

GST NEWSLETTER

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ADVISORY AND BUSINESS
CONSULTING FIRM**

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ARTICLE

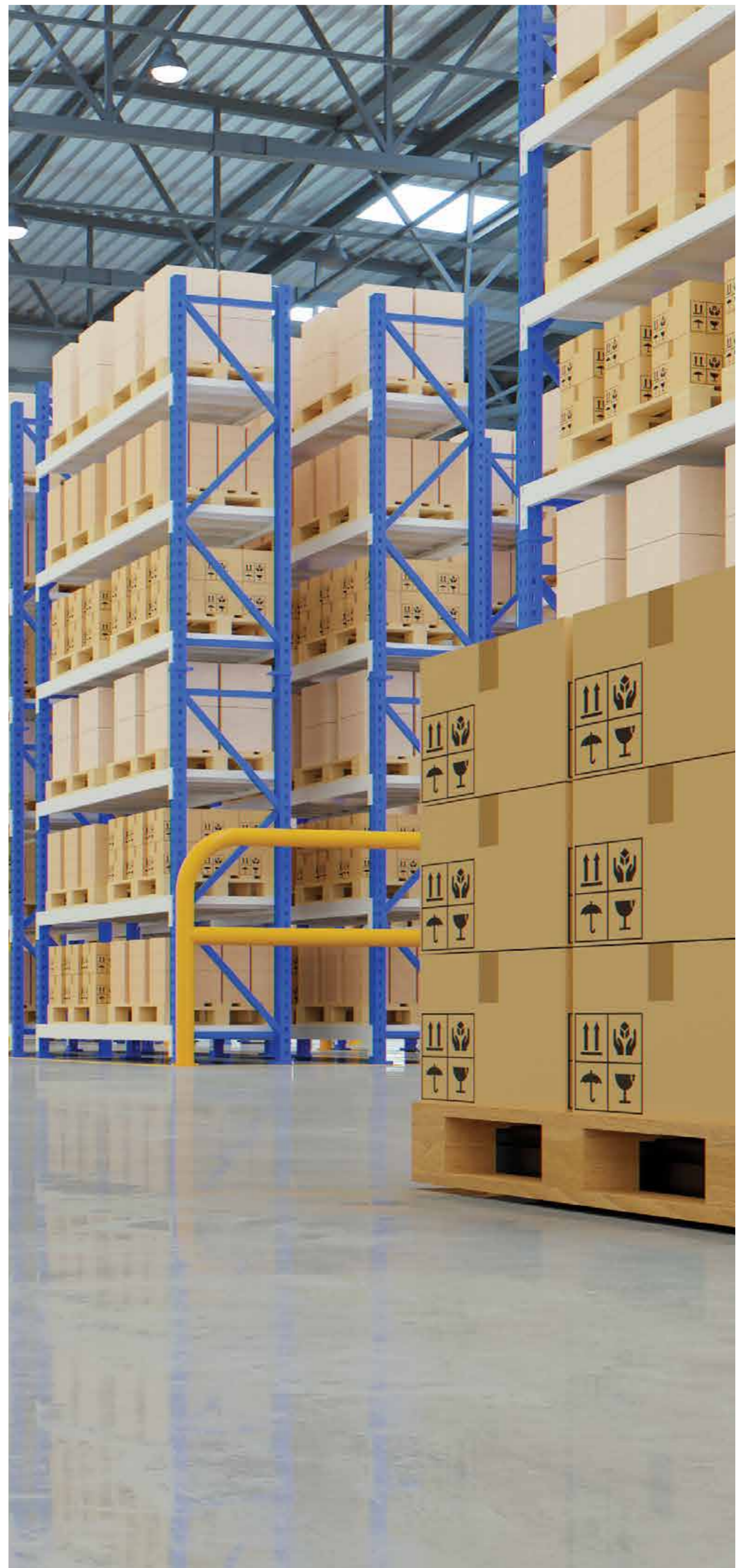
GST On Goods Transportation Agency (GTA)

Introduction

Goods Transport Agency commonly known as GTA is one of the largest service industry in India. All other industries rely on this industry for their growth and prosperity. The levy of Service Tax/GST on Goods Transportation Agency services has always remained subject matter of uncertainty and litigation. The Finance Act, 1997 levied Service Tax on Goods Transport Operators w.e.f. 16-11-1997 for the first time. However, after the nation-wide strike, levy of service tax was withdrawn by the government. Levy of service tax was imposed on Transport of Goods by Road service rendered by any goods transport agency with effect from 10-09-2004. However, the levy was again postponed in view of transporters strike. The Government thereafter constituted a committee to study the matter and finally levy of tax on Transport of Goods by Road was made effective with effect from 01-01-2005. However, the liability to pay the tax was shifted on the head of the service recipient who is receiving such service and paying freight. Under the GST regime, services of transportation of goods by road supplied by a GTA are taxable, similar to the erstwhile service tax regime.

✔ Meaning Of GTA Services

The term GTA has not been defined under GST Act, 2017. However according to para 2 of notification No. 12/2017-Central Tax(Rate) - "Goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.





As per rule 54(3) of CGST Rules, 2017 consignment note should contain the following items.

- **Gross weight of the consignment.**
- **Name of the consigner and the consignee.**
- **Registration number of goods carriage in which the goods are transported.**
- **Details of goods transported.**
- **Details of place of origin and destination.**
- **Goods and Services Tax Identification Number of the person liable for paying tax whether as consigner, consignee or goods transport agency.**

It is worth to note that mere bill issued for transportation of goods cannot be treated as a Consignment Note.


The use of the phrase 'in relation to' has extended the scope of the definition of GTA. This actually means that GTA includes not only the actual transportation of goods but any intermediate/ancillary service provided in relation to such transportation too like:

- **Loading / unloading,**
- **Packing / unpacking,**
- **Trans-shipment,**
- **Temporary warehousing, etc.**

Thus, we can say that issuance of consignment note is compulsory for supplier of services to become a GTA and if consignment note is not issued by such transporter, then such transporter will not be considered as GTA. The same has also been iterated in the GST Flyer Chapter 38 on GTA by the CBIC.

However, it must be noted that in the appeal against advance ruling filed by K.M. Trans Logistics Private Limited (RAJ./AAAR/05/2019-20, Appeal No. RAJ/AAAR/APP/03/2019-20 dated 20/11/2019), the Appellate AAR – Rajasthan held that *“if the lien of the goods is transferred and the appellant becomes responsible for the goods till its safe delivery to the consignee, the services will be classifiable as goods transport agency services and issuance of consignment note or its non-issuance does not make any difference so far as the nature of the activity carried out by them is concerned.”*

In the erstwhile Service Tax laws, the Allahabad High Court held similarly in the case Kisan Sahkari Chini Mills Ltd. Versus Commissioner (Central Excise Appeal No. 23 of 2014) which was then upheld by the Supreme Court (Special Leave Petition (Civil) Diary No. 27143 of 2018).



Therefore, it's important for taxpayers to verify that the transporter is either a GTA issuing a consignment note or the transport service agreement contains such clauses to distinguish the same.

Further, Goods transport operator (GTO) is kept outside the purview of GST. GTO is a self-employed person/driver either by taking vehicle on rent from other or as owner of one or two vehicles, he does not issue any consignment note. Exemption is given to GTO vide Notification No 12/2017 Central Tax (rate).

✔ **Present System Of Taxation Of GTA**

Presently, GST is leviable on GTA services under both reverse charge mechanism and forward charge mechanism at the option of GTA. GTA service is classified under land transport services of goods by road under SAC code 996511 and GST is payable at the rate of 5% without ITC or 12% with ITC. Originally, supply of services by goods transportation agency were subject to the payment of tax under RCM vide Notification No. 13/2017-CT (Rates) and 10/2017-IT (Rates) both dated 28-6-2017, effective from 1-7-2017. However, w.e.f. 22-08-2017, GTA has allowed to pay tax at the rate of 12% under the forward charge mechanism. Option to pay GST at the rate of 12% is normally exercised by those GTA, who are having good amount of ITC or by a freight forwarder who in addition to GTA services providing composite services such as packing, clearing and transportation from source to destination basis. In all other cases, including where the GTA has charged 5% GST, liability on transportation of goods by GTA is born by the recipient. Liability to pay tax under reverse charge mechanism is defined under Notification No. 13/2017-CT (Rates) and 10/2017-IT (Rates) both dated 28-6-2017. According to said Notification liability to pay tax under RCM is in the hands of recipient in case supplier of service is GTA and supply of services by a GTA by way of transportation of goods by road is given to –

- **Any factory registered under the Factories Act, 1948**
- **Any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or**
- **Any co-operative society established by or under any law; or**
- **Any person registered under the GST Act; or**
- **Any body corporate established, by or under any law; or**
- **Any partnership firm whether registered or not under any law including association of persons; or**
- **Any casual taxable person.**

The provision of reverse charge by registered person is not applicable where Government department, local authority or Government Agency is registered under GST only for purposes of TDS under section 51 of CGST Act. Notification No 12/2012 CT (Rate) and Notification No 09/2017 IT (Rate) also provide for certain exemptions in case of transportation of goods by road by GTA as follows-

- **Agricultural produce**
- **Goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed Rs. 1,500**
- **Goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750**
- **Milk, salt and food grain including flour, pulses and rice**
- **Organic manure**
- **Newspaper or magazines registered with the Registrar of Newspapers**
- **Relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or**
- **Defence or military equipment**

Apart from the above, GTA services provided to the Government department, local authority or Government Agency where registration by said entity is taken only for purposes of TDS under section 51 of CGST Act are also exempted from the payment of GST.

✔ **Taxation Of GTA w.e.f. 18th July, 2022**

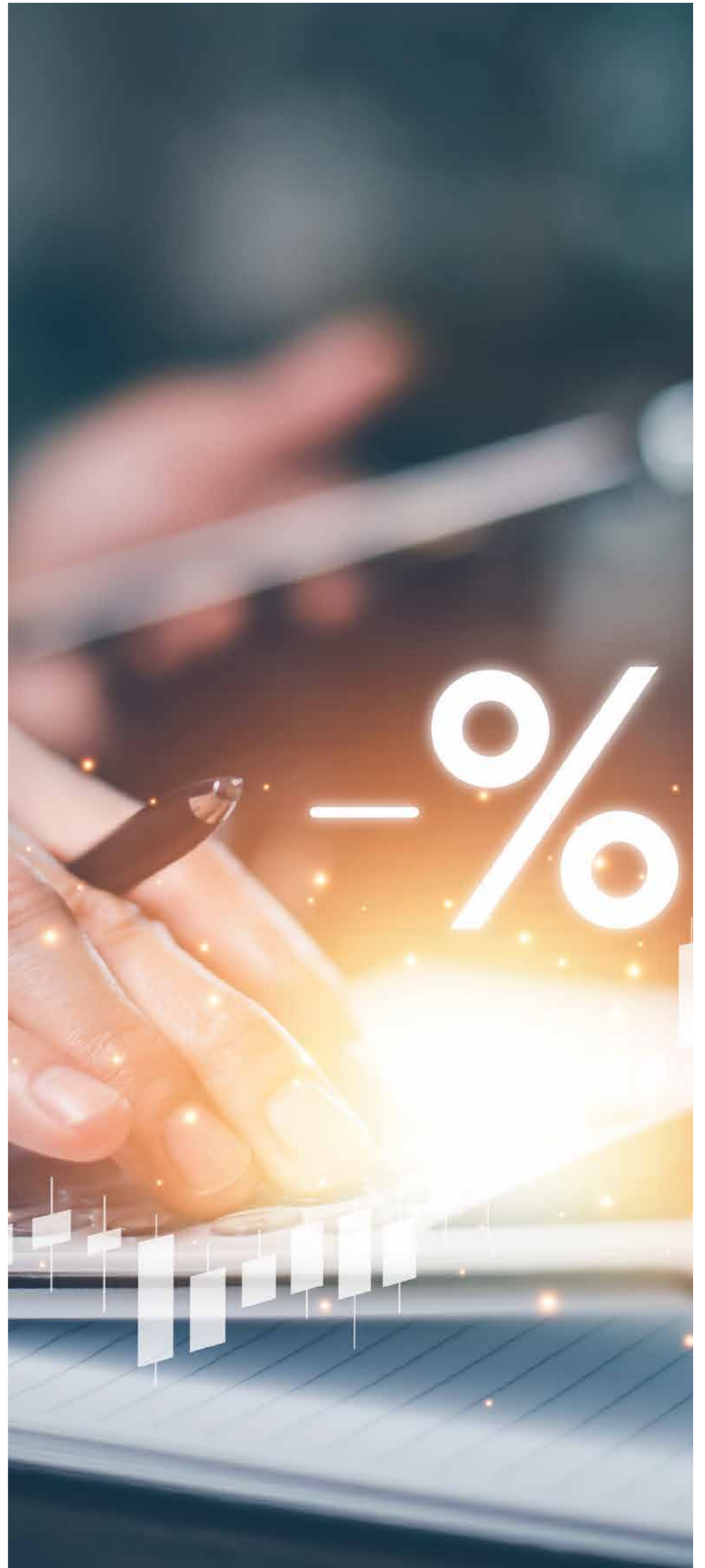
GST council in its 47th meeting held at Chandigarh on 28th & 29th June, 2022 recommended certain changes in the rates of GTA services. All such changes are notified by the board w.e.f. 18th July, 2022. The changes are categorised into following three categories -

- **GTA can pay tax at 5% or 12% under forward charge**
- **RCM by the recipient at the rate of 5%**
- **Withdrawal of certain exemptions**

• **GTA Can Pay Tax At 5% Or 12% Under Forward Charge**

GTA can pay tax at 5% or 12% under forward charge: Board vide Notification No 03/2022 CT (Rate) dt. 13th July, 2022 and Notification No 08/2022 IT (Rate) dt 13th July, 2022 has given an option to goods transportation agency to pay tax at the rate of 5% or 12% under reverse charge mechanism. Such option is subjective and GTA can exercise such option only after fulfilment of certain requirements. Following are the requirements which GTA has to fulfil in order to pay tax at the rate of 5% or 12%

- The option to pay tax by GTA itself shall be exercised by making declaration in Annexure V to the jurisdictional GST authority on or before 15th March of the preceding financial year. For FY 2022-23, option can be exercised on or before 16th August 2022. The option will remain valid till the end of financial year for which it is exercised, and a registered person is not allowed to change the same within a year.
- GTA has an option to pay GST at the rate of 5% without availing ITC on goods and services used in supplying the service or at the rate of 12% with ITC. It seems from the wordings that GTA can exercised to pay tax at both 5% & 12% at the same time for two different services. However, if such an option is chosen, then the GTA is liable to reverse the ITC claimed in terms of Rule 42/43 as the supply of GTA services at 5% will be considered as exempt supply for the purpose of claiming ITC as per explanation (iv) to the Notification No 11/2017 Central Tax (Rate) and Notification No 08/2017 Integrated Tax (Rate) dt. 28th June 2017.
- GTA must provide following declaration on every invoice issued by him that he has exercised the option to pay tax under forward charge mechanism.





Declaration - “I/we have taken registration under the CGST & SGST/IGST Act, 2017 and have exercised the option to pay tax on services of GTA in relation to transport of goods supplied by us during the Financial Year under forward charge”

- **RCM By The Recipient At The Rate Of 5%**

In case where GTA does not exercise to pay GST under forward charge mechanism, recipient would be liable to pay tax at the rate of 5%. Input tax credit would be available to the recipient. Recipient would be liable to pay tax under RCM on all such cases where a declaration regarding payment of tax under forward charge mechanism is not given by the supplier.

- **Withdrawal Of Certain Exemptions**

Notification No 12/2012 CT (Rate) and Notification No 09/2017 IT (Rate) also provide for certain exemptions in case of transportation of goods by road by GTA. Board vide Notification No 04/2022 CT (Rate) and 04/2022 IT (Rate) dt. 13th July, 2022 rationalised certain exemptions. Following value-based exemptions w.r.t. GTA has been withdrawn w.e.f. 18th July, 2022 -

- Goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed Rs. 1,500
- Goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs.750

Other specific exemptions w.r.t. GTA services will be continued.

Conclusion

In view of the above every registered person who is receiving GTA services should verify each of the invoice of the GTA. There is no need to pay tax under RCM where supplier has charged GST in its bill along with the appropriate declaration in the invoice. Cases where tax is not paid by the GTA and declaration in the invoice is not given in the invoice, GST is payable under reverse charge mechanism. One must also remember that exemption of Rs. 750/- or 1500/- for part consignment or full consignment is no longer available.



CASE LAWS

Extension Of Transitional Credit Claim

Facts Of The Case

Union of India vs. Filco Trade Centre (P.) Ltd Miscellaneous Application Nos.1545-1546/2022 in SLP(C) No. 32709-32710/2018 dated 02-09-2022 - Supreme Court of India

Many taxpayers were unable to file and carry forward their erstwhile regime credits to the GST regime on account of technical glitches and various other reasons despite various extensions. Some aggrieved taxpayers approached their respective jurisdictional High Courts seeking reliefs on the ground that the right to credit is a vested indefensible right and the same cannot be restricted basis purely technical considerations.

A challenge was also mounted in several of these petitions that right to utilize their erstwhile credit duly availed is an indefeasible right and no time limit can be inserted to restrict the transition and availment of the said credit under GST. High Courts by impugned orders allowed writ petitions filed by these taxpayers and Revenue filed SLP against impugned orders which was settled by the Supreme Court in the case of Filco Trade Center Pvt. Ltd.

Currently, based on an extension filed by Revenue department the final opportunity to file and claim Transition Credit will start from October 1st, 2022.


Provision Of Law

In terms of Section 140 of the CGST Act, 2017 and States GST Acts, 2017 registered persons under GST were eligible to take their eligible CENVAT credit and VAT credit inputs to the GST electronic ledger through GST TRAN-1. As per Rule 117, the due date for filing TRAN-1 was 31/03/2020.

Ruling Of AAR

The Hon'ble Supreme Court held that:

- Aggrieved taxpayers are directed to revise or file the relevant forms irrespective of whether they have filed a Writ Petition or their case has been decided by Information Technology Grievance Redressal Committee.

- 
- The concerned officers have to ensure that there are no technical glitch and are also given 90 days thereafter to verify the veracity of the claim/transitional credit and pass appropriate orders thereon on merits after granting appropriate reasonable opportunity.
 - The amount claimed and verified has to be credited to the Electronic Credit Ledger of the taxpayers.

Levy Of GST On Financial Assistance Received From Outside India And Classification Of The Supply As Zero-rated Or Domestic Supply

Facts Of The Case

Facts of the case - M/s. Prettl Automotive India Private Limited - GST-ARA-20/2019-20/B-59 dated 15/12/2020 by Advance Ruling Authority Maharashtra

The applicant is a subsidiary of Prettl Kabelkonfektion GmbH, Germany. In terms of developPPP.de programme run by the German Federal Ministry for Economic Cooperation and Development, the applicant was receiving 540,000 Euro towards economic, social and ecological sustainable development. For this, the applicant has planned to enter into an agreement with their holding company as a service agreement to construct a training center, implement training measures along with conducting training sessions.

Provision Of Law

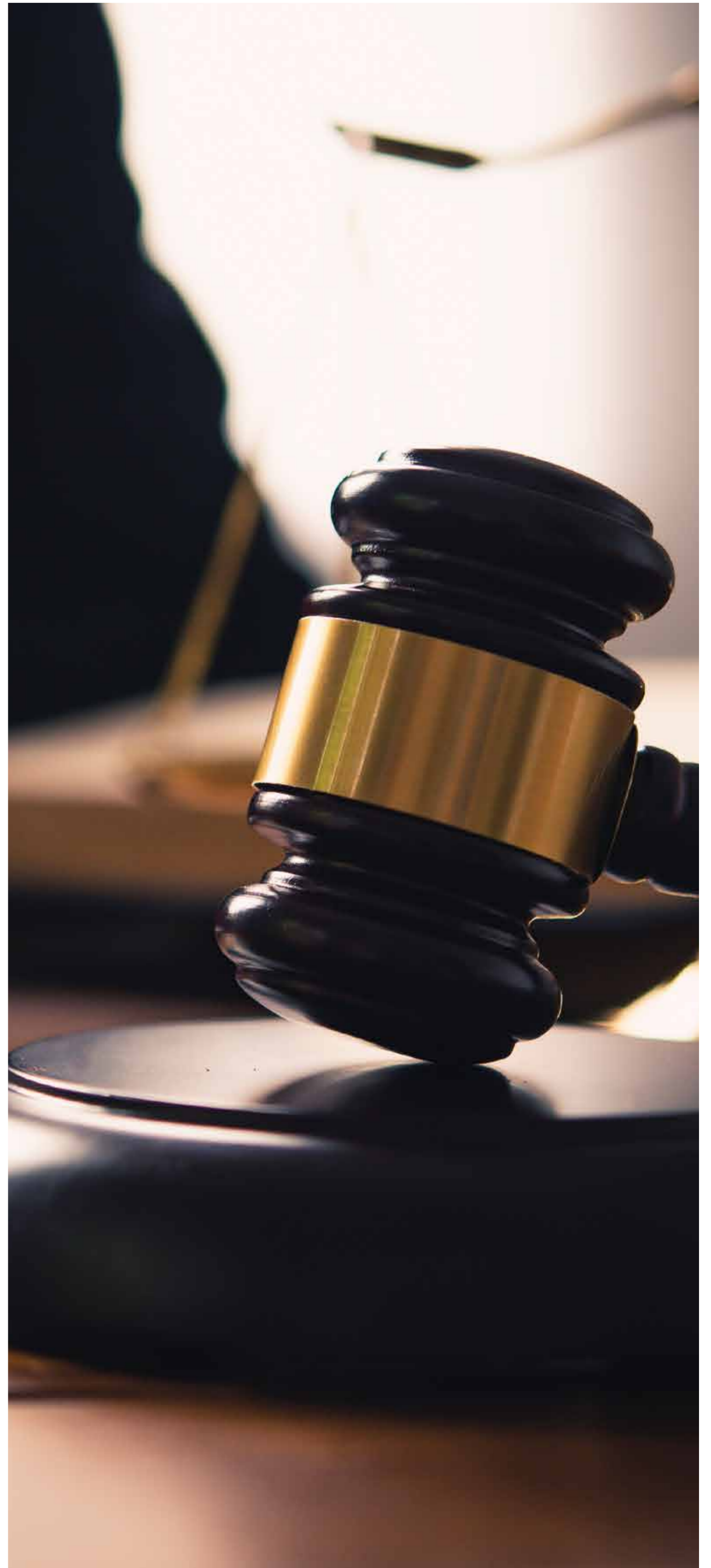
As per Section 7 read with Schedule II Sl. No. 5, “agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act” amounts to supply of services.

As per Section 13 (5) of the IGST Act, the place of supply of services supplied by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organization, shall be the place where the event is actually held.

Ruling Of AAR

The AAR ruled that:

- The proposed service agreement states that the services are provided by the applicant to the German holding company for a consideration i.e., disguised as 'financial assistance'.
- The applicant is providing services to the holding company in Germany as the beneficiaries of the training and other activities are not employees of the applicant.
- The activities undertaken by the applicant are to promote the investments of German companies in India and are undertaken only on the directions of Prettl GmbH.
- The applicant is providing services in the nature of 'agreeing to do an act' under HSN 999792 and the same is subject to GST at 18%.
- The entire gamut of supply as per the agreement between the applicant and Prettl GMBH, will be performed in India and is hence the place of supply is in India as per Section 13(5) of the IGST Act, 2017.



NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF AUGUST 2022

- ✓ One Central Tax Notification. - [Click here](#)
- ✓ Three Central Tax Circulars. - [Click here](#)
- ✓ Two Central Tax Instructions /Guidelines. - [Click here](#)

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to implement e-invoicing for the taxpayers having aggregate turnover exceeding Rs. 10 Cr from 01 st October, 2022.	17/2022-Central Tax 01-Aug-2022
2.	Clarifications regarding applicable GST rates & exemptions on certain services	177/09/2022-GST 03-Aug-2022
3.	GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law	178/10/2022-GST 03 Aug-2022
4.	Clarification regarding GST rates & classification (goods) based on the recommendations of the GST Council in its 47th meeting held on 28 th – 29 th June, 2022 at Chandigarh	179/11/2022-GST 03-Aug-2022
5.	Guidelines for arrest and bail in relation to offences punishable under the CGST Act, 2017	Instruction No. 02/2022-23-[GST-INV] 17-Aug-2022
6.	Guidelines on issuance of summons under section 70 of the Central Goods & Services Tax Act, 2017	Instruction No. 03/2022-23[GST-INV] 17-Aug-2022

DUE DATES OF GST FOR THE MONTH OF SEPTEMBER 2022

SEPTEMBER

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5	6	7	8	9	GSTR-7, GSTR-8 10
* GSTR-1 11	12	* IFF (Optional) & GSTR-6 13	Generation of Form 2B 14	15	16	17
18	19	* GSTR-3B & GSTR-5, 5A 20	21	22	23	24
* PMT-06 25	26	27	28	29	30	

2022

* Monthly returns for taxpayers with Annual Turnover more than Rs. 5 Crores or Taxpayer who has opted Monthly return option.

* Quarterly returns for taxpayers with Annual Turnover less than Rs. 5 Crores and opted for quarterly return monthly payment option (QRMP).



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