




**THE INSTITUTE OF CHARTERED  
ACCOUNTANTS OF INDIA**  
**GST & INDIRECT TAXES COMMITTEE**  
Webinar on Significant  
Developments pursuant to  
47<sup>th</sup> GST Council Meeting  
Date: 22 July 2022  
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Clarifications

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## Clarifications

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### Deemed Exports

- » Refunds claimed on deemed exports are in the nature of refund of tax charged on such supplies.
- » ITC restrictions u/s 17 of CGST, Act 2017, shall not apply to such refunds.
- » Circular No. 147/03/2021-GST dt. 12.03.2021 only provides for a procedural requirement of claiming such ITC in ECL debiting with the refund application.
- » Such ITC availed is not to be included in the "Net ITC" for computation of refund of unutilised ITC on account of zero-rated supplies by the recipient deemed export supply.

Circular No. 172/04/2022-GST dt.06.07.2022

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## Clarifications

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### Perquisites to employees

- » Perquisites provided by the employer to the employee will not be subjected to GST when the same is provided in terms of the contractual agreement between the employer and employee.

### Blocked ITC

- » The proviso inserted after sub-clause (iii) of clause (b) of subsection (5) of section 17 of the CGST Act shall be applied to the whole of clause (b).
- » ITC in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.
- » ITC in respect of supplies such as food and beverages, outdoor catering, health services, life insurance and health insurance, etc. shall be available if the provision of such supplies to the employees is obligated on the employer under any law.
- » Section 17(5)(b)(i) bars ITC in respect of leasing of motor vehicles, vessels, aircraft only. It does not bar availment of ITC in case of other leasing.

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## Clarifications

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### Usage of the balance available in the Electronic Cash & Credit ledger

#### » Amount available in Electronic Cash Ledger :

Any payment towards output tax, self- assessed or payable as a consequence of any proceeding instituted

#### » Amount available in Electronic Credit Ledger :

##### Can be used

- For making any payment towards output tax
- Such payment can be towards tax self – assessed in returns or,
- Tax payable as a consequence of any proceeding instituted

##### Cannot be used

- For payment of tax under RCM since output tax does not include tax payable under RCM
- For making payment of interest, penalty, fee or any other amount.
- For making payment of erroneous refund sanctioned in cash.

Hon'ble Orissa High court has held that pre-deposit for an appeal can be made only in cash  
No express clarification in this regard in the circular

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## Clarifications

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### Refunds under IDS where the input and output are same

- » Circular No. 135/05/2020-GST dated 31.03.2020 clarified that refund of accumulated ITC under clause (ii) of sub-section (3) of section 54 of the CGST Act would not be applicable in cases where the input and the output supplies are the same and attract different tax rates at different points in time
- » It is now clarified that where rate of tax of output supply is less than the rate of tax on inputs at the same point of time due to supply of goods by the supplier covered under concessional notification, the credit accumulated on account of the same is admissible
- » Refund shall not be allowed in cases where same product attracted different tax rates at different points of time and where the output supply is either Nil rated or fully exempted.
- » Refund shall also not be allowed where the supply of such goods or services is not notified by the Government as being excluded (i.e. refund restricted) from the refund of accumulated ITC.

Circular No. 173/04/2022-GST dt.06.07.2022

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## Clarifications

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## Clarifications

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### Applicability of demand and penalty for of transactions involving fake invoices

- » **Issue:** A registered person "A" has issued tax invoice to another registered person "B" without any underlying supply of goods or services or both, whether such transaction will be covered as "supply"?

Whether any demand and recovery can be made from 'A' in respect of the said transaction under the provisions of section 73 or section 74

Whether any penal action can be taken against registered person 'A' in such cases

- » **Clarification:** Since only tax invoice is issued by 'A' without the underlying supply of goods or services or both, such an activity does not satisfy the criteria of "supply"

As there is no supply no tax liability arises against 'A' for the said transaction, and accordingly, no demand and recovery or penal action is required to be made against 'A' under the provisions of section 73 or section 74 of CGST Act

'A' shall, however, be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.

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## Clarifications

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### Applicability of demand and penalty for of transactions involving fake invoices

- » **Issue:** In the above case 'B' avails input tax credit of the invoice without actual supply. He then issues invoice along with underlying supply of goods or services or both to his buyers and utilizes the aforementioned ITC, for payment of his tax liability. Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the CGST Act.

Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the Act

- » **Clarification:** "B' has availed ITC without receiving the goods or services, in contravention of the provisions of section 16(2)(b) of CGST Act. However, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid, no demand and recovery of either input tax credit fraudulently availed or tax liability of the outward transaction by 'B' to 'C' is required

'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods and/or services.

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## Clarifications

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### Applicability of demand and penalty for of transactions involving fake invoices

- » **Issue:** In the above case 'B' avails input tax credit of the invoice without actual supply. He then issues invoice without underlying supply of goods or services to 'C'.

Whether 'B' will be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 73 or section 74 or any other provisions of the Act

- » **Clarification:** "B' has availed and utilized ITC without receiving the goods or services, in contravention of the provisions of section 16(2)(b) of CGST Act. Hence, he shall be liable for the demand and recovery of the said ITC, along with penal action, under the provisions of section 74 of the CGST Act, and interest under the provisions of section 50 of the said Act

As per provisions of section 75(13), since penal action for fraudulent availment or utilization of ITC is taken under section 74 no penalty can be imposed on 'B' under any other provisions of including under section 122 can be taken.

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## Clarifications

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### Applicability of demand and penalty for of transactions involving fake invoices

- » Any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section. It may also be noted that in such cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable, subject to conditions specified therein, based on facts and circumstances of each case

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## Clarifications

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### Circulars yet to be issued on the following issues

- » Additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and shall be given the same tax treatment as given to toll charge
- » Allowing choice of location of a plot is part of supply of long-term lease of plot of land. Therefore, location charge or preferential location charges (PLC) are part of consideration charged for long term lease of land and shall get the same treatment under GST. Few advance rulings had held otherwise
- » Sale of land after levelling, laying down of drainage lines etc. is sale of land and does not attract GST

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## Changes to the law and measures for trade facilitation

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## Applicability of Interest

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### Payment of interest under Section 50 under various scenarios

- » The retrospective amendment to Section 50 (3) of the CGST Act pertaining to levy of interest has been notified. Simultaneously, Rule 88B has been inserted retrospectively from 1 July 2017
- » Retrospective amendment to Section 50 (3) notified. Interest shall be payable only in cases where ITC has been wrongly availed **and** utilised. In such cases interest shall be calculated from the date of such utilisation till the date of reversal of such ITC or date of payment.
- » Where the ITC balance in the Credit ledger falls below the amount of wrongly availed ITC, it shall be deemed to be utilised
- » The date of utilisation shall be considered as due date or date of filing of return whichever is earlier in case where the balance falls below due to payment made in the return
- » In all other cases, the date of debit in the electronic credit ledger shall be treated as the date of utilisation of such ITC

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## Applicability of Interest

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### Payment of interest under Section 50 under various scenarios – Contd..

- » In case of delayed filing of return, interest shall be calculated on the portion of tax paid by debiting electronic cash ledger for the period of delay. This shall not apply where return is filed after commencement of proceedings u/s 73 or 74 [Rule 88B r/w Section 50 (1)]
- » In all other cases, falling under Section 50 (1), interest shall be calculated on the amount which remains unpaid

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## Relaxations / measures for trade facilitation

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### Transfer of Cash balance of Electronic Cash ledger to other registrations

- » Balance of IGST and CGST in the **Electronic Cash Ledger** can be transferred to other registrations of the same person (within same PAN). Earlier, transfer was allowed only within same registration amongst the other heads of payment.
  - » Note: No such transfer shall be allowed if the person has unpaid liability in his Electronic Liability Leger

### Extension of Time limit for issuance of order under Section 73

- » The time limit for issuance of an order under Section 73 in respect of FY 2017-18 for recovery of tax not paid or short paid or of input tax credit wrongly availed or utilized has been extended up to 30 September 2023

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## Relaxations / measures for trade facilitation

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### » Revocation of suspension of registration

- » Where the registration has been suspended due non-filing of returns for prescribed period, such revocation shall be automatically revoked if all the pending returns are filed.
- » This will apply only if the registration is suspended but shall not apply if registration is already cancelled

### » Declaration on Invoices by specified persons not issuing e-Invoice / IRN

- » SEZ units, Insurers, Banks, Financial Institutions, NBFCs, GTA, Multiplexes, passenger transport service providers, OIDAR service providers who are excluded from generation of e-Invoices shall have to declare on the invoice that though their turnover exceeds the limit prescribed under Rule 48 (4), they are not required to prepare an invoice in terms of the said rule.

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## Relaxations / measures for trade facilitation

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### » Non-inclusion of sale of duty credit scrips in exempted supply turnover for ITC reversal:

- » A new clause has been added to explanation 1 to Rule 43 providing exclusion of supply of duty credit scrips from the value of exempted supply
- » Supply of duty credit scrips is considered as an exempted supply so far charging GST is concerned.

### » Recredit in case of erroneous refund paid back in cash

- » Where a person has claimed an erroneous refund and the same is returned by him along with applicable interest and penalty, wherever applicable, the erroneous refund shall be re-credited to the electronic credit ledger by an order in Form GST PMT-03A

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## Relaxations / measures for trade facilitation

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### » Filing of GSTR 9 & 9A for small taxpayers

Taxpayers having an AATO of up to 2 Cr. During FY 2021-22 are exempted from filing Annual return i.e. GSTR 9/9A for the said year

### » Payment options through UPI & IMPS:

The Council has also proposed that Taxpayers shall be allowed to deposit tax in the Electronic Cash Ledger using UPI and IMPS mode.

### » Extension of return filing for Composition dealers

- » Form GST CMP-08 (Quarterly statement) for the Quarter ended June 2022 can be filed till July 2022
- » Late fee for delayed filing of Form GSTR 4 (Annual return) for the FY 2021-22 waived if filed on or before 28 July 2022

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## Changes affecting refunds

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## Changes Affecting refunds

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### » Value for the purpose of refund on export of goods:

In case of export of goods without payment of duty, value of goods exported out of India shall be taken as lower of the FOB value or the value declared on the tax invoice / Bill of supply

### » Mismatch of data between shipping bill and GSTR 1

In case of mismatch between the shipping bill and GSTR 1, application for refund shall be deemed to have been filed on the date on which the mismatch is rectified

### » Refund in case of inverted duty structure

- » Formula for claiming refund in case supply of inverted goods & services has been amended
- » The Formula now deems that the payment of the tax on outward supply of inverted rated goods and services has been made by utilised ITC availed in respect of goods and services in proportion of their availment
- » Effect of the observations of the Hon'ble Supreme Court in case of VKC Footsteps

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## Changes Affecting refunds

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### » Time limit for claiming refund:

For computation of the period of limitation for filing refund claim under Section 54 and 55 of the CGST Act, the period between 1 March 2020 to 28 February 2022 shall be excluded.

### » Time limit for recovery of erroneous refund:

For computation of the period of limitation for filing refund claim under Section 54 and 55 of the CGST Act, the period between 1 March 2020 to 28 February 2022 shall be excluded.

### » Specified officer in case of supply to SEZ:

Specified officer for the purpose of Rule 89 shall include "specified officer" or an "authorised officer" as defined under rule 2 of the SEZ Rules, 2006

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## Changes Affecting refunds

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### » Procedure where refund is withheld

- » As per Rule 96 (4), refund is withheld in case where jurisdictional officer has made a request to withhold the refund or when Customs officer determines that the goods are exported in violation of the Customs Act
- » Additionally, now refund shall also be withheld if the department, on the basis of data analysis and risk parameters, is of the opinion that verification of credentials of the exporter, including the availment of ITC by the exporter, would be essential [96 (4) (c)]
- » Principal Director General / Director General of Directorate General of Analytics and Risk Management (DGRAM), CBIC, have been given powers to exercise the for the aforementioned clause, throughout the territory of India [notified on 21 July 2022]
- » In all the above cases, the refund application shall be transmitted in Form GSTR RFD – 01 to the proper officer with an intimation to the exporter. The application shall be dealt with by the officer in accordance with the provisions of Rule 89

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## Changes Affecting refunds

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### » Recredit in case of erroneous refund paid back in cash

Where a person has claimed an erroneous refund and the same is returned by him along with applicable interest and penalty, wherever applicable, the erroneous refund shall be re-credited to the electronic credit ledger by an order in Form GST PMT-03A

- Refund of IGST obtained in contravention of sub-rule (10) of rule 96.
- Refund of unutilised ITC on account of export of goods/services or supply to SEZ developer / unit without payment of tax.
- Refund of unutilised ITC due to inverted tax structure.

### » Mechanism for claiming the refund

- » Payment should be made along with applicable interest and penalty, wherever applicable, through FORM GST DRC-03 by debit of amount from electronic cash ledger
- » Reason for making payment to be mentioned in the text box as the deposit of erroneous refund of on account of the aforementioned cases
- » Till the time functionality is developed on the GSTN a written request shall be made to the proper officer in prescribed format
- » The proper officer after verifying the application, he shall recredit the erroneous refund amount within 30 days from the date of receipt of request or date of payment of full amount by taxpayer, whichever is later.

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# Rate Changes

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## Rate changes

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### Withdrawal of exemptions

- » Services provided by the Department of Posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than the Central Government, State Government, Union territory
  - » Additional exemption granted in case of Services by the Department of Posts by way of post card, inland letter, book post & ordinary post (envelopes weighing less than 10 gms)
- » Services by way of renting of residential dwelling for use as residence where the residential dwelling is rented to a registered person
- » Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having value of supply of a unit of accommodation below one thousand rupees per day or equivalent
- » services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding Rs. 5000 per day to a person receiving health care services

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## Rate changes

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### Withdrawal of exemptions

- » Services by a goods transport agency where consideration does not exceed Rs. 750 for of all goods for a single consignee does or Rs. 5,000 for a consignment transported in a single carriage
- » Services by way of storage or warehousing of cereals, pulses, fruits, nuts and vegetables, spices, copra, sugarcane, jaggery, raw vegetable fibres such as cotton, flax, jute etc., indigo, unmanufactured tobacco betel leaves, tendu leaves, coffee and tea
  - » Substituted with Services by way of storage or warehousing of cereals, pulses, fruits and vegetables
- » Services by the RBI, IRDAI, SEBI, FSSAI, GSTN (to food business operators)
- » Services by way of fumigation in a warehouse of agricultural produce
- » Services by way of slaughtering of animals
- » Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation

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## Rate changes

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### Changes in exemptions pertaining to tours and travel industry

#### Removal of following exemptions

- » Non-economy air travel embarking from or terminating in an airport located in the state of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, or Tripura or at Bagdogra located in West Bengal
- » Services by way of transportation of railway equipment or materials by rail or a vessel from one place in India to another
- » Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto

#### Introduction of following exemption

- » Tour operator services provided partly in India and partly outside India, supplied to a foreign tourist. The exemption shall be in respect of consideration proportionate to the number of days for which tour is performed outside India subject to maximum 50% of the total consideration charged
  - » Foreign tourist shall mean a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes

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## Rate changes

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### Modifications of existing exemption

- » Services by way of training or coaching in recreational activities relating to-
  - (a) recreational activities relating to arts or culture, by an individual, or
  - (b) sports by charitable entities registered under section 12AA or 12AB of the Income-tax Act.

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## Rate changes

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### Changes in reverse charge

- » GTA now has an option to charge 5% on forward charge basis also. RCM, however, would be under 5% only
- » Service by way of renting of residential dwelling to any registered person
- » Entry pertaining to services provided by department of post removed (brought under forward charge)

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## Rate changes

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### Rate Rationalization to remove inverted duty structure - Services

S#	Description	From	To
1	Job work in relation to processing of hides, skins and Leather	5%	12%
2	Job work in relation to manufacture of leather goods and footwear	5%	12%
3	Job work in relation to manufacture of clay bricks	5%	12%
4	Works contract supplied to central and state governments, union territories & local authorities Involving predominantly earthwork and sub-contracts	5%	12%
5	Works contract for roads, bridges, railways, metro effluent treatment plant, crematorium etc.	12%	18%
6	Works contract services supplied to Central and State governments or local authorities by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of historical monument, canals, dams or other irrigation pipelines, plants for water supply, educational institutions, hospitals etc	12%	18%
7	Services supplied by foreman to chit fund	12%	18%

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## Rate changes

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### Rate Rationalization to remove inverted duty structure - Goods

S.#	Description	From	To
1	Printing, Writing or drawing ink	12%	18%
2	Knives with cutting blades, Paper knives, Pencil sharpeners and blades therefor, spoons, forks, ladles, skimmers, cake servers etc	12%	18%
3	Power driven pumps primarily designed for handling water such as centrifugal pumps, deep tube well turbine pumps, submersible pumps and Bicycle pumps	12%	18%
4	Machine for cleaning, sorting or grating, seed, grain pulses, Machinery used in milling industry or for the working of cereals etc, Pawan chakki that is Air based chakki, Wet grinder	5%	18%
5	Machines for cleaning, sorting or grading eggs, fruit or other agricultural produce and its parts, milking machines and dairy machinery	12%	18%
6	LED Lamps, lights and fixture, their metal printed circuits board	12%	18%
7	Drawing and making out instruments	12%	18%
8	Solar Water Heater and system;	5%	12%
9	Prepared/finished leather/chamois leather / composition leathers;	5%	12%

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## Rate changes

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### Other GST rate changes

S #	Description	From	To
<b>GOODS</b>			
1	Tetra Pak (Aseptic Packaging Paper)	12%	18%
2	Tar (whether from coal, coal gasification plants, producer Gas plants and Coke Oven Plants)	5/ 18%	18%
3	Cut and polished diamonds	0.25%	1.5%
4	IGST on import of Diethylcarbamazine (DEC) tablets supplied free of cost for National Filariasis Elimination Programme	5%	Nil
5	IGST on specified defence items imported by private entities/ vendors, when end-user is the defence Forces.	Applicable rate	Nil
6	Ostomy Appliances	12%	5%
7	Orthopedic appliances - Intraocular lens, Splints & other fracture appliances; artificial parts of the body; other appliances which worn, carried or implanted in the body to compensate for a defect or disability	12%	5%
<b>SERVICES</b>			
1	Transport of goods and passengers by rope ways.	18%	5%
2	Renting of truck/ goods carriage where cost of fuel is Included	18%	12%

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# Thank You

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