

GST Update

Weekly Update
06.11.2021

Background

- This Presentation covers the GST changes / observations/ press releases released by CBEC since the last update on 02.10.2021. It supplements the earlier GST Updates.
- This presentation is based on CGST Act/Rules/ Notifications, except the provisions related solely to SGST provisions. Similar parallel provisions in State Laws may be referred to as required

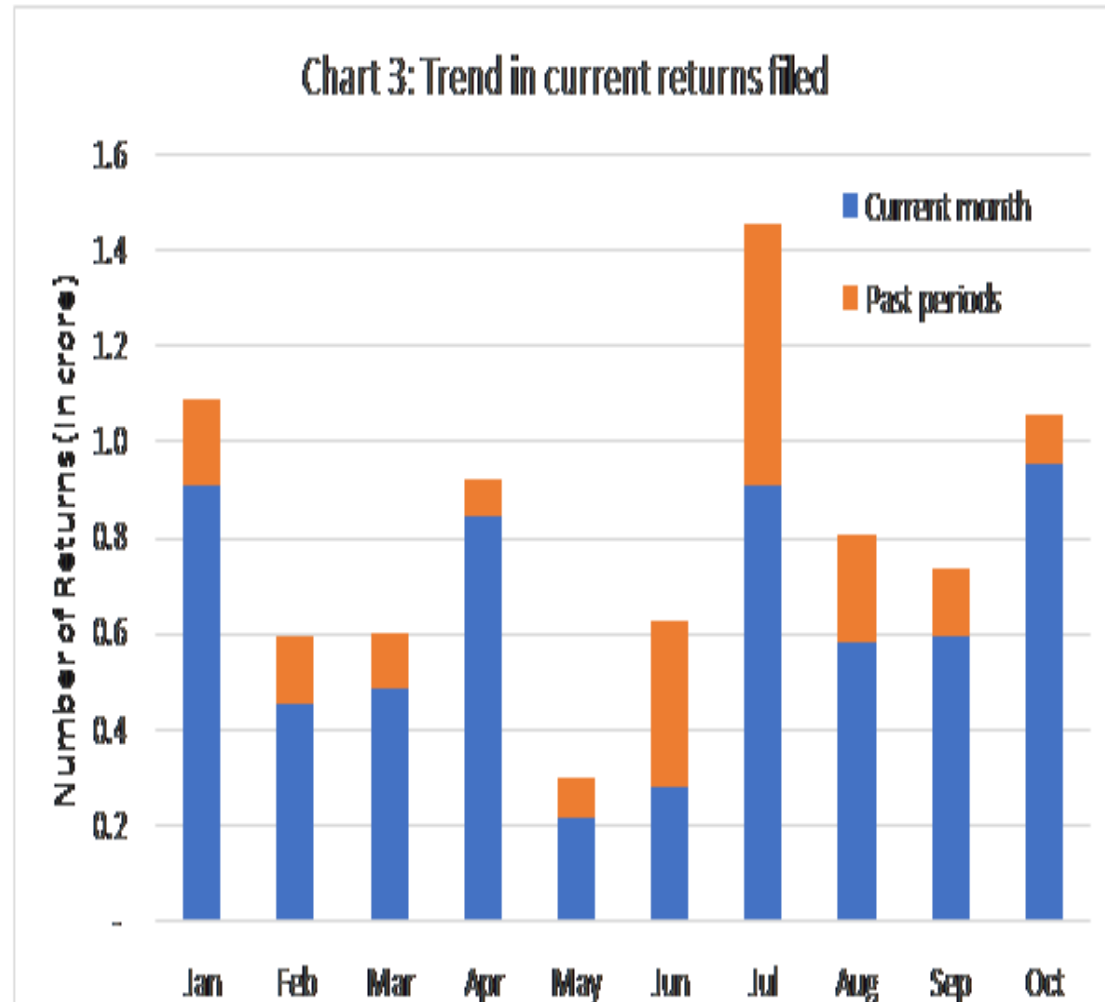
GST Revenue for October 2021

- **PIB Press release dated 1st November 2021.**
- The gross GST revenue collected in October 2021 is ₹ **1,30,127 crore** of which CGST is ₹ **23,861 crore**, SGST is ₹ **30,421 crore**, IGST is ₹ **67,361 crore** (including ₹ 32,998 crore on import of goods) and Cess is ₹ **8,484 crore** (including ₹ 699 crore on import of goods).
- The government has settled ₹27,310 crore to CGST and ₹ 22,394 crore to SGST from IGST as regular settlement. The total revenue of Centre and the States after regular settlements in the month of October 2021 is ₹ 51171 crore for CGST and ₹ 52,815 crore for the SGST.
- The revenues for **October 2021 are 24% higher** than the GST revenues in same month last year and 36% over 2019-20. During the month, revenues from import of goods was 39% higher and from domestic transaction (including import of services) are 19% higher than revenues from these sources during same month last year.

- **PIB Press release dated 1st November 2021.**
- The GST revenues for October have been second highest ever since introduction of GST, second only to that in April 2021.
- This is very much in line with the trend in economic recovery. This is also evident from the trend in the e-way bills generated every month since the second wave.
- The revenues have also been aided due to the efforts of the State and Central tax administration resulting in increased compliance over previous months. In addition to action against individual tax evaders, this has been a result of the multipronged approach followed by the GST Council. On one hand, various measures have been taken to ease compliance like nil filing through SMS, enabling Quarterly Return Monthly Payment (QRMP) system and auto-population of return.

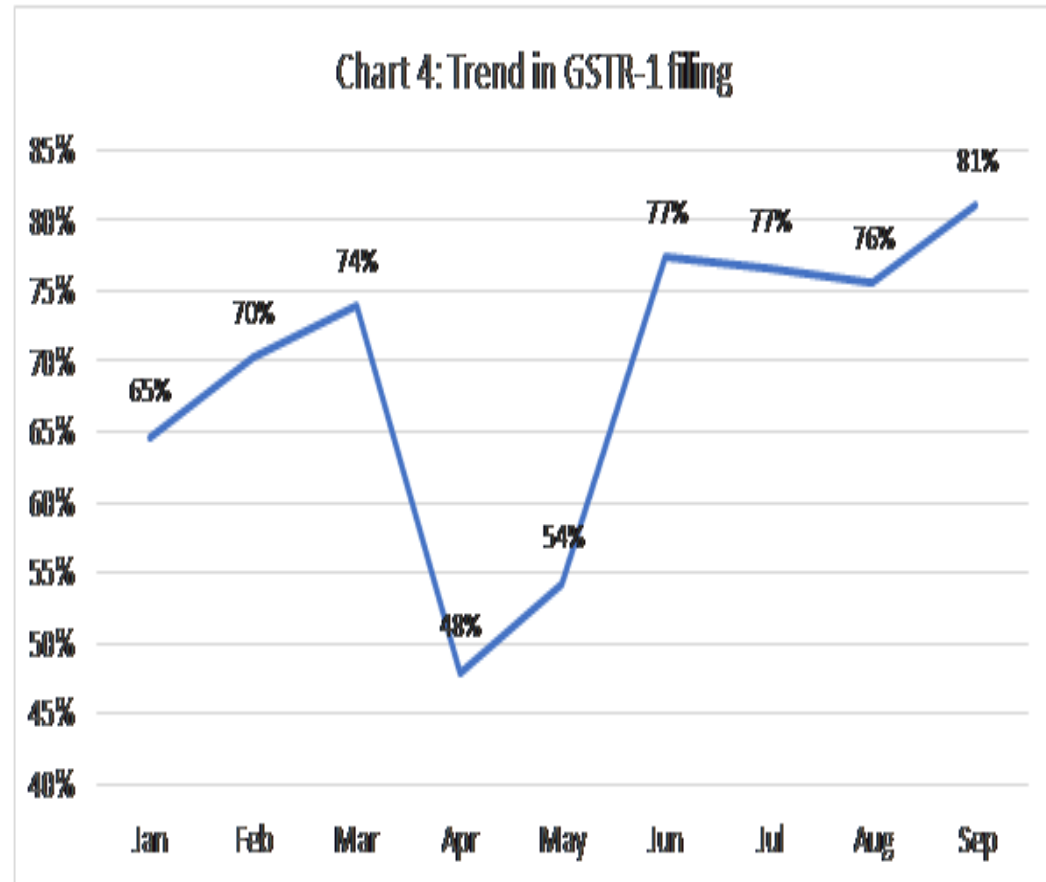
- **PIB Press release dated 1st November 2021.**
- During past one year, GSTN has augmented the system capacity considerably to improve user experience. On the other hand, the Council has also taken various steps to discourage non-compliant behaviour, like blocking of e-way bills for non-filing of returns, system-based suspension of registration of taxpayers who have failed to file six returns in a row and blocking of credit for return defaulters.
- Number of returns (GSTR-3B) of every month/quarter by the end of next month is a good parameter indicating timely payment of returns and filing of returns. After last date of filing of returns, special efforts are undertaken to ensure compliance by the end of the month in form of messaging by GSTN and close follow up by the Centre and State tax administration.

Decision by Council to waive late fee allowing people to file old returns and come up-to-date in filing of returns. With more and more taxpayers filing the returns every month, the percentage of returns of old period filed in any month has been increasing continuously.



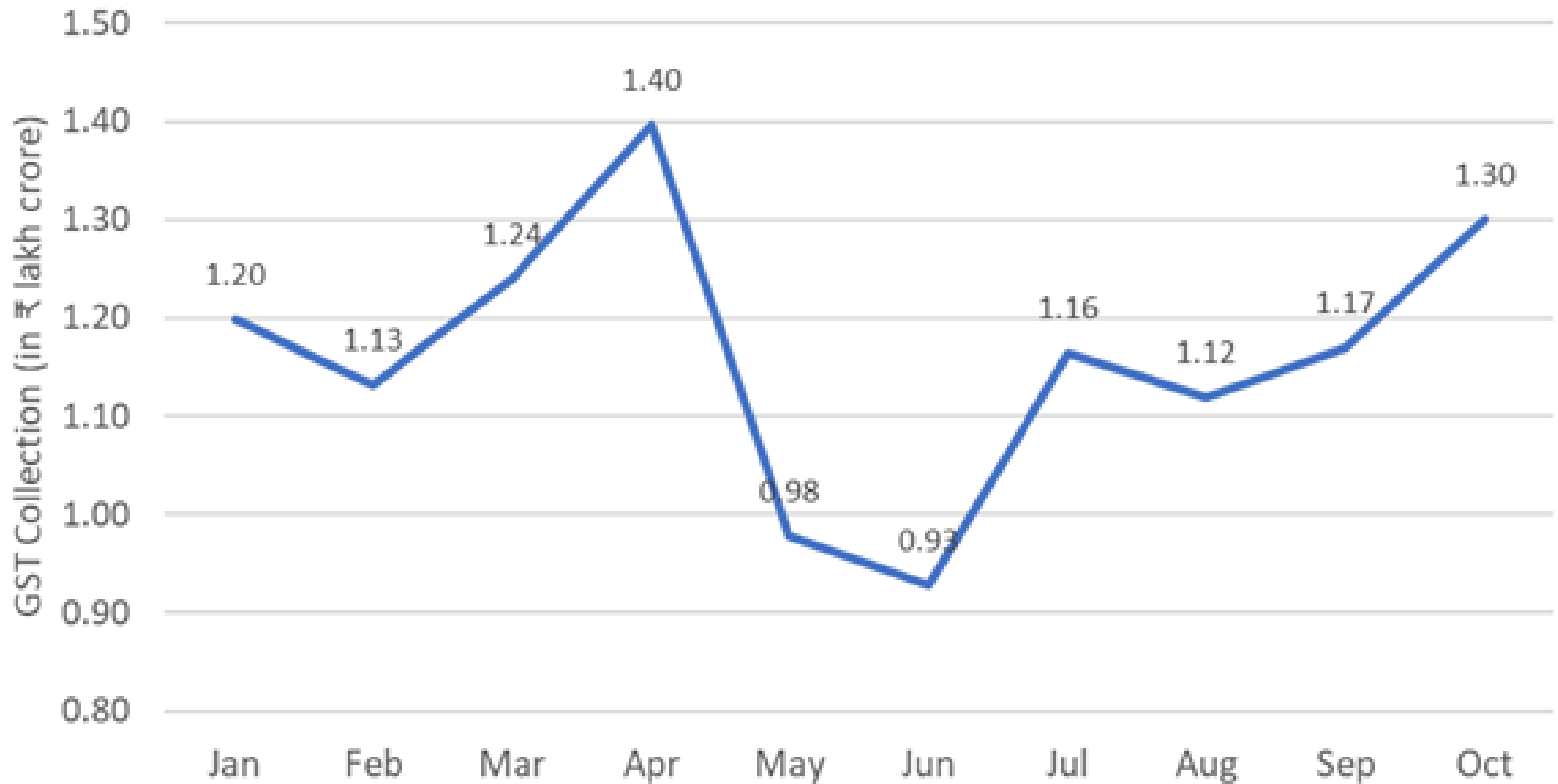
Trends in GSTR-1 filing

Focus of GST Council has been on timely filing of GSTR-1, the statement containing details of invoices. This statement is critical to ensure discipline in taking input tax credit. Various steps have been taken to ensure timely filing of GSTR-1.



Trends in Gross GST collection

Chart 5: Trend in Gross GST Collection



GST rate on Information Technology Software

- **Notification No. 13/2021-Central Tax (Rate) dated 27th October 2021**
- GST rate on Permanent transfer of Intellectual Property Vs IT software streamlined
- Rate on Permanent transfer of Intellectual property in respect of goods other than IT software increased from 12% to 18%
- Entry 243 in Sch. II omitted with suitable amendment in Entry 452P in Sch. III

GST rate on Information Technology Software (Contd)

Schedule III of Notification No. 01/2017-CT(Rate)

S/No.	Chapter Heading / Sub-heading / Tariff Heading	Description of Goods	CGST Rate
243 Sch. II	Any Chapter	Permanent transfer of Intellectual Property (IP) right in respect of goods other than Information Technology software	6%
452P Sch. III	Any Chapter	Permanent transfer of Intellectual Property (IP) right in respect of Information Technology software	9%

Clarifications regarding applicable GST rates & exemptions on certain goods and services

[Circulars No. 163 and 164- Central Tax both dated 10th October 2021; Based on Recommendations of 45th GST Council Meeting]

Services by cloud kitchens/central kitchens

- The explanatory notes to the classification of service state that “restaurant service” includes services provided by Restaurants, Cafes and similar eating facilities including takeaway services, room services and door delivery of food.
- Therefore, it is clear that takeaway services and door delivery services for consumption of food are also considered as restaurant service and, accordingly, service by an entity, by way of cooking and supply of food, even if it is exclusively by way of takeaway or door delivery or through or from any restaurant would be covered by restaurant service. This would thus cover services provided by cloud kitchens/central kitchens.
- Accordingly, as recommended by the Council, it is clarified that service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under “restaurant service”, as defined in notification No. 11/2017- Central Tax (Rate) and attract 5% GST [without ITC].

Supply of ice cream by ice cream parlors

- Ice cream parlors sell already manufactured ice- cream and they do not have a character of a restaurant. Ice-cream parlors do not engage in any form of cooking at any stage, whereas restaurant service involves the aspect of cooking/preparing during the course of providing service. Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.
- Accordingly, as recommended by the Council, it is clarified that where ice cream parlors sell already manufactured ice- cream and do not cook/prepare ice-cream for consumption like a restaurant, it is supply of ice cream as goods and not as a service, even if the supply has certain ingredients of service. Accordingly, it is clarified that ice cream sold by a parlor or any similar outlet would attract GST at the rate of 18%.

Coaching services supplied by coaching institutions and NGOs

- GST on free coaching services provided by coaching institutions and NGOs under the central scheme of “Scholarships for students with Disabilities” where entire expenditure is provided by Government to coaching institutions by way of grant in aid.
- Entry 72 of notification No. 12/2017- Central Tax (Rate) dated 28th June 2017, exempts services provided to the Central Government, State Government, Union territory administration under any training programme for which total expenditure is borne by the Central Government, State Government, Union territory administration.
- Accordingly, as recommended by GST Council, it is clarified that services provided by any institutions/ NGOs under central scheme of “Scholarships for students with Disabilities” where total expenditure is borne by Government is covered under entry 72 of notn No. 12/2017- Central Tax (Rate) dated 28th June 2017 and hence exempt from GST.

Satellite launch services provided by NSIL

- Satellite Launch Services supplied by M/s New Space India Limited (NSIL), a wholly-owned Government of India Company under the administrative control of Department of Space (DoS), to international customers as “Export of Service”
- Circular No. 2/1/2017-IGST dated 27.09.2017 clarifies that Place of Supply (PoS) of satellite launch services supplied by ANTRIX Corporation Ltd to customers located outside India is outside India and such supply which meets the requirements of section 2(6) of IGST Act, constitutes export of service and shall be zero rated. If the service recipient is located in India, the satellite launch services would be taxable.
- As recommended by the Council, it is clarified that as the satellite launch services supplied by NSIL are similar to those supplied by ANTRIX Corporation Ltd, the said circular No. 2/1/2017-IGST dated 27.09.2017, is applicable to them.

GST on overloading charges at toll plaza

- Vide notification dated 25th Sep. 2018, issued by Ministry of Road Transport And Highways, overloaded vehicles were allowed to ply on the national highways after payment of fees with multiplying factor of 2/4/6/8/10 times the base rate of toll. Therefore, in essence overloading fees are effectively higher toll charges.
- Entry 23 of notification No. 12/2017-Central Tax (Rate) dated 28th June 2017, exempts Service by way of access to a road or a bridge on payment of toll charges.
- As recommended by the GST Council, it is clarified that overloading charges at toll plazas would get the same treatment as given to toll charges.

Renting of vehicles to State Transport Undertakings and Local Authorities

- Service of renting of vehicles to State Transport Undertakings (STUs) and Local Authorities. Sl. No. 22 of notification No. 12/2017-Central Tax (Rate) dated 28.06.2017 exempts “services by way of giving on hire (a) to a state transport undertaking, a motor vehicle meant to carry more than twelve passengers; or (aa) to a local authority, an Electrically Operate vehicle meant to carry more than twelve passengers”
- As recommended by the GST Council, it is clarified that the expression “giving on hire” in Sl. No. 22 of the Notification No. 12/2017-CT (Rate) includes renting of vehicles. Accordingly, services where the said vehicles are rented or given on hire to State Transport Undertakings or Local Authorities are eligible for the said exemption irrespective of whether such vehicles are run on routes, timings as decided by the State Transport Undertakings or Local Authorities and under effective control of State Transport Undertakings or Local Authorities which determines the rules of operation or plying of vehicles .

Services by way of grant of mineral exploration and mining rights

- GST applicable on supply of services by way of granting mineral exploration and mining rights during the period from 1.07.2017 to 31.12.2018. With effect from 1.1.2019, the rate schedule has been specifically amended and it is undisputed since then that such service attracts GST at the rate of 18%.
- As regards classification of service, it was recommended by the Council that service by way of grant of mineral exploration and mining rights most appropriately fall under service code 997337, i.e., “licensing services for the right to use minerals including its exploration and evaluation”.
- It is clarified that even if the rate schedule did not specifically mention the service by way of grant of mining rights, during the period 1.7.2017 to 31.12.2018, it was taxable at 18% in view of principle laid down in the 14th meeting of the Council for residuary GST rate.

Admission to indoor amusement parks having rides etc.

- GST on services provided by Indoor Amusement Parks/Family Entertainment Centers, and scope of the word “amusement park” under entry 34(iii) of Notification No. 11/2017-CTR.
- Entry 34(iii) notification No.11/2017-CTR, prior to 01.10.2021, prescribed 18% GST on the services by way of admission to amusement parks including theme parks, water parks, joy rides, merry-go rounds, go-carting and ballet. On the other hand, Entry No. 34(iiiia) prescribed GST rate of 28% on the services by way of admission to entertainment events or access to amusement facilities including casinos, race club, any sporting event such as Indian Premier League and the like.

Admission to indoor amusement parks having rides etc. (Contd)

- On the recommendations of the Council, it is clarified that 28% rate [entry 34 (iiia)] applies on admission to a place having casino or race club [even if it provides certain other activities] or admission to a sporting event like IPL. On the other hand, Entry 34 (iii), having a rate of 18%, covers all other cases of admission to amusement parks, or theme park etc or any place having joy rides, merry-go rounds, go-carting etc, whether indoor or outdoor, so long as no access is provided to a casino or race club. This clarification will also apply to Entries 34(iii) and 34(iiia) as they existed prior to their amendment w.e.f 01.10.2021.
- The entries in question have been suitably amended vide notification No. 6/2021- Central Tax(Rate) dated 30.09.2021 to make them clearer.

Services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption

- GST on job work services supplied by contract manufacturers to brand owners for manufacture of alcoholic liquor for human consumption
- Entry in terms of Sl. No. 26 [Item 1(i)f] of notification No. 11/2017-Central Tax (R) dated 28-6-2017 prescribes GST rate of 5% on services by way of job work in relation to food and food products falling under chapters 1 to 22 in the first Schedule to the Customs Tariff Act, 1975.
- As recommended by GST Council, it is clarified that the expression “food and food products” in the said entry excludes alcoholic beverages for human consumption. As such, in common parlance also alcoholic liquor is not considered as food. Accordingly, above services are not eligible for the GST rate of 5% prescribed under the said entry.
- GST Council recommended that such job work would attract GST at the rate of 18%.

GST on fresh and dried fruits and nuts

- At present, fresh nuts (almond, walnut, hazelnut, pistachio etc) falling under heading 0801 and 0802 are exempt from GST, while dried nuts under these headings attract GST at the rate of 5%/12%.
- The general Explanatory Notes to chapter 08 mentions that this chapter covers fruit, nuts intended for human consumption. They may be fresh (including chilled), frozen (whether or not previously cooked by steaming or boiling in water or containing added sweetening matter) or dried (including dehydrated, evaporated or freeze-dried). Thus, HS chapter differentiates between fresh, frozen and dried fruits and nuts.
- Fresh fruit and nuts would thus cover fruit and nuts which are meant to be supplied in the state as plucked. They continue to be fresh even if chilled.

GST on fresh and dried fruits and nuts (Contd)

- However, fruit and nuts do not qualify as fresh, once frozen (cooked or otherwise), or intentionally dried to dehydrate including through sun drying, evaporation or freezing, for supply as dried fruits or nuts. It may be noted that in terms of note 3 to Chapter 8, dried fruits, even if partially re-hydrated, or subject to preservation say by moderate heat treatment, retain the character of dried fruits or dried nuts.
- Therefore, exemption from GST to fresh fruits and nuts covers only such products which are not frozen or dried in any manner as stated above or otherwise processed. Supply of dried fruits and nuts, falling under heading 0801 and 0802 attract GST at the rate of 5%/12% as specified in the respective rate Schedules.

GST on tamarind seeds

- Classification and applicable GST rates on tamarind seeds between tariff heading 1207 and 1209.
- As per general Explanatory Notes to HS 2017, heading 1209, covering seeds, fruit and spores, of a kind used for sowing, covers tamarind seeds. As per Chapter note 3 to Chapter 12, for the purposes of heading 1209, beet seeds, grass and other herbage seeds, seeds of ornamental flowers, vegetable seeds, seeds of forest trees, seeds of fruit trees, seeds of vetches (other than those of the species *Vicia faba*) or of lupines are to be regarded as “seeds of a kind used for sowing”.
- Thus, tamarind seeds, even if used for any purpose other than sowing, is liable to be classified under heading 1209 and hitherto attracted nil GST rate, irrespective of its use (for the period 01.07.2017 to 30.09.2021).

GST on tamarind seeds (Contd)

- The GST council in its 45th meeting recommended GST rate on seeds, falling under heading 1209, meant for any use other than sowing to 5% (S. No. 71A of schedule I of notification No. 1/2017- Central Tax (Rate) dated 28.06.2017) and Nil rate would apply only to seeds for this heading if used for sowing purposes (S. No. 86 of schedule of notification No. 2/2017- Central Tax (Rate) dated 28.06.2017).
- Hence, with effect from 1.10.2021, tamarind and other seeds falling under heading 1209, (i.e., including tamarind seeds), if not supplied as seed for sowing, would attract GST at the rate of 5%.

- **Definition of Copra and applicable GST rates**
- As per Explanatory Notes to HS (2017 edition) to heading 1203, Copra is dried flesh of coconut generally used for the extraction of coconut oil. Coconut kernel turns into copra, when it separates from the shell skin, while still being inside the shell. The whole unbroken kernel could be taken out of shell only when it converts to copra. Once taken out of shell, copra could be supplied either whole or broken.
- As per the Explanatory Notes to HS, the heading 0801 covers coconut fresh or dried but excludes Copra. Thus, exemption available to Coconut, fresh or dried, whether or not shelled or peeled, vide entry at S. No. 47 of notification No. 2/2017- Central Tax (Rate) dated 28.6.2017, is not available to Copra. Accordingly, Copra, classified under heading 1203, attracts GST rate of 5% vide entry at S. No. 66 of Schedule I of 1/2017-Central Taxes (Rate) dated 28.06.2017, irrespective of use.

GST on pure henna powder and leaves

- Classification and applicable GST rates on henna powder and henna leaves
- As per the Explanatory Notes to HS 2017, heading 1404 is vegetable products not elsewhere specified or included. Further, as per the said Explanatory Notes, heading 1404 includes raw vegetable materials of a kind used primarily in dyeing or tanning. Such products are used primarily in dyeing or tanning either directly or in preparation of dyeing or tanning extracts. The material may be untreated, cleaned, dried, ground or powdered (whether or not compressed).

GST on pure henna powder and leaves (Contd)

- Accordingly, it is clarified that pure henna powder and henna leaves, having no additives, is classifiable under tariff item 1404 90 90 and shall attract GST rate of 5% (S. No. 78 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).
- Further, the GST rate on mehndi paste in cones falling under heading 1404 and 3305 shall be 5% (S. No. 78A of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

GST on scented sweet supari & flavored and coated illaichi

- Classification and applicable GST rates on flavored and coated illaichi, and scented sweet supari
- Scented sweet supari falls under tariff item 2106 90 30 as “Betel nut product” known as “Supari” and attracts GST rate of 18% vide entry at S. No. 23 of Schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.
- Flavored and coated illaichi generally consists of Cardamom Seeds, Aromatic Spices, Silver Leaf, Saffron, Artificial Sweeteners. It is distinct from illaichi or cardamom (which falls under heading 0908).
- It is clarified that flavored and coated illaichi is a value added product and falls under sub-heading 2106. It accordingly attract GST at the rate of 18% (S. No. 23 of schedule III of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

GST on Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues

- GST rates on Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues of starch manufacture and similar residues, beet-pulp, bagasse and other waste of sugar manufacture, brewing or distilling dregs and waste, whether or not in the form of pellets.
- As per the Explanatory Notes to the HSN, heading 2303 includes residues of starch manufacture and similar residues (from maize (corn), rice, potatoes, etc.); beetpulp; bagasse; other waste products of sugar manufacture; brewing or distilling dregs and waste, which comprises in particular - dregs of cereals obtained in the manufacture of beer and consisting of exhausted grains remaining after the wort has been drawn off; malts sprouts separated from the malted grain during the kilning process; spent hops.

GST on Brewers' Spent Grain (BSG), Dried Distillers' Grains with Soluble [DDGS] and other such residues (Contd)

- Dregs resulting from the distillation of spirits from grain, seeds, potatoes, etc; beet pulp wash (residues from the distillation of beet molasses). All these products remain classified in the heading whether presented in wet or dry.
- Thus, Brewers' spent grain (BSG), Dried distillers' grains with soluble [DDGS] and other such residues are classifiable under heading 2303, attracting GST at the rate of 5% (S. No. 104 of schedule I of notification No. 1/2017-Central Tax (Rate) dated 28.06.2017).

GST rate on all pharmaceutical goods falling under heading 3006

- S. No. 65 of Second Schedule of Notification 1/2017- Central Tax (Rate) dated 28.6.2017 refers to the note 4 to Chapter 30 of the First schedule of the Customs Tariff Act, 1975 while mentioning an illustrative list. Certain representations were received seeking clarification on the applicable rate of goods falling under heading 3006 that are not specifically mentioned in the Entry at S. No. 65 of Schedule II of notification No. 1/2017-Central Tax (Rate) dated 28.6.2017.
- It is clarified that said entry 65 covers all goods as specified in Chapter Note 4 and Chapter Note 4 in turn covers all goods covered under Heading 3006. Therefore, said entry 65 covers all goods falling under heading 3006, irrespective of the fact that such goods are specifically mentioned in said entry. Therefore, all goods falling under heading 3006 attract GST rate of 12% under entry 65 in the 12% rate schedule.

All laboratory reagents and other goods falling under heading 3822

- Entry at S. No. 80 of Schedule II of notification No.1/2017-Integrated Tax (Rate) dated 28.6.2017 prescribes GST rate of 12% for “All diagnostic kits and reagents”.
- Heading 3822 covers “Diagnostic or Laboratory Reagents, Certified Reference Materials etc.”.
- The issue was placed before the GST Council and on its recommendations, it is clarified that the intention of this entry was to prescribe GST rate of 12% to all goods, whether diagnostic or laboratory reagents, falling under heading 3822.
- It is accordingly clarified that concessional GST rate of 12% is applicable on all goods falling under heading 3822, vide Entry at S. No. 80 of Schedule II of notification No.1/2017-Integrated Tax (Rate) dated 28.6.2017.

Requirement of Original/ import Essentiality certificate, issued by the DGH

- Requirement of Original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) on each inter-State stock transfer of goods imported at concessional GST rate for petroleum operations
- As per Section 7 read with Schedule-I of the CGST Act 2017, inter-state stock transfer between distinct persons (establishment of same person located in two different states) is considered as 'supply' of goods.
- Whether the original/ import Essentiality certificate can be used for such inter-state stock transfers or a fresh Essentiality certificate would be required for each inter-state stock transfer as it is being treated as supply subject to IGST.

Requirement of Original/ import Essentiality certificate, issued by the DGH (Contd)

- GST Council deliberated upon this issue and a decision was taken that the original/ import Essentiality certificate, issued by the Directorate General of Hydrocarbons (DGH) is sufficient and there is no need for taking a certificate every time on inter-state movement of goods within the same company / stock transfer so long as the goods are the same as those imported by the company at concessional rate.
- The importer is required to maintain records and should be able to establish nexus between the stock transfer of goods and the description in the essentiality certificate.

External batteries sold along with UPS Systems/ Inverter

- Classification and GST rate on External batteries sold along with UPS Systems/ Inverter
- It is observed that even if the UPS/inverter and external battery are sold on the same invoice, their price are separately known, and they are two separately identifiable items. Thus, this constitutes supply of two distinctly identifiable items on one invoice.
- Therefore, it is clarified that in such supplies, UPS/ inverter would attract GST rate of 18% under heading 8504, while external batteries would attract the GST rate as applicable to it under heading 8507 (28% for all batteries except lithium-ion battery).

GST rates on Solar PV Power Projects prior to 01.01.2019

- Explanation to Notification No.24/2018- Central Tax (Rate), dated 31st December 2018 provided that GST on specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, with effect from 1st January 2019. The request has been that same ratio (for deemed value) may be applied in respect of supplies made before 1.1.2019.
- The GST Council has now decided to clarify that GST on such specified Renewable Energy Projects can be paid in terms of the 70:30 ratio for goods and services, respectively, for the period of 1st July 2017 to 31st December 2018, in the same manner as has been prescribed for the period on or after 1st January 2019, as per the explanation in the Notification No.24/2018 dated 31st December 2018. However, it is specified that, no refunds will be granted if GST already paid is more than the amount determined using this mechanism.

GST rates on Fibre Drums, whether corrugated or noncorrugated

- Fibre drums are partially corrugated. A uniform GST rate of 18% on all goods classifiable under heading 4819 (with effect from 1st October 2021 under S. No. 153A of Schedule III of notification No.1/2017-Central Tax (Rate) dated 28.6.2017)
- For period prior to 1.10.2021, the Council upon taking note of the fact that there was an ambiguity regarding GST rates applicable on Fibre Drums, because of its peculiar construction (partially corrugated), has decided that supplies of such Fibre Drums even if made at 12% GST (during the period from 1.7.2017 to 30.9.2021), would be treated as fully GST-paid. Therefore, no action for recovery of differential tax (over and above 12% already paid) would arise. However, as this decision has only been taken to regularize the past practice in view of certain ambiguity, as detailed in para 14.1, no refund of GST already paid shall be allowed if already paid at 18%.

Guidelines for Debit of Electronic Ledger under rule 86A of CGST Rules

(GST Policy Wing Instructions 20/16/05/2021-GST dated 2nd
November 2021)

Debit of Electronic Ledger under rule 86A of CGST Rules

- GST Policy Wing Instructions 20/16/05/2021-GST dated 2nd November 2021; <https://www.cbic.gov.in/resources//htdocs-cbec/gst/Guidelines%20on%20Rule%2086A.pdf>
- Guidelines for disallowing debit of electronic credit ledger under Rule 86A of the CGST Rules, 2017
- Commissioner, or an officer authorised by him, not below the rank of Assistant Commissioner, must have "reasons to believe" that credit of input tax available in the electronic credit ledger is either ineligible or has been fraudulently availed by the registered person, before disallowing the debit of amount from electronic credit ledger of the said registered person under rule 86A. The reasons for such belief must be based only on one or more of the following grounds:

Debit of Electronic Ledger under rule 86A of CGST Rules (Contd)

- The reasons for such belief must be based only on one or more of the following grounds:
 - The credit is availed by registered person on the invoices or debit notes issued by a supplier, who is found to be non-existent or is found not to be conducting any business from the place declared in registration.
 - The credit is availed by the registered person on invoices or debit notes, without actually receiving any goods or services or both.
 - The credit is availed by the registered person on invoices or debit notes, the tax in respect of which has not been paid to the government'
 - The registered person claiming the credit is found to be non-existent or is found not to be conducting any business from the place declared in registration'
 - The credit is availed by the registered person without having any invoice or debit note or any other valid document for it.

Debit of Electronic Ledger under rule 86A of CGST Rules (Contd)

- The Commissioner. or an officer authorised by him, not below the rank of Assistant commissioner, must form an opinion for disallowing debit of an amount from electronic credit ledger in respect of a registered person only after proper application of mind considering all the facts of the case, including the nature of prima facie fraudulently availed or ineligible input tax credit and whether the same is covered under the grounds mentioned in sub-rule (I) of rule 86A; the amount of input tax credit involved; and whether disallowing such debit of electronic credit ledger of a person is necessary for restricting him from utilizing/ passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue.

Debit of Electronic Ledger under rule 86A of CGST Rules (Contd)

- It is reiterated that the power of disallowing debit of amount from electronic credit ledger must not be exercised in a mechanical manner and careful examination of all the facts of the case is important to determine case(s) fit for exercising power under rule 86A. The remedy of disallowing debit of amount from electronic credit ledger being, by its very nature, 'extraordinary' has to be resorted to with utmost circumspection and with maximum care and caution. It contemplates an objective determination based on intelligent care and evaluation as distinguished from a purely subjective consideration of suspicion. The reasons are to be on the basis of material evidence available or gathered in relation to fraudulent availment of input tax credit or in eligible in put tax credit availed aa per the conditions/grounds under sub-rule(I) of rule 86A.

Debit of Electronic Ledger under rule 86A of CGST Rules (Contd)

- **Proper authority for the purpose of Rule 86A**
- The Commissioner is the proper officer for the purpose of exercising powers for dis-allowing the debit of amount from electronic credit ledger of a registered person under rule 86A. However, commissioner/ Principal commissioner / ADG can also authorize any officer subordinate to him, not below the rank of Assistant Commissioner to be the proper officer for exercising such power under rule 86A.
- **Suggested proper authority**
- Amount of ineligible or fraudulently availed input tax credit-
 - Not exceeding one crore DC/AC / DD/ AD
 - Above one crore but below five crore... ADC/JC / ADD/ JD
 - Above five crore Commissioner / ADG

Debit of Electronic Ledger under rule 86A of CGST Rules (Contd)

- **Fraudulent ITC noticed during audit**
- Where during the course of Audit under section 65 or 66 of CGST Act, 2017 it is noticed that any input tax credit has been fraudulently availed or is ineligible as per the grounds mentioned in sub-rule (I) of rule 86A, which may require disallowing debit of electronic credit ledger under rule 86A, the concerned Commissioner/ Principal Commissioner of CGST Audit Commissionerate may refer the same to the jurisdictional CGST Commissioner for examination of the matter for exercise of power under rule 86A.

Debit of Electronic Ledger under rule 86A of CGST Rules (Contd)

- **Procedure for disallowing debit of electronic credit ledger/blocking credit under Rule 86(A)**
- The officer should apply his mind as to whether there are reasons to believe that the input tax credit availed by the registered person has either been fraudulently availed or is ineligible, as per conditions/ grounds mentioned in rule 86A(1) and whether disallowing such debit of electronic credit ledger of the said person is necessary for restricting him from utilizing/ passing on fraudulently availed or ineligible input tax credit to protect the interests of revenue. Such "Reasons to believe" shall be duly recorded by the concerned officer in writing on file, before he proceeds to disallow debit of amount from electronic credit ledger of the said person.

Debit of Electronic Ledger under rule 86A of CGST Rules (Contd)

- **Procedure for disallowing debit of electronic credit ledger/blocking credit under Rule 86(A)**
- The amount disallowed for debit from electronic credit ledger should not be more than the amount of input tax credit which is believed to have been fraudulently availed or is ineligible
- The action by the commissioner or the authorized officer, as the case may be, to disallow debit from electronic credit ledger of a registered person, is informed on the portal to the concerned registered person, along with the details of the officer who has disallowed such debit'

Debit of Electronic Ledger under rule 86A of CGST Rules (Contd)

- **Allowing debit of disallowed/restricted credit under sub-rule(2) of Rule 86A**
- The commissioner or the authorized officer, as the case may be, either on his own or based on the submissions made by the taxpayer with material evidence thereof, may examine the matter afresh and on being satisfied that the input tax credit, initially considered to be fraudulently availed or ineligible as per conditions of sub-rule (1) of rule 86A, is no more ineligible or wrongly availed, either partially or fully, may allow the use of the credit so disallowed/restricted, up to the extent of eligibility, as per powers granted under sub-rule (2) of rule 86A. Reasons for allowing the debit of electronic credit ledger, which had been earlier disallowed, shall be duly recorded on file in writing, before allowing such debit of electronic credit ledger.

Debit of Electronic Ledger under rule 86A of CGST Rules (Contd)

- **Allowing debit of disallowed/restricted credit under sub-rule(2) of Rule 86A**
- The restriction imposed as per sub-rule (I) of rule 86A shall cease to have effect after the expiry of a period of one year from the date of imposing such restriction. In other words, upon expiry of one year from the date of restriction, the registered person would be able to debit input tax credit so disallowed, subject to any other action that may be taken against the registered person.
- It should be endeavored that in all such cases the investigation and adjudication are completed at the earliest, well within the period of restriction, so that the due liability arising out of the same can be recovered from the said taxable person and the purpose of disallowing debit from electronic credit ledger is achieved'



GST Portal Updates

(www.gst.gov.in)

Availability of ITC for FY 2020-21

- As per Section 16(4) of CGST Act, 2017, no taxpayer shall take input tax credit in respect records (invoices and debit notes) for supply of goods or services (or both) for Financial Year 2020-21 after the due date of furnishing the return for the month of September 2021. The due date for the GSTR-3B for September 2021 is either 20th October 2021 for monthly filers and 22nd or 24th October 2021 depending on the State/UT of registration of the taxpayer. In view of the same, the following may kindly be noted:
 - Records (invoice or debit notes) pertaining to Financial Year 2020-21 reported in GSTR-1 after due date of GSTR-3B of September 2021 will not reflect as “ITC Available” in GSTR-2B of the recipients. Such records will reflect in “ITC Not Available” section of GSTR-2B and such ITC shall in turn not be auto-populated in GSTR-3B.

Availability of ITC for FY 2020-21 (Contd)

- Records (invoice or debit notes) pertaining to Financial Year 2020-21 reported in GSTR-1 after due date of GSTR-3B of September 2021 will also not reflect as “ITC as per GSTR-2A” in Table-8A of GSTR-9 of the recipients.
- The taxpayers may take note of the above and ensure that their records pertaining to Financial Year 2020-21 are reported on or before the due date of their GSTR-3B for the month September 2021, or for the quarter of July to September 2021 in case of quarterly GSTR-3B filers.
- Availment of ITC by the recipients contrary to the legal provisions in GST may entail action by the tax administrations in accordance with law.



THANK YOU