

GOODS & SERVICES TAX / IDT UPDATE – 49

NACIN as the authority for conducting the examination for GST Practitioners under rule 83 (3) of the CGST Rules, 2017

Sub rule (3) of Rule 83 provides that no person enrolled as Goods and Services Tax practitioner shall be eligible to remain enrolled unless he passes such examination conducted at such periods and by such authority as may be notified by the Government.

Therefore, in exercise of such power the Central Government vide *Notification No. 24 /2018 – Central Tax dated 28th May, 2018* has notified the National Academy of Customs, Indirect Taxes and Narcotics, Department of Revenue, Ministry of Finance, Government of India, as the authority to conduct the examination.

[Notification No. 24 /2018 – Central Tax dated 28th May, 2018]

No change in the GST law and taxation relating to farmers since July, 2017; Support Services to agriculture, forestry, fishing or animal husbandry are exempt from GST; Agriculturists are also exempted from taking GST Registration.

It has been reported in certain section of the Press that certain changes have been made in GST law relating to farmers, which will come into force with effect from 1st June, 2018 according to which farmers would be required to take registration and pay GST of 18% when they lease out their land.

This news is factually incorrect and misleading. There has been No Change in the GST law and taxation relating to farmers since July, 2017, when GST was implemented. Support services to agriculture, forestry, fishing or animal husbandry are exempt from GST. Such exempted support services include renting or leasing of vacant land with or without a structure incidental to its use. Thus, renting or leasing of land by farmers for agriculture, forestry, fishing or animal husbandry on batai (share cropping) or otherwise is also exempt from GST.

Further, agriculturists are also exempted from taking GST registration. Agriculturist has been defined to mean an individual or an HUF who undertakes cultivation of land-

- by own labour
- by the labour of family
- by servants or wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family.

(Release ID :179589 dated 28th May, 2018)

Recipient is liable to pay tax under Reverse Charge on purchase of Priority Sector Lending Certificate

The Central Government vide *Notification No. 11/2018-Central Tax (Rate) dated 28th May, 2018*

has amended the Notification No.4/2017-Central Tax (Rate), dated the 28th June, 2017 by inserting S. no. 7 which has provided that on supply of Priority Sector Lending Certificate by a registered supplier tax shall be payable by the recipient of such supply who is a registered under GST.

Priority Sector Lending is an important role given by the Reserve Bank of India (RBI) to the banks for providing a specified portion of the bank lending to few specific sectors like agriculture and allied activities, micro and small enterprises, poor people for housing, students for education and other low income groups and weaker sections.. This is essentially meant for an all-round development of the economy as opposed to focusing only on the financial sector.

[\[Notification No. 11/2018-Central Tax \(Rate\) dated 28th May, 2018\]](#)

Clarifications on refund related issues

The Central Government vide [Circular no. 45/19/2018-GST dated 30th May, 2018](#) with a view to ensure uniformity in the implementation of the provisions of the law across the field formations has clarified certain Refund related issues which are as follows:

1. Claim for refund filed by an Input Service Distributor, composition taxpayer or a non-resident taxable person:

It is clarified that in case of a claim for refund of balance in the electronic cash ledger filed by an ISD or a composition taxpayer; and the claim for refund of balance in the electronic cash and/or credit ledger by a non-resident taxable person, the filing of the details in FORM GSTR-1 and the return in FORM GSTR-3B is not mandatory. Instead, the return in FORM GSTR-4 filed by a composition taxpayer, the details in FORM GSTR-6 filed by an ISD and the return in FORM GSTR-5 filed by a non-resident taxable person shall be sufficient for claiming the said refund.

2. Application for refund of integrated tax paid on export of services and supplies made to a Special Economic Zone developer or a Special Economic Zone unit:

It is clarified that for the tax periods commencing from 01.07.2017 to 31.03.2018, such exporters shall be allowed to file the refund application in FORM GST RFD-01A on the common portal subject to the condition that the amount of refund of integrated tax/cess claimed shall not be more than the aggregate amount of integrated tax/cess mentioned in the Table under columns 3.1(a), 3.1(b) and 3.1(c) of FORM GSTR-3B filed for the corresponding tax period.

3. Refund of unutilized input tax credit of compensation cess availed on inputs in cases where the final product is not subject to the levy of compensation cess:

- It is clarified that a registered person making zero rated supply under bond or LUT may claim refund of unutilized credit including that of compensation cess paid.
- Such registered persons may also make zero-rated supply on payment of integrated tax but they cannot utilize the credit of the compensation cess paid on coal for payment of integrated tax in view of the proviso to section 11(2) of the Cess Act, which allows the utilization of the input tax credit of cess, only for the

payment of cess on the outward supplies. Accordingly, they cannot claim refund of compensation cess in case of zero-rated supply on payment of integrated tax.

- **For example:** Cess is levied on coal, which is an input for the manufacture of aluminum products, whereas cess is not levied on aluminum products. Therefore in this case if aluminum is exported under bond or LUT than he may claim refund of unutilized credit including that of compensation cess paid. However if exporter has exported on payment of integrated tax than he cannot utilize the credit of the compensation cess paid on coal for payment of integrated tax in view of the proviso to section 11(2) of the Cess Act which seems to be discriminatory.

Comment: It is an interesting that unlike Cen vat Credit Rules, GST appears to permit credit of cess paid on inputs though the corresponding output is not liable to cess. Cellular Operators Association of India decision of Delhi HC (2018-TIOL-310-HC-DEL-ST) refers.

4. Whether bond or Letter of Undertaking (LUT) is required in the case of zero rated supply of exempted or non-GST goods and whether refund can be claimed by the exporter of exempted or non-GST goods:

In case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/bond is not required. Such registered persons exporting non GST goods shall comply with the requirements prescribed under the earlier law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any. Further, exporter would be eligible for refund of unutilized input tax credit of central tax, state tax, union territory tax, integrated tax and compensation cess in such cases.

Comment: Non-GST products appear to be eligible for zero-rated benefit though the same products sold domestically are barred from credit under 17(2) of CGST Act. Given this view taken by the Government, technicalities of conflict between 16(2) of IGST Act and 17(2) of CGST Act become academic.

5. What is the scope of the restriction imposed by rule 96(10) of the CGST Rules, regarding non-availment of the benefit of notification Nos. 48/2017-Central Tax dated the 18.10.2017, 40/2017-Central Tax (Rate) dated 23.10.2017, 41/2017-Integrated Tax (Rate) dated 23.10.2017, 78/2017-Customs dated 13.10.2017 or 79/2017-Customs dated 13.10.2017:

The said restriction is not applicable to an exporter who has procured goods from suppliers who have not availed the benefits of the specified notifications for making their outward supplies. Further, the said restriction is also not applicable to an exporter who has procured goods from suppliers who have, in turn, received goods from registered persons availing the benefits of these notifications since the exporter did not directly procure these goods without payment of tax or at reduced rate of tax. There might be a scenario where a manufacturer might have imported capital goods by availing the benefit of Notification No. 78/2017-Customs dated 13.10.2017 or 79/2017-Customs dated

13.10.2017. Thereafter, goods manufactured from such capital goods may be supplied to an exporter. It is hereby clarified that this restriction does not apply to such inward supplies of an exporter.

[Circular no. 45/19/2018-GST dated 30th May, 2018]

Special Refund Fortnight from 31.05.2018 to 14.06.2018

Refunds of GST have been a concern for both the Government and Trade for the past several months. Refund claims to the tune of Rs 14,000 crore (Rs.7,000 crore on the IGST side and Rs 7,000 crore on account of ITC) are pending with the Government as on date, as against the figure of Rs 20,000 crore projected by FIEO in the press reports. In order to liquidate the pendency, Government is starting a second “Special drive Refund Fortnight” **from 31st May 2018 to 14th June 2018**. This time the “Special Drive Refund Fortnight” would facilitate all types of Refund claims in which Customs, Central and State GST officers will strive to clear all GST refund applications received on or before 30.04.2018. This will include refunds of IGST paid on exports, refunds of unutilized ITC and all other GST refunds submitted in FORM GST RFD-01A.

The Central Board of Indirect Taxes and Customs (CBIC) is implementing a solution whereby the refunds held in GSTN, in cases where the exporters have mistakenly declared their export supplies as domestic supplies, would now be transmitted to Customs EDI System. A Circular No 12/2018 dated 29-05-2018 has been issued in this regard. On receipt of the records from GSTN, the Customs System would automatically process the refunds for sanction, if no other errors are committed by exporters.

Circular No 45/19/2018-GST has been issued on 30-05-2018 clarifying matters related to refund claims by an Input Service Distributor, composition dealer, exports of services and supplies made to SEZ. The circular also clarifies issues related to requirement of LUT in cases of export of exempted or non-GST goods and scope of restriction imposed under Rule 96(10).

All claimants may note the refund application in FORM GST RFD-01A will not be processed unless a copy of the application, along with all supporting documents, is submitted to the jurisdictional tax office. Mere online submission is not sufficient.

All GST refund claimants are encouraged to approach their jurisdictional tax authority for disposal of any of their refund claims submitted on or before 30.04.2018, which are still pending. In case the jurisdiction (i.e. Centre or State) has not been defined for a particular claimant, he/she can approach either of the jurisdictional tax authorities.

All IGST refund claimants may register on ICEGATE website, if not already done, to check their refund status. Customs field formations have been directed to gear up for anticipated response of the exporters by diverting additional manpower and infrastructural resources. Exporters are requested to come forward and avail of the opportunity to get the refunds sanctioned during this special drive.

(Release ID : 179632 dated 30th May, 2018)

Roll out of e-Way Bill system for intra-State movement of goods in Chhattisgarh, Goa, Jammu & Kashmir, Mizoram, Odisha, Punjab, Tamil Nadu and West Bengal

As per the decision of the GST Council, e-Way Bill system for inter-State movement of goods has been rolled out from 01st April, 2018. As on 30th May, 2018, e-Way Bill system for intra-State movement of goods has been rolled out in the States of Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Nagaland, Rajasthan, Sikkim, Telangana, Tripura, Uttarakhand and Uttar Pradesh along with the Union Territories of Andaman & Nicobar Islands, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep and Puducherry. E-Way Bills are getting generated successfully and till 30th May, 2018 more than six crore and thirty lakh e-Way Bills have been successfully generated which includes more than two crore e-Way Bills for intra-State movement of goods.

It is informed that e-Way Bill system for intra-State movement of goods would be implemented in the following States :-

S. No.	State	Date of Implementation
1	Chhattisgarh, Goa, Jammu & Kashmir, Mizoram, Odisha & Punjab	01st June, 2018
2	Tamil Nadu	02nd June, 2018
3	West Bengal	03rd June, 2018

It may be mentioned that e-Way Bill system for intra-State movement of goods will be implemented throughout the country latest by 03rd June, 2018. It has now been two months since the e-Way Bill system was implemented and the same is working smoothly and without any glitches. On an average more than twelve lakh e-Way Bills are being generated every day. Trade and industry may approach their respective tax authority for any guidance in this matter. Further, it is informed that trade should get well versed with respect to the provisions of the e-Way Bill rules in order to avoid any difficulty. The provisions of rule 138D of Central / State GST Rules, 2017 may be referred to for any grievance redressal.

(PIB Release ID :179665 dated 31st May, 2018)

GST revenue collection for May 2018

Rs 94,016 Crore of total gross GST revenue collected in May2018 Gross revenue collection in May is much higher than the monthly average of GST collection in the last financial year

The total gross GST revenue collected in the month of May2018 is **Rs. 94,016 crore**. The segregation of the revenue is as follows:

S. no.	Tax	Amount
1.	CGST	Rs.15,866 crore
2.	SGST	Rs.21,691 crore

3.	IGST	Rs. 49,120 crore (including Rs. 24,447 crore collected on imports)
4.	CESS	Rs. 7,339 crore (including Rs.854 crore collected on imports)

The total number of GSTR 3B Returns filed for the month of April up to 31st May, 2018 is 62.47 lakh. The total revenue earned by Central Government and the State Governments after settlement in the month of May, 2018 is Rs.28, 797 crore for CGST and Rs.34, 020 crore for the SGST.

Though current month's revenue collection is less compared to last month's revenue, still the gross revenue collection in the month of May (Rs. 94,016 crore) is much higher than the monthly average of GST collection in the last Financial Year (Rs. 89,885 crore). The April revenue figure was higher because of year end effect.

On 29.05.2018, Rs. 6696 crore has been released to the states as GST compensation for the month of March, 2018. Therefore, the total GST compensation released to the states for the FY 2017-18 (Jul, 2017 to Mar, 2018) has been Rs. 47844 crore.

[*\(PIB Release ID :179687 dated 1st June, 2018\)*](#)

CUSTOMS

Customs Audit Regulations, 2018

The Central Government vide *Notification No. 45/2018-Customs (N.T) dated 24th May, 2018* has provided following regulations for the conduct of Customs Audit:

1. Auditee to preserve and make available relevant documents:

The auditee shall preserve and on request by the proper officer make available in a timely manner, for the purposes of audit, true and correct information, records including electronic records, documents or accounts maintained in compliance of the provisions of the Act, rule or regulations, made thereunder or any other law for the time being in force, maintained for a minimum period of 5 years in relation to imported goods or export goods or dutiable goods.

Further, auditee shall render assistance to the proper officer in the discharge of their official duty and shall in no case refuse the proper officer in discharge of their official duty.

2. Selection for Audit:

The selection of auditee or the selection of import declarations or export declarations, as the case may be, for the purposes of audit shall primarily be based on risk evaluation through appropriate selectivity criteria.

3. Manner of conducting Audit:

- i. The proper officer may conduct audit either in his office or in certain cases at the premises of the auditee.
- ii. The proper officer may, where considered necessary, request the auditee to furnish documents, information or record including electronic record , as may be relevant to audit.
- iii. The proper officer shall give not less than 15 days advance notice to the auditee to conduct audit at the premises of the auditee.
- iv. The proper officer may where considered necessary, inspect the imported goods or export goods or dutiable goods at the premises of the auditee or request the auditee to produce sample, if available with him.
- v. The proper officer shall inform the auditee of the objections, if any, before preparing the audit report to provide him an opportunity to offer clarifications with supporting documents.
- vi. Where the auditee is in agreement with the audit findings, he may make voluntary payments of duty, interest or other sums due, if any, in part or in full and the proper officer shall record the same in the audit report.
- vii. Where proper officer has asked the auditee to furnish information, document, record or sample for the purposes of audit , it shall be mandatory for the proper officer to inform outcome of such audit to the auditee.
- viii. The proper officer shall complete audit in cases where it is conducted at the premises of the auditee within thirty days from the date of starting the audit. Provided that the jurisdictional commissioner of customs may extend the period of completion of audit from thirty days to sixty days , by an order in writing.

4. **Assistance of professionals:** If the proper officer, having regard to the nature and complexity of the audit, is of the opinion that the audit has to be done with the assistance of a professional like Chartered Accountant, Cost Accountant, an expert in the field of computer sciences or information technology etc, may do so, with the previous approval of the Commissioner/Commissioner of Customs.

5. **Penalty :**Any auditee, who contravenes any provision of these regulations or abets such contravention or fails to comply any provision of these regulations with which it was his duty to comply , shall be liable to a penalty which may extend to Rs. 50,000

[Notification No. 45/2018-Customs (N.T) dated 24th May, 2018]

Sanctioning of pending IGST refund claims

It has been observed that the exporters have inadvertently mis-declared IGST paid on export supplies as IGST paid on interstate domestic outward supplies while filing GSTR-3B. The exporters have also in certain cases short paid IGST vis-à-vis their liability declared in GSTR1. As a result of these mismatches in the amount of IGST paid on export goods between GSTR-1 and GSTR-3B, the transmission of records from GSTN to Customs EDI system has not happened and consequently IGST refunds could not be processed.

Therefore, In order to overcome the problem the Central Government vide *Circular No. 12/2018 dated 29th May, 2018* has proposed an interim solution subject to undertakings/ submission of CA certificates by the exporters and post refund audit scrutiny which is as under:

A. Cases where there is no short payment:

- The Customs policy wing shall send a list of exporters whose cumulative IGST amount paid against exports and interstate domestic outward supplies for the period July' 2017 to March' 2018 mentioned in GSTR-3B is greater than or equal to the cumulative IGST amount indicated in GSTR-1 for the same period to THE GSTN .
- Thereafter, exporters whose refunds are processed/ sanctioned would be required to submit a certificate from Chartered Accountant before 31st October, 2018 to the Customs office at the port of export to the effect that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period July' 2017 to March' 2018.
- A copy of the certificate shall also be submitted to the jurisdictional GST office (Central/ State). The concerned Customs zone shall provide the list of GSTINs who have not submitted the CA certificate to the Board by the 15th November 2018.
- Non-submission of CA certificate shall affect the future IGST refunds of the exporter.

B. Cases where there is short payment:

- In cases where there is a short payment of IGST i.e. cumulative IGST amount paid against exports and interstate domestic outward supplies together, for the period of July' 2017 to March' 2018 mentioned in GSTR-3B is less than the cumulative IGST amount indicated in GSTR-1 for the same period, the Customs policy wing would send the list of such exporters to the GSTN and all the Chief Commissioner of Customs.
- The exporters would have to make the payment of IGST equal to the short payment in GSTR 3B of subsequent months so as to ensure that the total IGST refund being claimed in the Shipping Bill/GSTR-1(Table 6A) is paid. The proof of payment shall be submitted to Assistant/Deputy Commissioner of Customs in charge of port from where the exports were made.
- Where the aggregate IGST refund amount for the said period is upto Rs. 10 lacs, the exporter shall submit proof of payment (self-certified copy of challans) of IGST payment to the concerned Customs office at the port of export. However, where the aggregate IGST refund amount for the said period is more than Rs. 10 lacs, the exporter shall submit proof of payment (self-certified copy of challans) of IGST to the concerned Customs office at the port of export along with a certificate from chartered Account that the shortfall amount has been liquidated.
- The exporters whose refunds are processed/ sanctioned as above would be required to submit another certificate from Chartered Accountant before 31st October, 2018 to the same Customs office at the port of export to the effect that there is no discrepancy between the IGST amount refunded on exports and the actual IGST amount paid on exports of goods for the period July' 2017 to March' 2018. A copy of the certificate shall also be submitted to the jurisdictional GST

office (Central/ State). The concerned Customs zone shall provide the list of GSTINs who have not submitted the CA certificate to the Board by the 15th November 2018.

- Non-submission of CA certificate shall affect the future IGST refunds of the exporter.

Post refund audit

The exporters would be subjected to a post refund audit under the GST law. The inclusion of IGST refund aspects in Audit Plan of those units may be ensured by DG (Audit). In case, departmental Audit detects excess refunds to the exporters under this procedure, the details of such detections may be communicated to the concerned GST formations for appropriate action.

Thereafter, DG (GST) shall send the list of exporters to jurisdictional GST officers (both Centre / State) informing that these exporters have taken benefit of the procedure prescribed in this circular. The jurisdictional GST formations shall also verify the payment particulars at their end.

This circular deal only with the cases where the records have not been transmitted by GSTN to Customs EDI system. Once the records are transmitted by GSTN to Customs System based upon the above mentioned procedure, the usual procedure adopted in case of sanction of IGST refunds would have to be followed.

[Circular No. 12/2018 dated 29th May, 2018]

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Secretary

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ICAI Bhawan A-29, Sector -62,

NOIDA (U.P.) India

Website: www.itdc.icai.org