

PRE-BUDGET MEMORANDUM 2021-2022: INDIRECT TAXES

GOODS AND SERVICES TAX: POLICY AND PROCEDURAL RECOMMENDATIONS

Sl.	Subject	Rationale	Recommendation
1.	Applicability of interest on net tax liability for delayed payments	<ul style="list-style-type: none"> • The <i>proviso</i> inserted to Section 50(1) of the Central Goods and Services Tax Act, 2017 (“CGST Act”) provides for computation of interest on net liability [<i>i.e. total tax liability less eligible input tax credit (‘ITC’)</i>] only in case where the liability (<i>say of August 2020</i>) is declared in the return of August 2020 i.e. for the same tax period to which the liability pertains but the return is filed after due date (<i>say filed in October 2020</i>). • The provision does not cover a situation wherein the tax liability of a tax period (<i>August 2020</i>) is declared in subsequent tax period’s GST return (<i>September 2020</i>). In this situation, interest is required to be paid on the “gross tax liability” before adjusting Input Tax Credit (‘ITC’) and not “net tax liability”. • It is possible that taxpayer may inadvertently omit to report the transactions and corresponding output GST liability in the returns for a month which is belatedly filed. Such liability could then be reported in the subsequent tax period/s GST returns and can be paid by adjusting available input tax credit balance 	<p>Chamber recommends that the provision for applicability of interest on “net tax liability” should be extended to delayed payment in cases where the tax liability of a tax period is reported and discharged in subsequent tax period’s GST return. This would benefit taxpayers who fails to report the tax liability due to inadvertent omission or subsequent clarity in law or for any other reason and has available input tax credit balance of the period to which such tax liability pertains to.</p> <p>Also, Chamber recommends that clarification be issued to provide that interest shall not be attracted where there lies balance in electronic cash ledger of the taxpayer.</p>

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		<p>of the period to which such tax liability pertains to.</p> <ul style="list-style-type: none"> • Additionally, currently, offsetting GST liability or ITC reversal can be done only at the time of filing GSTR-3B on GST portal. Given this, inspite of having balance in electronic cash ledger, tax payers are warranted to discharge interest till the date of filing of GSTR-3B thereby leading to unnecessary interest cost burden. 	
2.	<p>Time of supply of services under Reverse Charge Mechanism ("RCM")</p>	<ul style="list-style-type: none"> • Section 13(3) of the CGST Act provides for time of supply of services in respect of which tax is paid or liable to be paid on RCM basis of earlier of the following events: <ul style="list-style-type: none"> – Date of payment; – Date immediately following sixty days from the date of issue of invoice. • There is a possibility that settlement of service invoices where tax is required to be paid under RCM takes more than 60 days. Moreover, the accounting of invoice in the books of accounts also takes some time i.e. around 20-30 days from the date of receipt of invoice and therefor time-period of 60 days to make the payment is quite short. • It is pertinent to note that in the service tax regime, point of 	<p>In order to address the genuine hardship faced by the recipient, the Chamber recommends that relaxation should be made by extending the time of supply to a date immediately following three months instead of sixty days from the date of invoice.</p>

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		<p>taxation was date of payment or expiry of 3 months period (effective from 1 October 2014 onwards) [Note - earlier period was 6 months].</p>	
3.	<p>GST ITC eligibility on expenses incurred towards CSR activities</p>	<ul style="list-style-type: none"> • As per Section 135 of Companies Act, 2013, a company is required to spend at least 2% of its average net profit for the immediately preceding three financial years on Corporate Social Responsibility ('CSR') activities subject to its turnover / net worth / net profit crossing prescribed limits. • Some of the significant expenditure covered under Corporate Social Responsibility activities are: <ul style="list-style-type: none"> ○ Providing education ○ Promoting gender equality ○ Projects related to rural development ○ Contribution to PM Cares Fund ○ Contribution towards the protection of the environment ○ Promotion of healthcare, preventive healthcare and 	<p>Chamber recommends that suitable clarification be issued to clarify that goods or services which are procured in the course of CSR activities should be considered to have been incurred in the course or furtherance of business or commerce, and that restrictions under Section 17(5) of the CGST Act should not apply for claiming Input Tax Credit. This will ensure consistency of position by the Field Formations on admissibility of input tax credit on goods and services procured for CSR activities.</p> <p>Also, Chamber recommends that the goods distributed as a part of CSR activities should not be treated as outward supply attracting GST in terms of Entry 1 of Schedule I of CGST Act.</p>

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		<p>sanitation activities related to COVID-19</p> <ul style="list-style-type: none"> ○ Events related to disaster management including relief activities • Companies incur expenses for procuring goods and services while undertaking CSR activities. Since CSR activity is a business activity and mandated by Companies Act, Input Tax Credit of GST paid on supplies procured in course of the said CSR activities should be allowed. • The Income tax legislation under Section 30 to 36 allows deduction of CSR expenses as a business expenditure. • Further, entry no. 1 of Schedule I of CGST Act treats permanent transfer or disposal of business assets where ITC has been availed on such assets as supply even if made without consideration. • In this connection, the goods distributed while undertaking CSR activities should not be considered as supply attracting GST in terms of the said entry. 	
4.	Allowing ITC of GST paid on advances for services	<ul style="list-style-type: none"> • As per provisions of time of supply for supply of services under Section 13(2) of the CGST Act, the liability to pay GST is 	Chamber recommends that Section 16(2) of the CGST Act should be amended to allow recipient of services to claim ITC of GST paid on advances

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		<p>triggered on receipt of advances by the supplier.</p> <ul style="list-style-type: none"> • However, as per Section 16(2) of the CGST Act, one of the pre-condition for claiming input tax credit is that services should have been received by the recipient of services. • The said restriction read with time restriction placed on taking credit under section 16(4) of the CGST Act would cause operational difficulties to capital-intensive business due to projects having a long gestation period comprising advance payments. There doesn't seem to be any revenue leakage if ITC is allowed to be claimed on advances for services in the hands of recipient. 	<p>for services. It is recommended that the condition for receipt of services should be done away with where an advance has been paid for receipt of service. This change would have no revenue implications as the supplier of services who has received advance would be liable to pay GST under Section 13(2)(a) of the CGST Act.</p>
5.	<p>GST ITC eligibility on construction of immovable property which is used for business purposes</p>	<ul style="list-style-type: none"> • As per Section 17(5)(c) and (d) of the CGST Act, ITC shall not be available on <ul style="list-style-type: none"> - works contract services in respect of an immovable property except where it as an input service for further supply of works contract service or - goods or services used for construction of an immovable 	<p>Chamber recommends that Section 17(5)(c) and (d) of the CGST Act should be amended to allow ITC on procurements of goods, services or works contract for construction of immovable property where such immovable property is intended to used in the course or furtherance of business.</p>

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		<p>property on his own account including when such goods and services are used in the course of furtherance of business.</p> <ul style="list-style-type: none"> • Denial of ITC when used for construction of immovable property on own account although the same is used in the course or furtherance of business is against the philosophy of the GST law which is aimed at reducing cascading effect of taxes. • Allowing ITC where building is used in the course or furtherance of business (<i>i.e. generating income liable to GST</i>) such as renting, will keep the tax chain intact and serve the purposes of equity. • Additionally, it is an indisputable fact that immovable properties such as factory sheds, machine foundation, office premises, residential quarters etc. are an integral part of business and have a direct nexus with the functioning of business. • While credit may not be allowable if the immovable properties are intended to be used for personal or non-business purposes, there appears to be no justification for disallowing credit on construction of immovable property which is exclusively for 	

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		<p>business purposes.</p> <ul style="list-style-type: none"> Also there have been advance rulings wherein it has been observed that leasing of land for construction of immovable property (such as hotels, commercial establishments, warehouses) is also regarded as services for construction and restriction under Section 17(5)(c) of the CGST Act is made applicable on GST paid on leasing of land. 	
6.	<p>GST ITC eligibility on life insurance premium taken by Mutual Fund for its investors and selling agents or by Banks for its customers</p>	<ul style="list-style-type: none"> Mutual Fund offers life insurance cover to its investors and selling agents as an add-on to the investments in mutual fund units, and the payment of the premium is done by the Asset Management Company [<i>(‘AMC’) that manages the mutual fund business</i>] as a part of the promotional strategy. Essentially, the option to obtain life insurance is a product feature i.e. where an investor opts to invest into mutual funds of a given scheme which simultaneously offers life cover, then the Company will provide them with life insurance cover, as per the plan selected. Such policies are offered to enable promotion of the mutual fund business, i.e. this product and feature is driven by commercial considerations and offered for business 	<p>Chamber recommends that an amendment should be made to Section 17(5) of the CGST Act or sufficient clarity be provided through a circular to allow mutual fund industry / Banks to avail ITC of GST on premium paid for life insurance policies as such policies offered to customers can be said to be used in the course or furtherance of the mutual fund / bank business.</p>

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		<p>development reasons. The Company pays the amount of premium to the life insurance company.</p> <ul style="list-style-type: none"> • Likewise, banks too offer life insurance cover while selling credit cards to its customers as a part of its promotional scheme. • Under section 17(5)(b) of the CGST Act, ITC is <i>inter alia</i> not available in case of life insurance except where it is made obligatory by law for an employer to provide the same to its employees or it is used for making outward taxable supply of the same category of services or an element of mixed or composite supply. There is a blanket restriction on availment of ITC irrespective of whether the ITC pertains to GST paid on life insurance premium with respect to policies taken with the objective of promoting mutual fund business, i.e. for its investors and selling agents. 	
7.	<p>Reduction in GST rate in health and fitness centres and allowing ITC of amount spent on membership of Health fitness</p>	<ul style="list-style-type: none"> • Maintaining health and fitness of employees is essential to keep the business running efficiently and COVID-19 has made us aware on how important it is to keep our body fit to withstand the pandemic. • New digital business initiative is development of health and wellness app. Health and wellness apps are mobile application 	<p>Chamber recommends that with an intent to promote new age digital business i.e. health and wellness app. and ensuring health and fitness centres survive the COVID-19 onslaught, the GST rates on health and fitness services should be reduced from 18% to 5%.</p>

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	<p>centre will promote health and wellness industry</p>	<p>programs that offer health-related services on smartphones, tablet PCs and other communication devices. There are several types of health and wellness apps focusing on various aspects of promoting digital health. One of the aspects is that they have tie ups with health and fitness centres and buy membership in bulk and share the same with the subscriber of digital App.</p> <ul style="list-style-type: none"> • It has become imperative for businesses to spend on health and wellness of their employees in view of this pandemic situation. However, GST rate of 18% is a deterrent where health and wellness considerations have become a necessity rather than a choice as a discretionary spend • ITC is disallowed under Section 17(5) (b) - (ii) of the CGST Act towards membership of a club, health and fitness centre. 	<p>It is also recommended to allow ITC of GST on health and fitness services, which is currently restricted under Section 17(5) of the CGST Act.</p>
8.	<p>Reduction in GST rate for Life Insurance and Health Insurance premium</p>	<ul style="list-style-type: none"> • COVID-19 has brought to light the significance of precaution amidst the global pandemic. People from all backgrounds and age groups have now become sensitive towards their health and life. • Health and life insurance is not just a matter of benefit but a necessity in these times of emergency. It is predicted that 	<p>Chamber recommends that to make the healthcare and life insurance policy affordable for common masses and in order to help deep penetration of insurance products amongst the general public, the GST rate on life and health insurance premiums should be reduced from</p>

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		<p>majority of individuals will be inclined to get a risk cover.</p> <ul style="list-style-type: none"> India has seen a spike in investment in the insurance industry. However, steep GST rate of 18% is forcing the common public to opt for lower insurance cover on account of economic scenario i.e. unemployment and job losses across the country. There is an increasing concern around treatment expenditure, particularly hospital bills, in case of an unfortunate event of hospitalization. Consecutive lockdowns saw more and more people digging into their savings to meet their everyday needs. The Insurance Regulatory and Development Authority of India (IRDAI) has directed all general and health insurance companies to offer a standard Benefit Based Covid-19 health insurance product. 	18% to 5%.
9.	<p>Extending GST rate of 12% for all services in relation to services to Government/ Railways / Metro etc. taxable</p>	<ul style="list-style-type: none"> For works contract services pertaining to Government / Railways / Metro etc., concessional GST rate of 12% is applicable vide Notification No.11/2017 – Central Tax (Rate). However, pure services availed by contractor rendering the aforementioned works contract services are typically taxable at GST rate of 18%. Simultaneously, refund is not available for input services on inverted duty structure resulting into substantial working 	Chamber recommends that the GST rate notification be amended to extend GST rate of 12% for across the Board all services, including the services received by contractors, and not restricted to only works contract services pertaining to railways/ metro/ Government.

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		capital blockage and cost inefficiencies for the contractors.	
10.	Relaxation in reversal of GST ITC for transactions in securities for life insurance, general insurance and health insurance companies	<ul style="list-style-type: none"> Life Insurance Companies invest in securities as a statutory obligation towards provision of life insurance service. In the case of Shriram Life Insurance Company Limited, CESTAT Hyderabad¹ has held that no reversal of CENVAT credit is required for statutory investments mandated under IRDA. Explanation to Chapter V of the Rules states that for determining the value of exempt supply under section 17(3) of the CGST Act, the value of security shall be taken as 1 percent of the sale value of such security. 	Chamber recommends that the obligation of proportionate reversal of ITC of GST on input services to the extent they pertain to transaction in securities in case of life insurance, general insurance and health insurance business should be done away with.
11.	Allow refund of GST claimed on capital goods to exporters supplying under Letter of Undertaking ("LuT")	<ul style="list-style-type: none"> While exporters can claim refund of accumulated ITC of GST paid on input & input services, GST paid on capital goods is not allowed to be claimed as refund as per Rule 89(4) of the Rules. Further, the exporter who opts for payment of IGST on zero rated supply can utilize input tax credit of GST paid on Capital goods. This brings disparity between the exporters opting for LUT scheme and the exporters opting to make payment of GST. Service exporters are not able to utilize the available ITC since majority of their output is zero-rated. This impacts the 	Chamber recommends that GST paid on procurement of capital goods should also be allowed as refund for export of goods or services under LUT. Such refund of GST on capital goods can be paid over a period of two financial years.

¹ Order No. A/30168-30169 dated 7 February 2019

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		working capital requirements of the exporters.	
12.	Allowing refund of GST on input services in case of inverted tax structure	<ul style="list-style-type: none"> • Section 54(3) of the CGST Act states that a registered person may claim refund of any unutilized ITC only in cases of zero-rated supplies made without payment of tax and supplies involving inverted rate structure. • Section 54(3) allows refund in case of inverted duty structure where rate of tax on inputs is higher than the rate of tax on outward supplies. • Rule 89(5) of the Rules provides that in case of refund on account of inverted duty structure, Net ITC in respect of which refund can be availed shall be restricted to inputs only. • Non-availability of refunds on input services results into huge credit accumulations mainly for the EPC contractors engaged in construction of Railways/ Metro etc. as the output works contract rate is 12% while the most of the inputs and services suffers taxes @18%/28%. The problem is far more severe when the project is executed under the JV/SPV which is formed specifically for execution of the projects, as on closure of the projects where any credit remains unutilized, the same become sunk cost with no provision for refunds. 	Chamber thereby suggests that Section 54(3) and Rule 89(5) of the Rules be amended to allow seamless refunds in case of inverted duty structure for both inputs and input services.

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13.	<p>Removal of condition for determination of value of export goods for refunds</p>	<ul style="list-style-type: none"> • Notification 16/2020-Central Tax dated 23 March 2020 amended the definition of 'turnover of zero-rated supply of goods' provided in Rule 89(4)(c) of the Rules with the intent to check the instances for over invoicing export of goods. • In terms of the definition provided in Rule 89(4)(c) of the Rules, the value of zero-rated supply of goods would be lower of the following: <ul style="list-style-type: none"> a. value of zero-rated supply of goods without payment of tax under bond or LuT during the relevant period; or b. the value which is 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier. • Section 16(3) of the IGST Act read with Section 54 of CGST Act permits the refund of unutilized ITC to a service provider when exports are made without payment of duty. Whereas Rule 89 of the Rules, only provides the procedural aspects and the computation mechanism for claiming refund of GST which cannot override or be contrary to the benefit provided in the Section 54 of the CGST Act. • The said amendment is having major impact on the quantum of GST refund claim of exporters clearing goods under bond or 	<p>Chamber recommends that the provision of determining the export value of goods as 1.5 times the value of like goods domestically supplied by the same or, similarly placed, supplier, as declared by the supplier, should be done away with for the purpose of claiming refund of unutilized ITC. This will ensure that there are no ambiguities at the field formation level for interpretation of value of like goods and would ensure faster disposal of refunds in such difficult times.</p> <p>Considering that this provision was brought in to check blatant over-valuation of goods, it is recommended to have clear objective safeguards, checks and balances which would serve the purpose of the notification and at the same time cause no loss to genuine exporters.</p>

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		<p>LuT without payment of tax, especially exporters who charge a considerable premium on export of their goods, as their refund claim would now be restricted to 1.5 times the value of similar products sold domestically.</p> <ul style="list-style-type: none"> • In a scenario where the supplier undertakes both domestic as well as export supplies, valuation may be relatively easy to derive. However, in the said cases too, it is advisable that due supporting / back-up documents are maintained by the supplier seeking the refund to avoid litigations/blockage of refunds. However, where the supplier undertakes only exports, he would face an issue to determine value of like goods domestically sold. • In the said cases where goods are exported without payment of tax, the exporter may be able to claim less ITC than the GST he has actually paid on inward supplies. This would defeat in making GST an efficient tax system. • Also the manner of valuation of goods as specified brings in a lot of aspect of subjectivity as the value has to be determined based on the value of like goods domestically supplied by the same or, similarly placed supplier. It is apprehended that this may lead to divergent views across field formation on interpretation of value of goods and could cause delays in 	

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		<p>refund or even rejection. This would go against the intent and the spirit of ease of doing business and supporting the exporters' fraternity in such difficult times.</p>	
14.	<p>Removal of IGST levy on ocean freight</p>	<ul style="list-style-type: none"> • Ocean freight incurred in the transportation of goods imported into India, including such services provided by a person located in a non-taxable territory to a person in a non-taxable territory, is liable to GST at the rate of 5% as a supply of service [<i>as per Sr. No. 9(ii) of Notification No. 8/2017 – IGST (Rate)</i>] and the same would be payable by the Indian importer on reverse charge [<i>as per Sr. No. 10 of Notification No. 10/2017 – IGST (Rate)</i>]. • Freight having suffered IGST as part of the value of the goods being imported, levying IGST again on the freight value by treating it as a supply of service tantamount to dual taxation. • It is pertinent to note that there have been differing rulings on the Constitutional validity of levy of IGST on ocean freight. This has led to unwarranted disputes and litigation for the trade and industry. • Also for Companies who deal in specified petroleum products such as crude oil, natural gas, motor spirit, high speed diesel and aviation fuel that are outside the ambit of GST have to 	<p>Chamber suggests that the taxing entry in the rate notification which casts the liability upon the importer to pay IGST on ocean freight should be done away with retrospective effect.</p> <p>Alternatively, since this provision has brought in to prevent discrimination against Indian Ship owners. It is therefore recommended to do away with double taxation by allowing deduction of ocean freight from transaction value of imported goods.</p>

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		<p>bear the burden of GST on ocean freight as well as the customs duty on the value of goods which includes such freight amount. This leads to cascading effect and impacts the sensitive and volatile pricing of such petroleum products.</p>	
15.	<p>Removal of GST under RCM on royalty payments by oil & gas companies</p>	<ul style="list-style-type: none"> • Royalty is Government's share in its own oil and gas reserves and is not a payment against any service. Also, there is no quid pro quo specified in this legislation under which royalty is levied that Government is required to fulfil obligation in lieu of royalty received. • It has been stated in Sectoral FAQs that GST on royalty paid to Government will be payable under RCM and the same would be eligible as ITC to the recipient. • However, in the oil and gas industry, since certain petroleum products are outside the ambit of GST, tax paid under RCM on royalty becomes a huge cost to oil and gas companies which impacts their working capital. 	<p>Chamber recommends that GST on royalty payments on production of specified petroleum products which are outside the ambit of GST should be done away.</p>
16.	<p>Blocking ITC due to non-filing of GSTR-3B by supplier - Flaws in Rule 86A of the Rule</p>	<ul style="list-style-type: none"> • Perusal of Rule 86A of the Rules conveys two-fold actions which are a) actions against fraudulent credit b) actions against ineligible credit. • While the intention is to curb fraudulent credits, the new Rule inserted vide Notification No. 75/2019 – Central Tax dated 26 	<p>Chamber recommends that the blocking of ITC on account of non filing of GSTR 3B by the supplier should be done away with, given the restriction which are already provided under Rule 36(4) of the Rules, for availing credit only</p>

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	<p>'Conditions of use of amount available in electronic credit ledger'</p>	<p>December 2019 is contentious because of clause (b) of Rule 86A(1) of the Rules. From basic interpretation of the Rule, non-payment of tax may happen in the following cases -</p> <ol style="list-style-type: none"> i. Invoices not uploaded by Suppliers; or ii. Invoices uploaded but returns and payment of taxes not made / uploaded. <ul style="list-style-type: none"> • Considering that Rule 36(4) of the Rules addresses the limitation of credit (<i>of invoices not uploaded</i>) to 10% of the eligible credit uploaded by suppliers, one fails to understand as to how a separate restriction on ITC will be made through Rule 86A of the Rules. • Once the right to claim ITC is established under Section 16 of the CGST Act, the same cannot be blocked on account of supplier's default. From a compliance perspective, to punish a recipient for the default of a supplier appears illegal and illegitimate. • While it is necessary to prevent misuse of ITC by fraudulent transactions, the said Rule 86A of the Rules has certain unforeseen implications which, the tax paying fraternity, earnestly hopes, does not affect ITC of genuine purchases, on account of omission on the part of supplier to file GSTR-3B. 	<p>to the extent it matches with the supplier invoices.</p> <p>It is also recommended that a list of GST registered persons with their credit rating as envisaged under section 149 of the CGST Act be made available, on which there is no information as of now. The compliance rating can be made available to any registered person who wants to deal contractually with the other person.</p>

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		<p>There is a possibility that the field formations may apply this provision in an arbitrary manner even in cases where there are genuine differences in credits.</p>	
17.	<p>GST on foreclosure charges levied by banks and financial institutions on the foreclosure of loan</p>	<ul style="list-style-type: none"> • Divergent views were expressed on chargeability of Service Tax on foreclosure charges by different benches of Hon'ble CESTAT resulting in a reference to the larger bench. In Commissioner of Service Tax vs. Repco Home Finance Limited, the larger bench has answered the reference in favour of the assessee, closing the doors on levy of Service Tax on foreclosure charges. • It has further held that payment of foreclosure charges is not an alternative mode of performance as they are merely intended to compensate the banks for breach by the borrower. It cannot be understood to mean that the borrower has been given an option to breach the contract in return of payment of foreclosure charges. • Further, the court observed that the processing charges, documentation charges etc. form a part of lending process and hence the same should be subject to service tax. However, foreclosure charges are exactly the contrary, they tend to cease the process of lending and thus cannot qualify to be a 	<p>Chamber recommends to issue clarification stating foreclosure charges should not be subjected to levy of GST since the agreement was not to pre-close the loan but to continue with it.</p>

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		<p>part of lending process.</p> <ul style="list-style-type: none"> • It has further been explained that there is a difference between conditions of a contract and consideration under a contract and that conditions of a contract are not equivalent to consideration under a contract. • These observations have direct relevance in determining the applicability of ST/ GST on the ever-disputed clause of <i>'agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act'</i>. • Payment of liquidated damages agreed under an agreement on breach of such agreement also arise on unilateral act of the party breaching the agreement. Such breach of agreement entitles the party to recover damages from the other party, which are quantified in the agreement itself for the sake of certainty. Nonetheless, the right to recover such liquidated damages arises only upon breach of the agreement. • Penalties, with whatever name called, cannot be equated with the consideration of the contract as the consideration and condition to a contract are different. In case of foreclosure charges, the agreement was not to pre-close the loan but to continue with it. 	

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18.	<p>Reversal of ITC in case capital goods are lost/ stolen/ destroyed after use</p>	<ul style="list-style-type: none"> • Section 17(5) of CGST Act restricts ITC in certain cases. As per clause (h), ITC shall not be available in case goods are lost, stolen or destroyed. • As per section 18(6) of CGST Act, in case of supply of capital goods on which ITC has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods determined under section 15, whichever is higher. • There are several instances where capital goods after being put to use are lost, stolen or destroyed. Section 18(6) is not applicable in such scenarios as there is no supply of capital goods. • Plain reading of section 17(5) suggests that ITC claimed on such capital goods needs to be reversed. However, the quantum of ITC to be reversed is not specifically provided and therefore, the department may take a stand that 100% of ITC is required to be reversed even though the capital goods were put to use for some period of time. 	<p>Chamber recommends that a proviso or explanation should be inserted in section 17(5)(h) to provide that in case where the capital goods are lost, stolen or destroyed after being put to use, the credit is required to be reversed in proportion to the remaining life of the capital asset (assuming life of capital asset as 5 years and hence, reversal @ 5% per quarter)</p>

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GST recommendations seeking specific relaxations due to COVID-19 pandemic			
1.	Late fee waiver and complete interest reduction for the period February 2020 to December 2020	<ul style="list-style-type: none"> Finance Minister has been announcing various reliefs from the very beginning of lockdown 1.0 which essentially included extension of due dates for most GST compliances and flexibility of delayed payment of GST with / without interest, depending on the size of business and period of delay. Government has focused on MSMEs (<i>taxpayers with turnover upto INR 5 crores</i>) and provided leeway in the form of reduction of interest liability, extension of due dates in staggered manner, waiver of late fee / reduction in late fee etc. However, considering the fact that COVID-19 has disrupted the business functioning for small as well as large business houses, and bringing the situation to normalcy is far-fetched, there is a dire need to extend compliance relaxations to all taxpayers upto December 2020. 	<p>Chambers seeks for a relaxation for complete waiver of interest for delayed payment of taxes and waiver of late fee for delay in filing the GST returns for the period February 2020 to December 2020 irrespective of the taxpayers' turnover, provided the returns for the said period are filed by due date of filing return for the month of January 2021.</p> <p>Chamber also recommends that late fee paid by taxpayers who have already filed the returns should be refunded.</p>
2.	Extension of due date of ITC matching from August 2020 to March 2021 under	<ul style="list-style-type: none"> Under Section 16(4) of the CGST Act, time limit for claiming ITC for FY 2019-20 is up to September 2020 i.e. filing of GSTR-3B of September 2020 by 20 October 2020. Post introduction of Rule 36(4) w.e.f. October 2019, ITC on 	<p>Chamber recommends extending relaxation from complying with Rule 36(4) up to March 2021. Also, Chamber recommends that time limit for claiming ITC for FY 2019-20 should be extended</p>

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	Rule 36(4)	<p>invoices not appearing in Form-2A shall be restricted to 10% of eligible credit reflected in Form-2A.</p> <ul style="list-style-type: none"> • However, from April 2020, relaxation has been provided on account of COVID-19 w.r.t. the Rule 36(4) restriction for the months of February 2020 to August 2020 on the condition that cumulative adjustment of ITC for the said months be made in Form GSTR-3B for the month of September 2020. • With the slowdown in economy, businesses are struggling to pay past GST dues and file returns. Number of non-filers of GST returns have kept on increasing during COVID-19. 	to March 2021.
3.	ITC of health insurance premium paid by the establishment during lockdown period and to protect employees from COVID 19.	<ul style="list-style-type: none"> • Section 17(5)(b) of the CGST Act <i>inter alia</i> puts ITC restriction on health insurance. However, a proviso is added which states that ITC on health insurance can be claimed <u>provided it is obligatory for an employer to provide the same to its employees under any law for time being in force.</u> • In India, the Government of India announced a lockdown in terms of Disaster Management Act, 2005 ('DMA') and simultaneously invoked provisions of the Epidemic Diseases Act 1897. In these turbulent times facing mankind, the Company expanded / extended the health insurance cover for their employees and personnel. 	Chamber recommends issuing suitable clarification on eligibility to avail credit of health insurance premium for the COVID-19 period. The eligibility to claim ITC on health insurance premium for employees should continue even post COVID-19 period.

Sl.	Subject	Rationale	Recommendation
		<ul style="list-style-type: none"> • Ministry of Home Affairs (MHA) in wake of COVID 19 through an express Order No. 40-3/2020-DM-I(A) dated 15.04.2020 has made medical insurance mandatory for the workers of offices, workplaces, factories, and establishments. • Although the word 'worker' has not been defined in the guidelines or in DMA, going with the intention of the guidelines, it should cover all the employees and workers which are under the payroll of the company including contractual employees. • Further, the term 'health insurance business' has been defined under Section 2(6C) of the Insurance Act, 1938 to include contracts that provide for sickness benefits or medical, surgical or hospital expense benefits, whether in-patient or out-patient travel cover and personal accident cover. Thus, medical insurance is part of the health insurance only. • To avail ITC on medical insurance, there must be an obligation on the employer to provide the same under the law. • The aforementioned MHA order clearly states that it is mandatory to undertake medical insurance for all the workers of <i>industrial and commercial establishments, work places, offices etc.</i>, thereby making it obligatory on part of the employer to provide the same to its employees resultantly 	

Sl.	Subject	Rationale	Recommendation
		<p>satisfying the condition stipulated in the proviso.</p> <ul style="list-style-type: none"> • Prior to MHA guidelines, ITC on medical insurance was restricted under Section 17(5). Where medical insurance is taken before the issuance of said order, it is construed to be restricted and ITC cannot be claimed. • However, another view is possible that as medical insurances spread over the period, proportionate ITC can be claimed for the COVID-19 period. The same would possibly lead to litigation until and unless clarity is issued by the Government. 	
4.	<p>Temporary suspension of ITC reversal condition under Section 17(5) for damaged goods, loss of perishable goods, obsolete inventory written-off etc. owing to</p>	<ul style="list-style-type: none"> • Many consignments were in transit during the lockdown period. Damage to raw material and finished products have been observed. On top of the said loss of goods, since ITC on goods lost, damaged or stolen is liable to be reversed as per Section 17(5)(h) of the CGST Act, the same adds further distress to the businesses which are already struggling due to stalled activities. • Sectors such as food processing, leather, textiles where the goods are highly perishable – are facing a situation where the 	<p>Chamber recommends onetime relief to do away with ITC reversal under section 17(5)(h) of the CGST Act for the COVID period for goods which are damaged, destroyed, obsolete.</p>

Sl.	Subject	Rationale	Recommendation
	lockdown.	<p>inventory loss is now compounded with reversal of ITC which will in turn lead to a higher tax outgo.</p> <ul style="list-style-type: none"> • Delays in delivery resulted in many orders being cancelled, the tax on which was already paid, further adding to the working capital woes. 	
5.	Challenges in implementation of e-invoicing w.e.f. 1 October 2020	<ul style="list-style-type: none"> • E-invoicing or 'electronic invoicing' is a system in which B2B invoices are authenticated electronically by GSTN for further use on the common GST portal and shall apply to taxpayers .with annual aggregate turnover exceeding INR 500 Crores. • Books of accounts cannot be forced closed at the end of the month i.e. 30th or 31st of respective month. Finalisation of invoicing, receiving the information from business, and booking of invoices takes a considerable amount of time. Thus, there is a need to consider relaxation for invoices raised with earlier dates due to books closure. • Another area of challenge is IRN cancellation within 24 hours. IRN once generated cannot be modified or deleted. However, if IRN is generated with wrong information, it can be cancelled. Once it is cancelled, the IRN cannot be generated on the same invoice. The cancellation is required to be done within 24 hours 	<p>Chamber recommends that –</p> <ul style="list-style-type: none"> - Time period of 24 hours to cancel IRN is not sufficient which may lead to need to do reconciliation of IRN generated vis-à-vis actual invoices being issued; - Mechanism to provide relaxation in case of breakdown of internet connectivity in certain areas.



Sl.	Subject	Rationale	Recommendation
		<p>from the time of generation.</p> <ul style="list-style-type: none">• Any amendment to the e-invoice beyond 24 hours have to be carried out on GST portal (<i>through GSTR-1</i>) and not on IRP.	