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**INDORE BRANCH OF CIRC OF ICAI**



# NEWSLETTER

AUGUST, 2022 ▶ Price ₹ 20



## Chairman's Communique

Dear Members,

**At the outset, let me wish you all a Very Happy 75th Independence Day!**

This month of August brings with it a cheerful occasion to celebrate 75 years of India's Independence. As the whole nation rises to the Prime Minister's call for Har Ghar Tiranga, our Indore Branch has also taken pride in associating with this movement. As the national tricolour unfurls in our abodes, we shall take pride in this great nation and feel more connected with our profession which is truly a partner in nation building.

I would also like to take this opportunity to extend festive greetings to all our members on the occasion of Shri Krishna Janmashtami, Ganesh Chaturthi, Paryushan and such colourful festivals that connect us with this vibrant nation and make us experience and embrace all the joyful memories along with it.

Indore Branch of ICAI is proud to host the third national conference on direct taxes. We would be joined in the inaugural session by the newly elected mayor of Indore City Shri Pushyamitra Bhargav. The branch shall also organise a kavi sammelan on the eve of India's 75th Independence Day, and I invite all the members to take part in these activities for learning and enjoyment.

As India celebrates 75 years of Independence, I share immense pride and joy in our country's national movement of decades that culminated into this sweet freedom. While some of our respected senior members may remember the nascent moments of this nation, young members like me have only heard stories. Such story fills our hearts with joy and pride. It can also encourage us to contribute towards the noble cause of nation-building.

On this occasion, I can only call upon that feeling, and invoke the words of **Gurudev Rabindranath Tagore**

*Where the mind is without fear and the head is held high;*

*Where knowledge is free;*

*Where the world has not been broken up into fragments by narrow domestic walls;*

*Where words come out from the depth of truth;*

*Where tireless striving stretches its arms towards perfection;*

*Where the clear stream of reason has not lost its way into the dreary desert sand of dead habit;*

*Where the mind is led forward by thee into ever-widening thought and action –*

*Into that heaven of freedom, my Father, let my country awake.*

*Yours truly,*  
**CA. Anand Jain**

# GST on Pre-packaged & Labelled Commodities



CA. Nikhil Jhavar

As per [Notification No. 06/2022 Central Tax Rate, issue on 13th July 2022, certain commodities were made to be taxed if they are in Pre-Packaged & Labelled form.](#)

The expression 'pre-packaged and labelled' means a 'pre-packaged commodity' as defined in clause (l) of section 2 of the Legal Metrology Act, 2009 (1 of 2010) where, the package in which the commodity is pre-packed or a label securely affixed thereto is required to bear the declarations under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.'

Pre-packaged commodity as per section 2 (l) of Legal Metrology Act (LMA), 2009 is as under:

“Pre-packaged commodity” means a commodity which without the purchaser being present is placed in a package of whatever nature, whether sealed or not, so that the product contained therein has a pre-determined quantity;

Hence, taxability will be based on two conditions:

1. The item is pre-packaged &
2. It is required to bear the declaration under the provisions of the Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder.

The FAQ released on 17th July 2022, has only referred Rule 3 of (LMA) for the purpose of declaration requirement. As per Rule 3 of Legal Metrology Act, 2009 (1 of 2010) and the rules made thereunder:



3. The provisions of this chapter shall not apply to-
- (a) packages of commodities containing quantity of more than 25 kilogram or 25 litre;
  - (b) cement, fertilizer and agricultural farm produce sold in bags above 50 kilogram; and
  - (c) packaged commodities meant for industrial consumers or institutional consumers.”

Meaning there by,

- a) If the commodity say pulses is pre-packaged with a quantity of less than or equal to 25 kg, the package will be required to bear declaration under LMA and even if the declaration requirement is not met, the same shall be chargeable to tax at the rate of 5%
- b) For cement, fertilizer and agricultural farm produce, the packaging limit shall be 50Kg or less and
- c) When goods are supplied to industrial consumers or institutional consumers, say. Pulses are supplied to an industrial consumers or institutional consumers, tax at the rate of 5% will not be charged on same. As per LMA:

(bb) “industrial consumer” means the consumer who buys packaged commodities directly from the manufacturer or from an importer or from wholesale dealer for use by that industry and the package shall have declaration 'not for retail sale';

(bc) “institutional consumer” means the institution which buys packaged commodities bearing a declaration 'not for retail sale', directly from the manufacturer or from an importer or from wholesale

dealer for use by that institution and not for commercial or trade purposes;'

Hence, exemption w.r.t sale made to industrial consumer shall be available only if:

- ▶ It is a prepackaged commodity
- ▶ Bought directly from manufacturer or from an importer or from wholesale dealer
- ▶ Package shall have a declaration – not for retail sale

Vis-a-vis exemption w.r.t sale made to institutional consumer shall be available only if

- ▶ It is a packaged commodity
- ▶ Package shall have a declaration – not for retail sale
- ▶ Bought directly from manufacturer or from an importer or from wholesale dealers used by that institution and not for commercial or trade purposes.

Further, important clarification have been made via FAQ F. No. 190354/172/2022-TRU Dated the 17th July, 2022 with respect to following cases:

- ▶ Whether GST would apply to a package that contains multiple retail packages. For example, a package containing 10 retail packs of flour of 10 Kg each?

Yes, if several packages intended for retail sale to ultimate consumer, say 10 packages of 10 Kg each, are sold in a larger pack, then GST would apply to such supply. Such package may be sold by a manufacturer through distributor. These individual packs of 10 Kg each are meant for eventual sale to retail consumer. However, a package of say rice containing 50 Kg (in one individual package) would not be considered a pre-packaged and labelled commodity for the purposes of GST levy, even if rule 24 of Legal Metrology (Packaged Commodities) Rules, 2011, mandates certain declarations to be made on such wholesale package.

**Authors Remarks: Hence, focus should be on the individual packages meant to be sold as it is, to the ultimate buyers.**

- ▶ At what stage would GST apply on such supplies, i.e., whether GST would apply on specified goods sold by manufacturer/producer to wholesale dealer who subsequently sells it to a retailer?

GST would apply whenever a supply of such goods is made by any person, i.e. manufacturer supplying to

distributor, or distributor/dealer supplying to retailer, or retailer supplying to individual consumer. Further, the manufacturer/wholesaler/retailer would be entitled to input tax credit on GST charged by his supplier in accordance with the Input Tax Credit provisions in GST.

A supplier availing threshold exemption or composition scheme would be entitled to exemption or composition rate, as the case may be, in usual manner.

**Authors Remarks: From the above example it is clear that taxability needs to be ascertained at each and every point of the trade. Hence, it is very much possible that a goods exempted at wholesaler stage get taxed at retail stage and via –a –versa. For example: Pulses sold in a package of 30kg by manufacturer to wholesaler is exempt. If the same package is sold by whole seller to retailer shall also be exempt. However, if the retailer makes 30 small packages of 1kg each out of the same lot and the same is done in absence of buyer, the said packages shall be chargeable at the rate of 5%.**

Further, Every registered taxable person whose aggregate annual turnover exceeds Rs. 20 Cr in any of the financial year since 2017-18 is liable to issue e-invoice by way of uploading its tax invoice in json file on Invoice Registration Portal (IRP) in accordance with e-invoice schema in INV- 01 and getting back digitally signed json from IRP with IRN and QR Code.

**Authors Note:** The dealers who were selling commodities by availing exemption by selling non branded goods or by forgoing the rights of the brand , shall now have to reassess if aggregate annual turnover had exceeds Rs. 20 Cr & there packaged commodity is now chargeable to tax shall abide by the provisions of E-Invoicing.

Furthermore, It is important to note that requirement to generate E-Way bills are governed by Rule 138 of CGST Act. Provisions of E-way bill are required to be complied in case of supply of goods other than the one falling within the exemptions specified in sub rule 14 of rule 138.

In case of Interstate supply of goods, E-way bill is required to be generated in case the Invoice of Value – Value of Exempted Goods (being part of invoice) is above Rs. 50,000.

However in case of intra state supply of goods, the limit

will differ from state to state. Notification No. FA3-08/2018/1/V(18) dated 23/03/2022 may be referred with respect to E-way bill requirement in case of intra state supply within the state of Madhya Pradesh.

Notification:

The CBIC vide Notification No. 07/2022-Central Tax (Rate) dated July 13, 2022 has issued amendments in the Goods

S. No.	CHAPTER/ HEADING	PARTICULARS
9.	0202, 0203, 0204, 0205, 0206, 0207, 0208, 0209, 0210	All goods, other than fresh or chilled, <b>other than pre-packaged &amp; labelled.</b>
22.	0303, 0304, 0305, 0306, 0307, 0308, 0309	All goods, other than fresh or chilled & <b>other than pre-packaged &amp; labelled.</b>
26.	0403	Curd, Lassi, Butter milk, other than pre- packaged & labelled.
27.	0406	Chena or paneer, <b>other than pre-packaged and labelled.</b>
29.	0409	Natural honey, <b>other than pre-packaged and labelled.</b>
30B.	0504	All goods, other than fresh or chilled, <b>other than pre- packaged &amp; labelled.</b>
45.	0713	Dried leguminous vegetables, shelled, whether or not skinned or split, <b>other than pre-packaged and labelled.</b>
46A	0714	Manioc, arrowroot, salep, Jerusalem artichokes, sweet potatoes and similar roots and tubers with high starch or inulin content, frozen, whether or not sliced or in the form of pellets, <b>other than pre-packaged and labelled.</b>
46B	08	Dried makhana, whether or not shelled or peeled, <b>other than pre-packaged and labelled.</b>
65.	1001	Wheat and meslin, <b>other than pre-packaged and labelled.</b>
66.	1002	Rye, <b>other than pre-packaged and labelled.</b>
67.	1003	Barley, <b>other than pre-packaged and labelled.</b>
68.	1004	Oats, other than those, <b>other than pre-packaged and labelled.</b>
69.	1005	Maize (corn), <b>other than pre-packaged and labelled.</b>
70.	1006	Rice, <b>other than pre-packaged and labelled.</b>
71.	1007	Grain sorghum, <b>other than pre-packaged and labelled.</b>
72.	1008	Buckwheat, millet and canary seed; other cereals such as Jawar, Bajra, Ragi, <b>other than pre-packaged and labelled.</b>
73.	1101	Wheat or meslin flour, <b>other than pre-packaged and labelled.</b>
74.	1102	Cereal flours other than of wheat or meslin, maize (corn) flour, Rye flour, etc., <b>other than pre-packaged and labelled.</b>
75.	1103	Cereal groats, meal and pellets, <b>other than pre-packaged and labelled.</b>
77.	1105	Flour, powder, flakes, granules or pellets of potatoes, <b>other than pre-packaged and labelled.</b>
78.	1106	Flour, of the dried leguminous vegetables of heading 0713 (pulses), other than guar meal 1106 10 10 and guar gum refined split 1106 10 90, of sago or of roots or tubers of heading 0714 or of the products of Chapter 8 i.e. of tamarind, of singoda, mango flour, etc., <b>other than pre- packaged and labelled.</b>
94.	1701 or 1702	Jaggery of all types including Cane Jaggery (gur), Palmyra Jaggery; Khandsari Sugar, <b>other than pre packaged and labelled.</b>

# लैंड एवं जीएसटी



लैंड न तो मटेरियल अथवा गुड्स है न ही सर्विस यह सेटल्ड पोजीशन है इसी के चलते सेल ऑफ लैंड जीएसटी कानून के शेड्यूल 3 में शामिल की गई है जिसमें ऐसी एक्टिविटी दर्शाई गई है जो कि सप्लाय ही नहीं होती यानी कि जीएसटी के दायरे से ही बाहर होती है (सबको पता ही है कि सप्लाय होने पर ही

उपरोक्त आधार पर न तो मटेरियल की वैल्यू शामिल की गई और ना ही लैंड की इसके अलावा जब बिल्डर्स पर 2010 में टैक्सेशन आया तभी और बाद में भी नोटिफिकेशन के मार्फत सेनवैट क्रेडिट देते समय शर्तों के अंतर्गत कंस्ट्रक्शन सर्विस की वैल्यू टोटल प्राइस की 25 या 30% ही मानी गई जिसमें 75 अथवा 70% मटेरियल एवं लैंड की वैल्यू अनुमानित की गई या मान ली गई।

इसी मान ली गई प्रोसीजर के द्वारा टैक्सेशन को दिल्ली हाईकोर्ट ने सुरेश कुमार बंसल वाले मामले में यह कहकर नकार दिया था कि इसमें टैक्सेशन से संबंधित जरूरी तीन बातें स्पष्ट नहीं हो रही थी, टैक्स कितना लगेगा, किस पर लगेगा और कब लगेगा।

जब जीएसटी आया तब भी सरकार लैंड की वैल्यू टैक्सेशन के लिए शामिल नहीं करना है इस बात को स्वीकार तो करती रही किंतु टोटल प्राइस में से उसकी वैल्यू कितनी माइनस की जाए यह तय नहीं कर पाई और नोटिफिकेशन 11/2017 में स्पष्टीकरण दे दिया कि यह टोटल प्राइस की एक तिहाई होगी जिसे हाल ही में गुजरात हाईकोर्ट ने मुंजाल भट्ट वाले मामले में सीधे-सीधे असंवैधानिक करार दिया।

उपरोक्त पृष्ठभूमि से स्पष्ट हो जाता है कि कुल मिलाकर लैंड कभी भी सर्विस टैक्स अथवा जीएसटी के दायरे में नहीं आती है। इस पर पिछले वर्ष सुप्रीम कोर्ट ने रिफंड मैटर से संबंधित वीकेसी फुट स्टेप्स प्रा. लि. वाले अपने महत्वपूर्ण निर्णय में स्पष्ट व्याख्या करते हुए मुहर लगा दी।

कोर्ट ने यह व्यवस्था दी कि स्टैप ड्यूटी वाले ट्रांजैक्शन पर जीएसटी नहीं लग सकता, कोर्ट ने कहा कि संवैधानिक व्यवस्था एवं सरकारी वित्त नीतियों के खिलाफ जाने का कोर्ट का क्षेत्राधिकार नहीं होता है वह हस्तक्षेप नहीं कर सकती है इसलिए कोर्ट से कभी यह उम्मीद नहीं की जा सकती या फिर यह मांग कर ली जाए की स्टैप ड्यूटी अथवा

ऐसा इसलिए भी है क्योंकि भारतीय संविधान के अंतर्गत शेड्यूल 7 में लिस्ट 2 के अनुसार आइटम नंबर 49 लैंड है जिस पर सिर्फ स्टेट गवर्नमेंट को पावर है टैक्सेशन करने की जो कि वह स्टैप ड्यूटी लगाकर करती है।

जैसा कि सभी जानते हैं कि कंस्ट्रक्शन जब भी होता है किसी भवन, मकान या कॉम्प्लेक्स का वह होता तो जमीन पर ही रो-हाउस /अपार्टमेंट या बंगलो के रूप में, उस प्रॉपर्टी की परचेज प्राइस में उसके नीचे आने वाली जमीन और यदि मल्टीस्टोरी बन रही है तो अविभाजित भूमि का हिस्सा (जो कि प्रकोष्ठ के मार्फत तय हो जाता है) की वैल्यू शामिल होती है, कंस्ट्रक्शन में लगने वाले मटेरियल एवं लेबर की वैल्यू शामिल होती है तथा कांट्रैक्टर का प्रॉफिट भी।

जब गैनन डंकरले वाले मामले में सुप्रीम कोर्ट का निर्णय आया था कॉन्ट्रैक्ट के अंतर्गत आने वाले मटेरियल पर राज्य सरकार को टैक्सेशन का पावर नहीं है तो डीमंड टैक्सेशन कंसेप्ट के तहत लेबर पोर्शन एवं उससे संबंधित प्रॉफिट को माइनस करके जो वैल्यू बचती थी उस पर टैक्सेशन की बात हुई थी। भारतीय संविधान के आर्टिकल 366(29)। उस में लेबर पोर्शन और उससे संबंधित प्रॉफिट जो कि आदरणीय कोर्ट में बताया गया था उसी को सर्विस टैक्स में आधार मानकर कंस्ट्रक्शन सर्विस पर सर्विस टैक्स लगाया गया।

अल्कोहल वाले ट्रांजैक्शन पर भी जीएसटी लगने लगे। उपरोक्त परिचर्चा से यह साबित होता है कि लैंड के किसी भी ट्रांजैक्शन पर कोई भी राज्य सरकार ही स्टैप ड्यूटी के मार्फत टैक्सेशन कर सकती है। वैसे भी यह स्पष्ट है कि संविधान के शेड्यूल सेवन में लिस्ट 1 केंद्र सरकार की आइटम है और लिस्ट दो राज्य सरकार की। लिस्ट थी कॉमन आइटम है जिस पर दोनों सरकारें टैक्सेशन कर सकती हैं।

## सबसे अहम प्रश्न बन जाता है कि लैंड क्या है?

जीएसटी कानून में इसकी डेफिनेशन तो दी नहीं गई है। इस संबंध में सुप्रीम कोर्ट के भोपाल शुगर मिल्स के मामले में दिए गए निर्णय को संदर्भ में लेना चाहिए।

कोर्ट ने यह स्पष्ट किया था कि किसी शब्द का अर्थ सामान्यतया जो कि समझा जाता है या होता है वही माना जाना चाहिए। इस मामले में कैपटिव कंजंक्शन कोर्ट ने ठहराया था और कहा था कि सेल मतलब वही जब दूसरे को ट्रांसफर किया जाए न कि खुद को, अतः लैंड शब्द का सामान्य अर्थ जो भूमि की सतह हमें दिखाई पड़ती है वह है।

कई कोर्ट के निर्णय के अनुसार जमीन के नीचे पाताल तक और जमीन के ऊपर बिना कंस्ट्रक्शन के आकाश तक जो भी हिस्सा होता है वह जमीन ही कहलाता है। इस संबंध में जिल्लू भाई नाना भाई एवं अनंत मिल्स का सुप्रीम कोर्ट का डिजीजन बड़ा महत्वपूर्ण है। चुकी लैंड अपने आप में एक इम्यूवेबल प्रॉपर्टी है, उस पर लैंड ओनर को जो डेवलपमेंट के अधिकार निहित होते हैं वही डेवलपमेंट राइट्स कहलाते हैं। इस राइट के बिना लैंड की कीमत लगभग शून्य है इसीलिए यह राइट सब्सटेंशियल या मुख्य राइट्स कहलाते हैं इसीलिए कई कोर्ट निर्णय के अनुसार वह भी लैंड की श्रेणी में ही आते हैं।

जैसा कि जनरल क्लॉजस एक्ट 1897 की धारा 3 (26) में भी उल्लेखित है। कई दफा तो जमीन से कुछ लाभ कमाना भी उसी से चूंकि उपजता है तो वह भी लैंड ही कहलाता है। जीएसटी कानून में शेड्यूल 3 में जो लैंड को कानून के दायरे से बाहर रखा गया है वह अपने आप में बिल्कुल स्पष्ट है, वहां पर यह नहीं लिखा है कि कच्ची लैंड/विकसित लैंड अथवा विकास अधीन लैंड।

लैंड लैंड ही रहती है विकसित हो अथवा अविकसित क्योंकि विकसित होने के बाद भी उस पर किए गए विकास को नहीं बेचा जाता बल्कि लैंड को बेचा जाता है। कुल मिलाकर बात यह है कि डेवलपमेंट के पहले भी वह लैंड रहती है और बाद में भी उसके स्वरूप में बदलाव नहीं आता इसीलिए लैंड के टुकड़े अर्थात् प्लॉट के विक्रय पर (चाहे वह विकसित/अविकसित अथवा विकास अधीन हो) कोई भी जीएसटी नहीं लगता। जो थोड़ा बहुत डेवलपमेंट होता है वह कच्ची लैंड को विक्रय के योग्य बनाने के लिए होता है जिसमें लैंड लेवलिंग, पाइप लाइन बिछाना इत्यादि गतिविधियां शामिल है। यह सब लैंड की श्रेणी में ही आएगा। इसे पिछले दिनों जीएसटी काउंसिल ने भी स्पष्ट कर दिया है, क्योंकि मध्यप्रदेश एवं गुजरात के कुछ विभागीय एडवांस रूलिंग ( जो कि उस निर्णय को मांगने के लिए गए

टैक्सपेयर एवं उसे देने वाले \*पर ही लागू होता है) में विकसित प्लाट को बेचने पर जीएसटी लगने की बात की गई थी जिससे टैक्सपेयर लॉबी और बिल्डर्स में हड़कंप मच गया था।

इसके बाद भी एक प्रश्न उठाया जा रहा है की कोई किसी लैंड के स्वामी अर्थात् लैंड ओनर के साथ मिलकर कोई डेवलपर लैंड को डेवलप करने के बाद अलग/साथ में बेचते हैं यानी कि ज्वाइंट डेवलपमेंट जिसे बोलचाल की भाषा में रेशो डील या रेवेन्यू शेयरिंग भी कहा जाता है उस पर तो टैक्स लगेगा ही।

## इसमें दो परिस्थिति है -

अगर लैंड ओनर के साथ यथोचित ज्वाइंट डेवलपमेंट अनुबंध करके प्लॉट को डेवलप करके एक कॉमन अकाउंट में पैसा प्राप्त करके फिर प्रि एग्रीड अनुपात में रेवेन्यू को शेयर किया जाता है, ऐसी स्थिति में कोई टैक्सेशन नहीं होगा क्योंकि दोनों ही मिलकर अल्टीमेटली लैंड अथवा उसका टुकड़ा यानी कि प्लॉट ही बेच रहे हैं जिस पर सिर्फ और सिर्फ स्टॉप ड्यूटी लग सकती है। यहां पर वह अपने लिए ही डेवलपमेंट कर रहे हैं, कोई एक दूसरे के लिए नहीं कर रहा। दोनों मिलकर दोनों के लिए कर रहे। सेल्फ को कोई सर्विस की सप्लाई नहीं होती।

अब इसमें कोई खरीददार से अलग से कोई डेवलपमेंट चार्ज लेते हैं जिस पर की स्टॉप ड्यूटी नहीं चुकाई गई है तब तो फिर जीएसटी लग सकता है।

दूसरी स्थिति ऐसी होती है की ज्वाइंट डेवलपमेंट के अंतर्गत मान लीजिए 100 प्लॉट निकल रहे हैं और दोनों डेवलपमेंट के बाद 50-50 प्लॉट रख लेते हैं और अपने अपने प्लॉट अलग-अलग सेल करते हैं तो ऐसी स्थिति में डेवलपर द्वारा लैंड ओनर के हिस्से में आए 50% प्लॉट पर जो डेवलपमेंट की एक्टिविटी की गई है उस पर सर्विस सप्लाई होना कहा जा सकता है क्योंकि डेवलपमेंट की एक्टिविटी के बदले में कंसीडरेशन जो मिला है वह 50% प्लॉट है। इसीलिए गलत एग्रीमेंट के मार्फत लैंड जैसी आइटम जिस पर संविधान के अंतर्गत सिर्फ राज्य सरकार को टैक्सेशन का पावर है उस पर अनावश्यक रूप से जीएसटी अट्रैक्ट हो जाता है। जबकि इस स्थिति में भी मूल उद्देश्य लैंड के स्वामित्व का पुर्ननिर्धारण होकर लैंड को ही बेचने से प्राप्त हुई राशि (जिसमें अगर विकास कार्य हुआ भी है तो वह इंसीडेंटल है सब्सटेंशियल नहीं) के हिस्से पर भी टैक्स लग रहा है जबकि संविधान की ऐसी कोई मंशा नहीं है।



सीए नवीन खंडेलवाल

# CBIC ISSUES CLARIFICATION ON APPLICABILITY OF DEMAND AND PENALTY IN RESPECT OF TRANSACTIONS INVOLVING FAKE INVOICE



**CA. Swati Gupta**

The issue relating to issuance of fake invoice is of the most concern to the tax department. We regularly come across the news relating to investigation by the tax department with respect to the issuance of fake or bogus invoices by the certain dealers. It has also been noticed that the department takes action and issues demand of tax and penalty from all the dealers who are involved in a chain of transaction.

For example when A issues invoice to B and B further issues invoice to C without supply of goods, then in such cases generally demand of tax and penalty is raised on each person who is involved in the chain transaction without going in to facts about the nature of activity in which each person in the chain is involved.

The government has recently clarified various issues relating to applicability of demand and penalty provisions under the Central Goods and Services Tax Act, 2017 in respect of transactions involving fake invoices. Such clarification would be very help full for the officers in the field to deal with the cases of fake invoice. The clarification issued by the department is summarised herein below.

## **(i) What is Fake Invoice:**

The said circular provided that when a registered persons are found to be involved in issuing tax invoice, without actual supply of goods or services or both, in order to enable the recipients of such invoices to avail & utilize input tax credit fraudulently then such person would be considered to be involved in issuance of fake invoice.

## **(ii) Illustrations**

a. 'A' issues invoice to 'B' without supply of goods and services.

Person	Offence	Legal Action
Dealer A	No recovery of tax and penalty shall be made from 'A' under Section 73 and 74 of the CGST Act since there was no supply made by him in terms of Section 7 of the CGST Act to 'B'.	'A' shall be liable for penal action under section 122 (1)(ii) of the CGST Act for issuing tax invoices without actual supply of goods or services or both.

b. 'B' utilises the ITC against his outward tax liability in respect of the fake invoice issued by 'A' to 'B' without supply of goods and services.

Dealer B	The registered person 'B' has availed and utilized fraudulent ITC on the basis of the fake tax invoice issued by A, without receiving the goods or services or both, in contravention of the provisions of section 16(2)(b) of CGST Act.	The demand of ITC availed without invoice can be made from B, along with penal action, under the provisions of section 74 of the CGST Act, along with applicable interest under provisions of section 50 of the said Act. If the action is taken u/s 74 then no penal action shall be taken u/s 122 of the CGST Act shall be taken.
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c. 'A' issues fake invoice to 'B'. B passes on the ITC of fake invoice to C without supply of goods and services.

Person	Offence	Legal Action
Dealer C	As there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction, no tax was required to be paid by 'B' in respect of the same. The input tax credit availed by 'B' in his electronic credit ledger on the basis of tax invoice issued by 'A', without actual receipt of goods or services or both, is ineligible in terms of section 16 (2)(b) of the CGST Act. In this case, there was no supply of goods or services or both by 'B' to 'C' in respect of the said transaction and also no tax was required to be paid in respect of the said transaction.	No demand and recovery of either input tax credit wrongly/ fraudulently availed by 'B' in such case or tax liability in respect of the said outward transaction by 'B' to 'C' is required to be made from 'B' under the provisions of section 73 or section 74 of CGST Act. 'B' shall be liable for penal action both under section 122(1)(ii) and section 122(1)(vii) of the CGST Act, for issuing invoices without any actual supply of goods and/or services as also for taking/ utilizing input tax credit without actual receipt of goods &/or services.

### (iii) Other clarifications

- a. Basis of any Action: CBIC clarifies that the any action to be taken against a person will depend upon the specific facts and circumstances of the case which may involve complex mixture of above scenarios or even may not be covered by any of the above scenarios.
- b. Action against beneficiaries: Board clarifies that any person who has retained the benefit of transactions specified under sub-section (1A) of section 122 of CGST Act, and at whose instance such transactions are conducted, shall also be liable for penal action under the provisions of the said sub-section.
- c. Prosecution u/s 132: The Board further clarifies that in cases of wrongful/ fraudulent availment or utilization of input tax credit, or in cases of issuance of invoices without supply of goods or

services or both, leading to wrongful availment or utilization of input tax credit or refund of tax, provisions of section 132 of the CGST Act may also be invocable.

**Conclusion:** The clarification issued by the board would be a guiding document of the officers on the field and such clarification is line with provisions of the law. Further, such clarification will reduce the litigation with respect to demand of tax and penalty in cases involving fake invoices. However, a clarification was also required in respect of the action taken by the department on the genuine buyers when an investigation was carried upon a particular supplier allegedly involved in issuing fake invoices.

It is a general practice of the department to issue notices to the all the buyers of the suppliers in respect of whom an investigation for issuing fake invoice is being carried upon. The present circular is silent upon this aspect.

# COMPLIANCE CHART

## AUGUST 2022

Return / Forms	Month/Year	Due Date/ Extended Date	Remark
GSTR 1	Jul-22	11 August 2022	RP having monthly filing of return
GSTR 3B	Jul-22	20 August 2022	RP having ATO > Rs 5CR
GSTR 5	Jul-22	20 August 2022	Non-Resident taxable person
GSTR 6	Jul-22	13 August 2022	ISD return
GSTR 7	Jul-22	10 August 2022	TDS return
GSTR 8	Jul-22	10 August 2022	TCS return
GSTR 2B	Jul-22	14 August 2022	Auto-populate data for Rule 36(4)
Filing application for GTA	FY 22-23	16 August 2022	Application to apply for forward charge
CMP 08	Apr - Jun 22	18 August 2022	Composition dealers
Challan for QRMP scheme	Jul-22	22 August 2022	Taxpayer opting QRMP scheme
IFF for QRMP	Apr - Jun 22	13 August 2022	
Deposit of TDS/TCS	Jul-22	07 August 2022	
Issue of TDS Certificate for tax deducted under section 194-IA/194-IB & 194M in the month of May, 2022	Jul-22	14 August 2022	
Due date for furnishing statement in Form no. 3BB by a stock exchange in respect of transactions in which client codes been modified after registering in the system	Jul-22	15 August 2022	
Furnishing of Challan - cum - statement in respect of tax deducted U/S 194-IA/ 194-IB & 194M	Jul-22	30 August 2022	
PF and ESI	Jul-22	15 August 2022	

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