

GST NEWSLETTER

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ARTICLE

5 Years Of GST – A Tax Reform To Unite A Nation Under One Tax & One Market



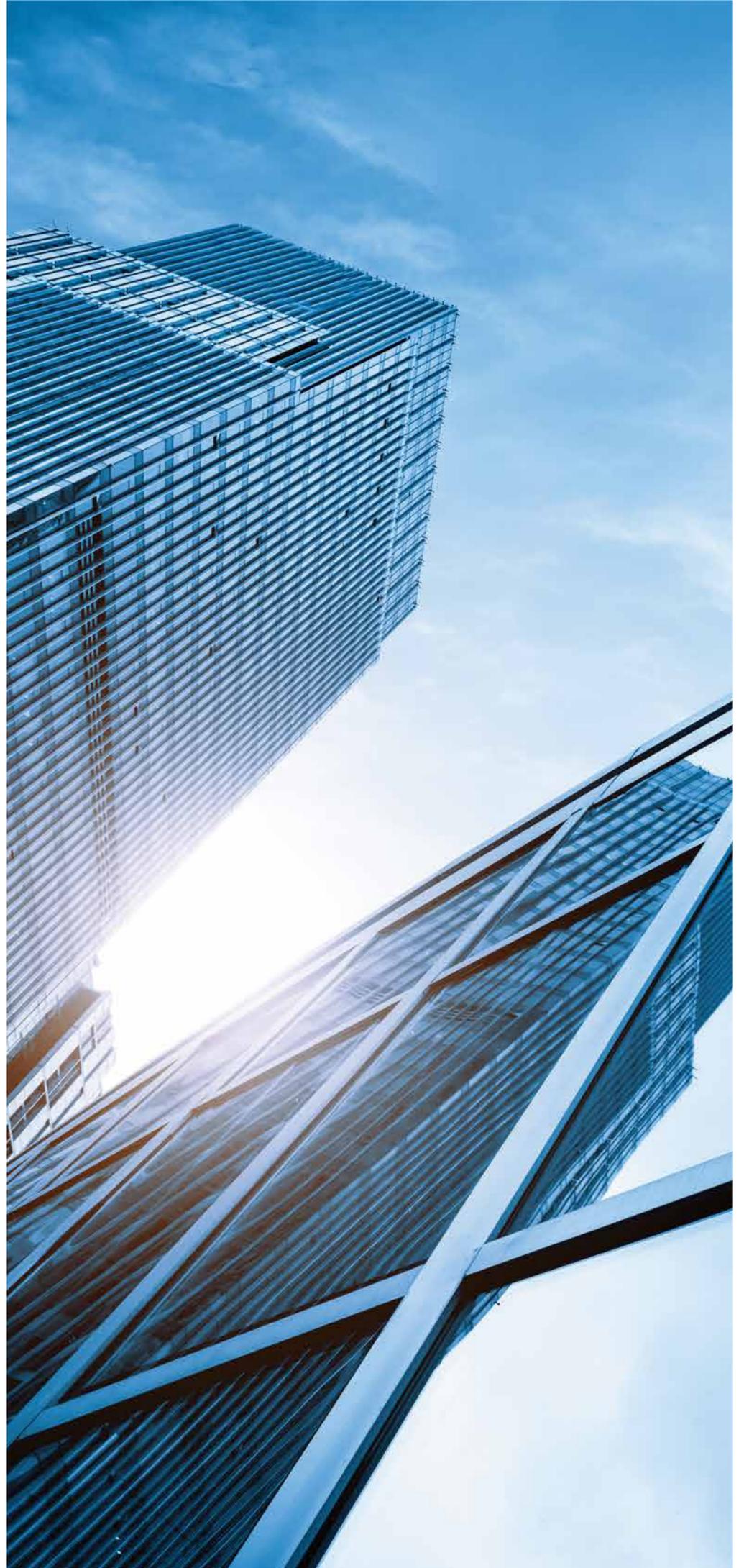
Ek Bharat Sreshtha Bharat. GST stands for Good and Simple Tax. It is a path breaking legislation for New India. It's a revolutionary taxation system for the digital India. GST is not just a tax reform, but it is a landmark step towards economic and social reforms.

*- Shri Narendra Modi,
Hon'ble Prime Minister of India*

It has been 5 years since the introduction of the biggest tax reform in India since Independence, the Goods & Services Tax on 1st July 2017. GST subsumed over 22 taxes and charges levied by both the Central & State governments (Basic Customs duty, Education Cess, Anti-dumping duty, Safeguard duty will continue to be levied). This ensured that the multiple taxes levied by each State and the Center would no longer be a hurdle in the creation of a single market within the nation.

✔ Some Highlights Of The Parliament Speech:

- GST was introduced with the Constitution (One Hundred and First Amendment) Act, 2016.
- The Constitution promotes Co-operative federalism where India is strong if both the Centre and States are strong. GST allows the Centre and the States to keep their sovereignty in tax laws.



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- GST is not just tax reform but it's economic reform. GST is really a Good and Simple Tax; Good because multiple taxes will be removed and Simple because it requires just one form and is easy to use.
 - "As far as something seems, as impossible it seems to achieve, it can be obtained through hard work,". Just as Sardar Patel played a large part in bringing the country together, GST will do the same on an economic level. Our dream of one nation one tax will be realized.

1 Major Changes / Reforms Under GST:

GST is merely 5 years old, and any new law is bound to undergo major tax reforms and changes. Though the reforms are many, we have short-listed 3 major reforms under GST.

GSTR 3B:

GST was originally envisioned with the requirement of filing 3 different returns i.e., GSTR 1 for outward supplies, GSTR 2 for inward supplies & GSTR 3 for payment of tax. The intention was to provide the taxpayers the opportunity to file their sales and verify and accept their inward supplies ITC, after which the details would be auto populated in GSTR 3 for the payment of GST.

However, in August 2017, GSTR 3B was introduced in notification number 21/2017 – Central Tax dated 08/08/2017 as an interim return in place of Forms GSTR 2 & 3. But, due to reasons only speculated this interim status was extended many times wherein Form GSTR 3B was kept as an interim return and Forms GSTR 2 & 3 were kept in abeyance till such further date.

Then, in notification number 49/2019 – Central Tax dated 09/10/2019 GSTR 3B was formally introduced as a substitute to GSTR 3 as a result of the ruling of the Gujrat High Court in the Writ Petition (SCA 18962 of 2018 dated 24/06/2019 - AAP & Company, Chartered Accountants v/s Union of India) wherein it was held that GSTR 3B is not a return as per the GST acts.

Finally, the notification number 82/2020-Central Tax dated 10/11/2020 and effective from 01/01/2021 substituted Form GSTR 3B with Form GSTR 3 as the legal return for filing and payment of GST.

Matching Of Input Tax Credit:

A seamless flow of Input tax credit and the availability of more credit are what seek to differentiate GST law from the erstwhile indirect tax laws. Since its inception, admittedly GST has provided a higher flow of credit comparatively and with less restrictions. However, the flow of credit has not been as seamless as it



was expected. Input tax credit claim was originally envisioned to be based on the strength of invoices uploaded by the suppliers and available to the taxpayer in GSTR 2. However, with the abeyance and subsequent removal of GSTR 2, the government made GSTR 2A operational in September 2018 to provide taxpayers the details of the invoices uploaded by their suppliers.

The introduction of GSTR 2A attained significance from 9th October 2019 when Rule 36(4) became effective in terms of Notification No. 49/2019 – Central Tax dated 09-10-2019, and taxpayers henceforth were eligible to claim input tax credit as per the credit appearing in GSTR 2A. This was an attempt by the government to envision the original intention of GST laws, wherein input tax credit is based on the invoices uploaded by the suppliers. The Rule also placed certain limits in claiming input tax credit on invoices not appearing in GSTR 2A which ranged from 20% to 5% of the input tax credit actually appearing in GSTR 2A.

However, from 1st January 2022 input tax credit claimed was restricted to those invoices which are filed by suppliers in their GSTR 1 AND appearing in GSTR 2B, a new form introduced alongside GSTR 2A in terms of Notification No. 40/2021 – Central Tax dated 29-12-2021. Form GSTR 2B is an auto-populated return which reflects only those invoices uploaded by a supplier within 11th or 13th being the due date of GSTR 1 / Invoice Furnishing Facility. Invoices uploaded in GSTR 1 after the due dates will be reflected in GSTR 2B of the next return filing period and will be eligible for claim in such period.

✓ **E-invoicing:**

Electronic invoice or E-invoice is a revolutionary method of raising invoices by business entities wherein the details of such invoice at time of raising them are shared and vetted by the tax regulatory authorities. Though India is not the first to introduce E-invoice, it however, is one the larger countries to enforce them.

Under E-invoicing, Indian taxpayers are required to upload the details of such E-invoice to one of the many portals created by the government (<https://einvoice1.gst.gov.in/>). After the details are uploaded, the portal generates an Invoice Reference Number (IRN) and acknowledgement number for the particular invoice. This process validates the invoice, curbs duplicate invoicing, auto populates the invoice in GSTR 1 and E-way bill and digitizes the requirement to carry invoice during transportation of goods. Further, an E-invoice is mandatory for the customers / clients of the taxpayer to claim input tax credit as having a valid invoice is one of the conditions to claim input tax credit.



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Unresolved / Ongoing Issues:

Since 5 years from its inception, GST has evolved as a law and continues to evolve even today. However, there are various ongoing and unresolved issues in GST that require attention. We have shortlisted some of the important issues from the taxpayer's perspective:

✔ **Input Tax Credit Not Reflecting In GSTR 2A Before 9th October 2019:**

With the insertion of Rule 36(4) from 9th October 2019, it was clear to taxpayers that input tax credit will face restrictions in claim and will be dependent on GSTR 2A. This meant that taxpayers commenced periodical reconciliations and also ensured proper compliance of their Suppliers as well in order to be eligible for the input tax credit claim. However, for the period prior to 9th October 2019, there was not much clarity on input tax credit claimed but not appearing in GSTR 2A. Further, many taxpayers did not reconcile their credits with those appearing in GSTR 2A for earlier periods as they did not see any obligation on their front in ensuring the compliance of their suppliers.

But the lack of clarity has not deterred the authorities from pursuing litigative measures such as notices under GST for differences in input tax credit as per GSTR 3B and GSTR 2A. This has also resulted in taxpayers filing petitions before the High Courts of Madras and Chhattisgarh seeking judicial intervention in a matter that could be solved in the administrative level.

Hence, its in the interest of the government, revenue and taxpayers that this issue be resolved through a notification or amendment of the law in order to avoid litigations that can turn expensive to taxpayers.

✔ **E-invoicing Corrections:**

E-invoicing was a revolutionary measure adopted by the government to curb fake invoices and eliminate bill trading. However, the measure itself is not flawless. Certain issues faced by taxpayers are:

- E-invoice once generated does not allow the rectification of the details of such invoice. Therefore, in case of any changes that may have been caused due to human error, then taxpayers only have the option to cancel the invoice within a period of 24 hours of generation of IRP.
- In case of cancellation of an E-invoice, the invoice number of the cancelled invoice cannot be utilized again in case a new E-invoice for the same transaction is generated. This is, of course, done to curb

generation of multiple invoices with the same invoice number. However, taxpayers are forced to raise another invoice with a different invoice number which may cause internal accounting issues. Therefore, an option to correct or modify E-invoices before filing of GSTR 1 return of the relevant period would ensure such issues are solved without much hassle to the taxpayers.

✔ Refund Of Input Tax Credit On Capital Goods On Account Of Zero-rated Supplies:

Taxpayers involved in any business of exports or making supplies to SEZ, and incurring input tax credit can claim a refund of such input tax credit as the same shall, otherwise, become a cost to the taxpayer. Under GST laws, taxpayers have the option to claim refund under two methods:

● Zero-rated Supply Without Payment Of GST:

Under this, taxpayers can make the zero-rated supplies without payment of any GST provided that they obtain a Letter of Undertaking before making such supplies. Taxpayers are eligible to claim the refund of the input tax credits utilized by them for making such zero-rated supplies. However, only credit on input goods and input services are eligible for refund claim and credit on capital goods are ineligible in terms of Section 54(8) of the CGST Act, 2017.

● Zero-rated Supply With Payment Of GST:

Under this, taxpayers can make the zero-rated supplies with payment of the relevant GST (IGST) applicable on the goods and services





supplied as per Section 16(4) of the IGST Act, 2017. Here, the payment of tax can be made either in cash or by the utilization of the input tax credit arising from input goods, input services AND the input credit on capital goods.

As seen from the above, a taxpayer is not eligible to claim refund of input tax credit on capital goods if the exports or SEZ supplies are made without payment of tax; whereas any input tax credit utilized for payment of IGST on exports or SEZ supplies is eligible for refund including input tax credit on capital goods.

This discriminatory legislation has to be rectified by the authorities so that taxpayers who have opted to make zero-rated supplies without payment of tax and incur substantial input tax credit from capital goods will have to bear the loss.

✔ **Cross Charge – Valuation And Employee Cost:**

Business entities within India may have multiple GST registrations for its branches or divisions due to the need to obtain a separate registration in each State the entity carries out its business. There may also be a transfer of goods or provision of services by one entity to the other and each of these entities with a separate registration is considered as a distinct person. As per Schedule I, any supply that takes place between these entities is considered as a supply regardless of whether it was made with consideration or not.

Hence, such entities are liable to charge GST when they undertake any supply within the divisions or branches of the same entity under the concept of Cross-charge. One branch of the same entity transfers the goods with GST and the other entity is eligible for the input tax credit as the recipient under the Cross-charge mechanism.

However, the concept of Cross charge is not without issues:

● **Valuation:**

Valuation is of primary importance in GST as the rate of tax is applied on the value of the goods or services supplied. Rule 28 of the CGST Rules, 2017 provides for the method of valuation to be adopted between distinct persons and related parties which includes the open market value, value of goods or services of like kind and quality and on cost plus ten percent or on reasonable means as per principles of valuation. Finally, it also provides that in case the recipient entity is eligible to claim the input tax credit, then the invoice value will be deemed to be the open market value. Therefore, taxpayers do not have clarity on whether actual valuation of the goods should be made or any value, regardless of their market value or cost can be adopted if input tax can be claimed. There is a serious need from the tax



authorities to provide a clarification so that the deeming provision on value will hold good in case of scrutiny or audit by the department.

- **Employee Cost:**

Another issue that needs attention is the requirement to cross-charge shared employee cost. This issue arose for the first time in the Advance Ruling by the Karnataka Authority of Advance Rulings for Columbia Asia (KAR/AAR-15/2018 dated 27-07-2018) and upheld by the Appellate Authority of Advance Rulings.

Under this case, employees appointed by the Head Office but who have worked on any administrative or such other functions for any of the branch offices in other states, then such services will be treated as a supply between distinct person and is liable for Cross-charge.

However, there also exists the fact that employees employed by one branch / division will remain an employee of the entity as a whole and also have employment agreements with the entity in itself and not just of the branch / division. This reasoning was, however, rejected by the authorities.

Hence, there is a need for the tax authorities to provide clarification on this matter so that entities can make decisions on how to structure their businesses.



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Taxpayer Expectations:

- ✓ **Pre-deposit On Account Of Appeal:**

Tax litigation requires litigants to make a pre-deposit of the disputed tax amount in order to qualify for the appeal. This requirement is meant to dissuade taxpayers from going on appeal for every order or demand and only encourage those litigants who genuinely believe that the order or demand is unjust and can prove the same.

However, under GST laws, the pre-deposit for 1st appeal i.e., the Commissioner (Appeals) is 10% of the disputed tax amount under section 107. Then, in case of unfavorable order in the 1st appeal level, taxpayers have the option to appeal the same in the GST Appellate Tribunal (un-constituted till date). However, the pre-deposit requirement for this 2nd appeal is an additional 20% of the disputed tax amount. Therefore, a total of 30% of the disputed tax amount needs to be paid to the tax authorities for a taxpayer to obtain justice on the grounds of merits.



Tax litigations are not fast paced and can continue to be litigated for years. The requirement to pay 30% of the disputed tax amount even before the cases are adjudicated results in blockage of working capital. Therefore, it would serve well to both the tax authorities and taxpayers to reduce the pre-tax deposit to a lower percentage.

✔ **Dual Jurisdictions:**

GST was introduced by subsuming various indirect taxes that was levied earlier by both the State and Centre. Hence, it was imperative that GST laws also provided the States proper jurisdiction, power and authority to regulate and monitor taxpayers along with the Centre. Hence, every person taking a registration under GST will be assigned two jurisdictions but with only one: either the Centre or the State being the primary jurisdiction.

However, the presence of two authorities for a single taxpayer meant that both the authorities could issue notices and initiate proceedings on a single taxpayer.

The tax authorities have issued letters in this regard to provide that any intelligence-based enforcement can be initiated by any of the two authorities and if initiated, then the same authority will also be empowered to complete the entire process of investigation. There are also judicial pronouncements that have successfully resolved jurisdictional issues. However, it's important for both the tax authorities and taxpayers that this issue be resolved and only those officers with correct jurisdiction conduct the tax proceedings. It would also reduce the litigative cost of both the government and the taxpayers.

✔ **Final Thoughts:**

Goods and Services Tax Act has progressed from its nascency and is well on the way to prove that it's a much-needed reform that has changed the tax system. While the tax authorities have brought various reforms to address taxpayer's grievances, they are also silent on many issues that need their attention. However, in spite of this GST will continue to evolve as a tax system and become a standard for indirect tax reforms in the World.

CASE LAWS

Taxability And ITC Eligibility On Canteen And Bus Services Provided To Employees

Facts Of The Case

Emcure Pharmaceuticals Limited - Authority for Advance Ruling – Gujarat (GUJ/GAAR/R/2022/22 dated 12-Apr-2022)

The applicant M/s. Emcure Pharmaceuticals Limited provides canteen services at subsidized rates and bus transportation facility having more than 13 seater capacity at free of cost to its employees as part of its HR policy. The subsidized rate of canteen is recovered from employees on monthly basis deducted from salary. The applicant purchases the said facilities from third parties who are charging GST and in turn it provides the same to their employees.

The applicant has sought ruling for following queries:

- Whether the recoveries made by the Applicant from the employees for providing canteen facility and free of cost bus transport facilities provided to its employees are taxable under the GST laws?
- Whether they are eligible for exemption towards bus transportation facility on account of non-airconditioned contract carriage other than radio taxi, for transportation of passengers, excluding tourism, conducted tour, charter or hire
- Whether input tax credit is admissible to the Applicant for the GST charged/paid to the vendors on procurement of such services as the same are used in relation to furtherance of business? If yes, would the same be restricted to the portion of cost borne by the Applicant?

Provision Of Law

As per Schedule III any services provided by the employer to the employees in terms of the contractual agreement entered into between them will not be subjected to the GST.

In respect of Input tax credit eligibility, the relevant provisions of Section 17(5) CGST Act, 2017 states that:

- Input tax on Motor vehicles used for transportation of persons and approved seating capacity of not more than thirteen persons shall not be available.

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- Input tax on Leasing, renting or hiring of motor vehicles stated above shall not be available.
 - Input tax on food & beverages shall not be available.

Ruling Of AAR

Considering the above provisions of law, the AAR has provided following ruling:

- The Applicant is not liable to pay GST on the recovery of canteen charges from employees as they are merely collecting and paying the same to the service provider but do not provide the service themselves.
- No GST is leviable on the bus transportation facility as the same forms part of the employment agreement and since the vehicle has a seating capacity of more than 13 persons, the input tax is available for credit.
- Input tax credit is not available on food and beverages as the same is not eligible for claim even if such canteen facility is mandated by law.

GST On Residential Units Let Out To Commercial Entities For Residential Use

Facts Of The Case

Kasturi & Sons Ltd - Authority for Advance Ruling, Maharashtra (GST-ARA-67/2020-21/B-72 dated 31-May-2022)

The Applicant Kasturi & Sons Ltd owns 22 residential apartments. It generally charges Rs.145/- per sq.ft as rentals or license fees for giving such residential apartments to other parties.

The applicant wishes to let out said premises to **M/s. Life Insurance Corporation of India (LIC)** for **residential purpose** of their staff members. The Ruling is sought whether GST is applicable or exempted on the said transaction.

Provision Of Law

As per Sl. No. 12 of the Notification No. 12/2017-CT (Rate) and ST (Rate), GST is exempt for renting out / giving license the property for their **residential use** as shown below:

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate %
12	Heading 9963 or Heading 9972	Services by way of renting of residential dwelling for use as residence.	Nil

Ruling Of AAR

The Advance Ruling authority held that:

- The classification does not specify about the recipient of service, rather it is focused on the purpose for which the let-out premises is used.
- The proposed agreement included a clause that the premises should not be used for commercial purpose.
- The applicant had also submitted allotment letter issued by LIC to its employees stating that the premises shall only be used for residential purpose, and they will stay there until transfer/ resignation or retirement.
- The contention of the GST officer that LIC is a commercial entity and not a natural person and it provides accommodation to employees so they can work late and make profit for LIC lacks logical and legal reasoning and thereby not accepted in the ruling.
- Thus, the applicant's service is classifiable under SAC 997211 - Rental or leasing services involving own or leased residential property and is exempted under Notification 12/2017, irrespective of whether it is let out to individual owners or commercial entities.

NOTIFICATIONS AND CIRCULARS FOR THE MONTH OF JUNE 2022

- ✓ One Central Tax Notification. - [Click here](#)
- ✓ One Compensation Cess. - [Click here](#)
- ✓ One Instruction. - [Click here](#)

Sl. No	Subject	Notifications/Circulars No. Date of Issue
1.	Seeks to provide waiver of interest for specified electronic commerce operators for specified tax periods	08/2022-Central Tax 07-Jun-2022
2.	Seeks to bring into force the Goods and Services Tax (Period of Levy and Collection of Cess) Rules, 2022	1/2022-Compensation Cess 24-Jun-2022
3.	Procedure relating to sanction, post-audit and review of refund claims	Instruction No. 03/2022-GST 14-Jun-2022

DUE DATES OF GST FOR THE MONTH OF JULY 2022

JULY

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7	8	9
GSTR-7, GSTR-8 10	* GSTR-1 11	12	* GSTR-1, & GSTR-6 13	Generation of Form GSTR 2B 14	15	16
17	18	19	* GSTR-3B & GSTR-5,5A 20	21	* GSTR-3B 22	23
24	25	26	27	28	29	30
CMP-08 31						

2022

* Monthly returns for taxpayers with Annual Turnover more than Rs. 5 Crores or Taxpayer who has opted Monthly return option.

* Quarterly returns for taxpayers with Annual Turnover less than Rs. 5 Crores and opted for quarterly return monthly payment option (QRMP).



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