



### Communiqué

Indirect Tax

January 2023

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### CBIC issues Clarification regarding GST rates and classification of certain goods

The CBIC issued Circular No. 189/01/2023-GST date January,13 2023 to updates clarification regarding GST rates and classification of certain goods. The detailed updates are mentioned below:

Tariff Heading	Goods Name	Rate
1702	Rab	18% GST
2302,2304 2305,2306 2308,2309	Aquatic feed including shrimp feed and prawn feed, poultry feed & cattle feed, including grass, hay & straw, supplement & husk of pulses, concentrates & additives, wheat bran & de-oiled cake	NIL
220299	Carbonated Beverages of Fruit Drink' or 'Carbonated Beverages with Fruit Juice'	28% GST and 12% Compensation Cess
19059030	Snack pellets (such as 'fryums') with description 'Extruded or expanded products, savoury or salted'	18%
8703	SUVs with the engine capacity exceeding 1,500 cc; the length exceeding 4,000 mm; and the ground clearance is 170 mm and above	22% Compensation Cess

### Applicability of IGST rate on goods specified under notification No. 3/2017-Integrated Tax (Rate)

Goods specified in the list as annexed to the notification No. 3/2017-Integrated Tax (Rate), dated the June 28, 2017 which are eligible for IGST rate has been increased from 5% to 12%. The list of goods are as follows:

Description of Goods	Old Rate	New Rate
Petroleum operations undertaken under petroleum exploration licenses or mining leases, granted by the Government of India or any State Government to the Oil and Natural Gas Corporation or Oil India Limited on nomination basis	5%	12%
Petroleum operations undertaken under specified contracts	5%	12%
Petroleum operations undertaken underspecified contracts under the New Exploration Licensing Policy	5%	12%
Petroleum operations undertaken under specified contracts under the Marginal Field Policy (MFP)	5%	12%
Coal bed methane operations undertaken under specified contracts under the Coal Bed Methane Policy	5%	12%

Source: Circular No. 189/01/2023-GST date January,13 2023



### **CBIC** issues Clarification regarding GST rates and classification of certain services

CBIC vide Circular No 190/02/2023-GST dated January 13, 2023 issued following clarifications:-

 Applicability of GST on accommodation services supplied by Air Force Mess to its personnel:

CBIC clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Sl. No. 6 of Notification No. 12/2017 – Central Tax (Rate) dated June 28, 2017 provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.

 Applicability of GST on incentive paid by Ministry of Electronics and Information Technology (MeitY) to acquiring banks under Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions:

CBIC clarified that incentives paid by MeitY to acquiring banks under the Incentive scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.

Source: Circular No 190/02/2023-GST dated January 13, 2023





## Clarification and guidelines w.r.t. levy of penalty by the Roving Squad officers on movement of goods due to disparity in E-way bill

The Office of the Principal Secretary/Commissioner of Commercial Taxes in **Chennai issued Circular IW1/3365394/2022 dated January 10, 2023** to further amend Circular No.10/2019 dated May 31, 2019 so as to clarify the issues w.r.t. to levy of penalty by the Roving Squad, due to disparity in E-way bill under Section 129 of the Tamil Nadu Goods and Services Tax Act, 2017 ("the TNGST Act").

In para 11 of the said circular, instructions have been issued for "CIRCUMSTANCES WHERE PENALTY OF Rs.25000/- SHALL BE LEVIED". The Existing para 11 (i) and (ii), are as below.

- ("i) In the circumstances described in Sl.No.10 if any person repeatedly indulges in the same violation, a penalty of Rs.25,000/- per act shall be levied to deter the recurrence of such offence. For this purpose, the term 'any person repeatedly' shall denote consignor or consignee who commits a violation more than once in a calendar month or twice in a calendar quarter or thrice in a financial year.
- (ii) In all other circumstances, other than the ones falling under Sl. No. 9, 70 and 72 a penalty of Rs.25000/- per act shall be levied."

SI. No.	Issue	Clarification
1(a)	Bill To - Ship To:  The 'Ship To' address in E way bill differed from where the goods are being actually delivered which is an unregistered place of the consignee, who is a registered tax payer, but the place of delivery is in same locality i.e. having the same PIN Code as mentioned in the E - way bill	Since the consignment in question is duly covered with invoice/Bill of Supply/delivery challan and valid e- way bill and the irregulates relates to unloading the goods at an unregistered place of registered person, as narrated in the issue, the following procedure needs to be adopted.  As per Rule 19 (1) of the TNGST Rules, the registered person shall within a period of 15 days from the date of change in any particulars of registration, submit an application for amendment regarding additional place of business in the common portal.  In this regard, if valid rental / lease agreement etc. is produced as proof of unregistered place of business, and if the date of such rental/lease agreement is within 15 days prior to the date of checking of vehicle, minor penalty of Rs.5,000/- shall be levied as per Section-125 of the of the Act TNGST Act, 2017.  If application reference number has already been generated then no penalty is to be levied.  If no ARN and no valid rental / lease agreement is produced as above, penalty of Rs.25,000/- under Section 125 is to be levied.  If the registered person repeats the same offence, (more than once in a calendar month or twice in a calendar quarter or thrice in a financial year) maximum penalty under Section129 is to be levied.

SI. No.	Issue	Clarification		
1(b)	Bill To - Ship To: The 'Ship To' address in E-way bill differed from where the goods are being actually delivered which is an unregistered place of the consignee, who is a registered tax payer, but the place of delivery is in another locality i.e. PIN Code mentioned in the E way bill is different.			
1(c)	Bill To - Ship To The 'Ship To' address in E-way bill differed from where the goods are being actually delivered which is a registered place of the consignee.	<ul> <li>Since the consignment in question is duly covered with invoice/Bill of supply/Delivery challan and valid E-Way bill for Vehicle number and time period then, minor penalty of Rs.5,000/- is to be levied under Section- 125 of the TNGST Act.</li> <li>If the registered person repeats the same offence, (more than once in a calendar month or twice in a calendar quarter or thrice in a financial year) maximum penalty of Rs.25000/- under Section 125 of the TNGST Act,2017 is to be levied.</li> </ul>		
2	Bill To - Ship To:  The given 'Ship To' address of delivery is place of construction of a building but not a registered place of the consignee builder and materials were delivered based on construction agreement and consignee is a registered tax payer.  The address of delivery as per document and place of actual delivery is same.	Since the consignment in question is duly covered with Invoice/Bill of Supply/Delivery Challan and valid E - Way Bill and irregularity relates to unloading the goods. at an unregistered place of the registered person, the following procedure needs to be adopted. As per Rule 19 (1) of the TNGST Rules, the registered person sha within a period of 15 days' from the date of change in any particulars of registration, submit an application for amendment regarding additional place of business in the common portal.  • In valid rental / lease agreement is produced as proof of unregistered place of business, and if the date such rent/lease agreement is within 15 days prior to the date of checking of vehicle, minor penalty of Rs.5,000/- is to be levied as per Section-125 of the of the Act TNGST Act,2017.  • If ARN has already been generated regarding declaration of additional place of business and produced to		

SI. No.	Issue	Clarification	
3	Bill To - Ship To: Whether one invoice is enough for movement of goods in 'Bill To - Ship To' transactions.	<ul> <li>If supplier A places purchase order on supplier B to ship the goods to the recipient C then,</li> <li>If e-way bill is generated by B, corresponding invoice of B raised on A and the same details filled in e-way bill is required during the transportation of goods.</li> <li>If e-way bill is generated by A, corresponding invoice of A raised on the recipient C and the same details filled in e-way bill is required during the transportation of goods.</li> <li>If, Recipient C is a registered tax payer, but his GSTIN is not given in the 'Bill to Ship to' invoice, minor penalty of Rs.5,000/-under Section 125 of the TNGST Act, 2017 is to be levied.</li> </ul>	
4	The address given in E - way bill is a ware house / place of transporter which is a registered plate of the taxpayer and used for further transaction of those goods by the recipient taxpayer.	place of business by the recipient tax payer.  • If ARN has already been generated regarding declaration of ware house / transporter's godown as additional place of	
5(a)	The address given in E way bill differed from where the goods are being actually delivered which is an unregistered place of the consignee, who is a registered tax payer, but the place of delivery is in same locality i.e. having the same PIN Code as mentioned in the E way bill.	Since the consignment in question is duly covered with invoice/Bill of Supply/delivery challan and valid e- way bill and the irregularities relates to unloading the goods at an unregistered place of registered person, the following procedure needs to be adopted. As per Rule19(1) of the TNGST Rules, the registered person shall within a period of 15 days' from the date of change in any particulars of registration, submit an application for amendment regarding additional place of business in the portal.  • In this regard, if valid rental / lease agreement etc. is produced as proof of unregistered place of business, and if the date of such rental/lease agreement is within 15 days prior to the date of checking of vehicle, minor penalty of Rs.5,000/- shall be levied as per Section 125 of the of the Act TNGST Act,2017.  • If ARN has already been generated regarding declaration of additional place of business and produced for verification and if the date and time of generation of ARN is prior to the check of movement of the vehicle by the Official, no penalty is to be levied.  • If no ARN and no valid rental / lease agreement as above is produced, penalty of Rs.25,000/- under Section 125 is to be levied.  • If the registered person repeats the same offence, (more than once in a calendar month or twice in a calendar quarter or thrice in a financial year) maximum penalty under Section 129 is to be levied.	

Sl. No.	Issue	Clarification
The address given in E way bill differed from where the goods are being actually delivered which is an unregistered place of the consignee, who is a registered tax payer, but the place of delivery is in another locality i.e. PIN Code mentioned in the E way bill is different.  Maximum penalty under SectionL29 of the TNGST Act, is to be levied.		Maximum penalty under SectionL29 of the TNGST Act, is to be levied.
5(c)	The address given in E way bill differed from where the goods are being actually delivered which is a registered place of the consignee.	<ul> <li>Since the consignment in question is duly covered with valid invoice/Bill of supply/Delivery challan and valid E - Way bill for Vehicle number and time period then, minor penalty of Rs.5,000/- is to be levied under Section 125 of the TNGST Act.</li> <li>If the registered person repeats the same offence, (more than once in a calendar month or twice in a calendar quarter or thrice in a financial year)" maximum penalty of Rs.25,000/- under Section 125 of the TNGST Act, 2017 is to be levied.</li> </ul>
6	a) As per E- way Bill, the goods supplied at the work site where the supplier has an order to install, maintenance, testing, erection etc. but not a registered place of that tax payer.	Since the consignment in question is duly covered with Invoice/Bill of Supply/Delivery Challan and valid E - Way Bill and irregularity relates to unloading the goods at an unregistered place of the registered person, the following procedure needs to be adopted.  As per Rule 19 (1) of the TNGST Rules, the registered person shall within a period of 15 days' from the date of change in any particulars of registration, submit an application for amendment regarding additional place of business in the common portal.  • In this regard, if valid rental / lease agreement etc. is produced as proof of unregistered place of business, and if the date of such rental /lease agreement is within 15 days prior to the date of checking of vehicle, minor penalty of Rs.5,000/- is to be levied as per Section 125 of the of the Act TNGST Act,2017.  • If ARN has already been generated regarding declaration of additional place of business and produced for verification and if the date and time of generation of ARN is prior to the check of movement of the vehicle by the Official, no penalty is to be levied.

SI. No.	Issue	Clarification
	b) As per E - way bill, goods transported by a taxpayer for outdoor display but the destination address is an unregistered place of that tax payer. c) As per E- way bill, goods were moved to a construction site by the taxpayer, based on the construction agreement entered, but the construction site was not registered under GST Act.	<ul> <li>If no ARN and no valid rental / lease agreement as above is produced, penalty of Rs.25,000/- under Section 125 is to be levied.</li> <li>If the registered person repeats the same offence (more than once in a calendar month or twice in a calendar quarter or thrice in a financial year) maximum penalty under Section 129 is to be levied.</li> </ul>
7	Goods were transported by a registered taxpayer to participate in an exhibition or trade fair and for that place, no amendment of registration for inclusion of additional place of business has been done.	The tax payer participating in exhibition or trade fair tends to supply goods from such place of event. Hence, transportation of the g5ods to participate "in an exhibition or trade fair, without declaring the place of exhibition or trade fair as an additional place of business is a violation of Section 129 of the TNGST Act, 2017 and penalty is to be levied. However, if ARN has already been generated regarding declaration of place of exhibition or trade fair as an additional place of business and produced for verification and if the date and time of generation of ARN is prior to the check of movement of the vehicle by the Official, no penalty is to be levied.
8	Finished goods moved by Principal after completion of job work from the premises of an unregistered job worker to a recipient for sale.	<ul> <li>As per 143(1), the proviso Principal to section shall not supply the goods from the place of business of an unregistered job worker unless the said principal declares the said place of business of job worker as his additional place of business. If the above condition is not fulfilled, which is a violation, penalty under Section 129 of the TNGST Ac-,2017 is to be levied.</li> <li>However, if ARN has already been ' generated regarding declaration of additional place of business and produced for verification, and if the date and time of generation of ARN is prior to the check of movement of the vehicle by the Official, no penalty is to be levied.</li> </ul>

SI. No.	Issue	Clarification
9	A company undertaking project of Government Authorities /Entities executing work order relating to laying of road or pipe lines in a stretch which is covered by the work order given by Government Authority/Entity and has proper invoice/Bill of Supply/delivery challan and E-way bill, but the place of delivery is an unregistered place.	As per Rule-138 of the TNGST Rules 2017, for movement of goods in motorized vehicle, invoice/Bill of supply/delivery challan and e-way bill is mandatory. There is difficulty in registering all stretches of the work site as additional place of business in the instance cited. If the work order issued by the Government Authority/Entity is produced as valid proof of site address for execution, no penalty is to be levied, for the transportation and delivery of goods at work site.

The valid rental/lease agreement mentioned as proof of place of business for inclusion of additional place of business under Rule 19(1) of the TNGST Rules, 2017 shall be construed to include the following with reference to the guidelines in Form REG-01 as mentioned therein under:

#### Proof of Place of Business:

- For Own premises Any document in support of the ownership of the premises like latest Property Tax Receipt or Municipal Khata copy of copy of Electricity Bill.
- For Rented or Leased premises A copy of the valid Rent/Lease Agreement with any document in support of the ownership of the premises of the Lessor like latest Property Tax Receipt or Municipal Khata copy or copy of Electricity Bill.
- For premises not covered in (a) & (b) above A copy of the Consent letter with any document in support of the ownership of the premises of the Consenter like Municipal Khata copy or Electricity Bill copy. For shared properties also, the same documents may be uploaded.
- For rented/leased premises where the Rent/lease agreement is not available, an affidavit to that effect along with any document in support of the possession of the premises like copy of Electricity Bill.
- If the place of business is located in a Special Economic Zone or the applicant is an Special Economic Zone developer, necessary documents/certificates issued by Government of India are required to be uploaded.

Source: Circular IW1/3365394/2022 dated January 10, 2023

## Concessional GST rate of 12% on composite supply of works contract to be applied prospectively

The AAR, Chhattisgarh in the matter of M/s Dee Vee Projects Limited [Advance Ruling No. STC/AAR/03/2020/41 dated October 8, 2020] has ruled that the Notification amending the tax rate from 18% to 12% on Composite Supply of Works Contract can only be applied prospectively, if an enactment does not expressly provide that it should be deemed to have come into effect form a past date.

Source: Advance Ruling No. STC/AAR/03/2020/41 dated October 8, 2020

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## 18% GST leviable on Interactive Flat Panel Screens if used for data processing purposes only

The AAR, Chhattisgarh in the matter of M/s. Savex Technologies Pvt. Ltd. [Order No. STC/AAR/06/2022 dated August 17, 2022] has held that, Interactive Flat Panel Screens used only for data processing purposes will attract Goods and Service Tax ("GST") rate of 18% and in case the same provides any additional function, GST at 28% will be attracted.

Source: M/s. Savex Technologies Pvt. Ltd. [Order No. STC/AAR/06/2022 dated August 17, 2022





# 18% GST leviable on supplying, installing, testing and commissioning of oxygen pipeline system in Government Hospitals

The AAR, Chhattisgarh in the matter of M/s Goel Medico [Advance Ruling No. STC/AAR/09/2021 dated December 17, 2021] has ruled that installation services of parts and equipment for supply of oxygen and other gases used in hospital, homes and connection of other gas operated equipment for government hospitals, attracts 18% Goods and Services Tax ("GST").

Source: M/s Goel Medico [Advance Ruling No. STC/AAR/09/2021 dated December 17, 2021

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# Seller cannot be penalised for mentioning the quantity of goods in pieces instead of weight

The Hon'ble Allahabad High Court in the matter of M/s. Ganpati Battery Traders v. State of U.P. [Writ Tax No. 1138 of 2021 dated December 6, 2022] has held that mere selling of batteries by piece instead by weight does not make the seller liable to be penalised under the Central Goods and Services Tax Act, 2017 ("the CGST Act").

Source: M/s. Ganpati Battery Traders v. State of U.P. Writ Tax No. 1138 of 2021 dated December 6, 2022

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# Assessee permitted to make changes in Form GSTR-3B for the months of July, 2017 and March, 2018

The Hon'ble Karnataka High Court in M/s. **Orient Traders v. the Deputy Commissioner** of Commercial Taxes (Audit) [Writ Petition No. 2911 of 2022 (T-RES) dated December 16, 2022] has permitted the assessee to make the necessary changes to its Form GSTR 3B returns for the months of July, 2017 and March, 2018 and held that, allowing the assessee to make such changes, would not cause any prejudice to the Revenue Department nor would it upset the chain of credit under the Goods and Services Tax ("GST") scheme. Further held that, the authorities must avoid a blinkered view while adjudicating/assessing the tax liability of a dealer under the Central Goods and Services Tax Act, 2017 ("the CGST Act").

Source: M/s. Orient Traders v. the Deputy Commissioner of Commercial Taxes (Audit) [Writ Petition No. 2911 of 2022 (T-RES) dated December 16, 2022



## Time limit for issuance of SCN for F.Y. 2017-18 is extended till June 30, 2023

The Hon'ble Kerala High Court in Pappachan Chakkiath v. Assistant Commissioner & Anr. [WP(C) NO. 816 of 2023 dated January 11, 2023] has held that, when the time limit for issuance of order under Section 73(10) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") for the Financial Year ("F.Y.") 2017-18 is extended upto September 30, 2023, the only interpretation that can be placed on the provisions of Section 73(2) of the CGST Act is that, the SCN can also be issued with reference to the date September 30, 2023. Further held that, there is no ambiguity in the provisions which requires to apply any rules of interpretation in favour of the assessee.

Source: Pappachan Chakkiath v. Assistant Commissioner & Anr. WP(C) NO. 816 of 2023 dated January 11, 2023

# Assessee allowed to rectify its GSTR-1 after the deadline wherein B2C was erroneously mentioned, instead of B2B

The Hon'ble Orissa High Court in the matter of M/s. Shiva Jyoti Construction v. The Chairperson, Central Board of Excise & Customs and others [W.P. (C) No. 18216 of 2017 dated January 12, 2023] permitted the assessee to rectify its GSTR-1 filed for the months of September 2017 and March 2018, in order to claim Input Tax Credit ("ITC") benefit by the recipient, wherein B2C was erroneously mentioned, instead of B2B. Held that, the assessee will be unnecessarily prejudiced if it is not allowed to avail the benefits of ITC.

Source: M/s. Shiva Jyoti Construction v. The Chairperson, Central Board of Excise & Customs and others W.P. (C) No. 18216 of 2017 dated January 12, 2023

No ITC on goods/services used for installation of Solar Power Panels being Plant and Machinery, being used for exempted services

The AAR, Tamil Nadu in the matter of VBC Associates [Advance Ruling No. 10/2022/ARA dated August 31, 2022], has ruled that the assessee is not eligible to claim Input Tax Credit ("ITC"), as per Section 17(2) of the Central Goods and Services Tax Act, 2017 ("the CGST Act") read with Rule 43(a) of the Central Goods and Services Tax Rules, 2017 ("the CGST Rules") on the goods/services used for installation of Solar Power Panels, which are considered as Plant and Machinery and used for exempted services.

Source: VBC Associates Advance Ruling No. 10/2022/ARA dated August 31, 2022

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## Co-operative society not eligible to claim ITC on receipt of works contract services

The AAAR, Maharashtra in the matter of M/s. Mahavir Nagar Shiv Shrushti Co-op Housing Society Ltd. [Order No. MAH/AAAR/AM-RM/10/2022-23 dated September 30, 2022] has upheld the order passed by the AAR, Maharashtra, holding that a co-operative housing society cannot claim Input Tax Credit ("ITC") of the Goods and Services Tax ("GST") paid to its appointed contractor for repairs, renovation and rehabilitation work carried out in the society.

Source: M/s. Mahavir Nagar Shiv Shrushti Co-op Housing Society Ltd. Order No. MAH/AAAR/AM-RM/10/2022-23 dated September 30, 2022

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# Administering of COVID-19 vaccine by hospitals is a composite supply and liable for GST at 5%

The AAAR, Andhra Pradesh in the matter of M/s Krishna Institute of Medical Sciences Limited [Order No. AAAR/AP/07(GST)/2022 dated December 19, 2022] upheld the order of the AAR wherein it was held that the administration of COVID – 19 vaccine is not an exempted supply as it is not covered under the definition of 'healthcare services. Further held that, it is a composite supply wherein the principal supply is the 'sale of vaccine' and the ancillary supply is the service of 'administering of vaccine' and liable to Goods and Services Tax ("GST") at 5%.

Source: Order No. AAAR/AP/07(GST)/2022 dated December 19, 2022

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# Pure Agent not liable to pay GST on reimbursement of the compensation amount paid to farmers and land owners

The AAR, Karnataka in the matter of M/s Sree Subha Sales [Advance Ruling No. KAR ADRG39/2022 dated October 27, 2022] ruled that, if the assessee qualifies to be a pure agent, then reimbursement of tree cut compensation paid to farmers and land owners during the course of execution of work is not chargeable to Goods and Services Tax ("GST").

Source: M/s Sree Subha Sales Advance Ruling No. KAR ADRG39/2022 dated October 27, 2022

## CBIC exempts COVID -19 vaccines from basic Custom duty till 31st March, 2023

Source: Notification No. 01/2023 dated January 13, 2023

CBIC issues Notification No. 05/2023- Customs (N.T.) dated January 19, 2023 for rate of exchange of foreign currency equivalent to Indian Rupees.

Source: Notification No. 05/2023- Customs (N.T.) dated January 19, 2023



#### Schedule-I

SI. No.	Foreign Currency	Rate of exchange of one unit of foreign currency equivalent to Indian Rupees	
		(For Imported Goods)	(For Export Goods)
1.	Australian Dollar	57.50	55.10
2.	Bahraini Dinar	222.75	209.45
3.	Canadian Dollar	61.30	59.30
4.	Chinese Yuan	12.20	11.85
5.	Danish Kroner	12.00	11.60
5.	EURO	89.45	86.35
7.	Hong Kong Dollar	10.60	10.20
8.	Kuwaiti Dinar	275.10	258.60
9.	New Zealand Dollar	53.70	51.30
10.	Norwegian Kroner	8.30	8.05
11.	Pound Sterling	102.10	98.70
12.	Qatari Riyal	23.05	21.50
13.	Saudi Arabian Riyal	22.35	21.00
14.	Singapore Dollar	62.60	60.55
15.	South African Rand	4.90	4.60
16.	Swedish Kroner	8.00	7.75
17.	Swiss Franc	90.55	87.15
18.	Turkish Lira	4.45	4.20
19.	UAE Dirham	22.85	21.50
20.	US Dollar	82.30	80.55

#### Schedule-II

SI. No.	Foreign Currency	Rate of exchange of 100 units of foreign currency equivalent to Indian rupees	
		(For Imported Goods)	(For Export Goods)
1.	Japanese Yen	64.50	62.40
2.	Korean Won	6.80	6.40

### **GST Revenue**

The gross GST revenue collected in the month of January 2023 is INR. 1,55,922 crores of which CGST is Rs 28,963 crore, SGST is Rs 36,730 crore, IGST is Rs 79,599 crore (including Rs 37,118 crore collected on import of goods) and Cess is Rs 10,630 crore (including Rs 768 crore collected on import of goods)

Source: pib.gov.in

### Let's Connect

+91.135.2743283, +91.135.2747084

3rd Floor, MJ Tower, 55, Rajpur Road, Dehradun - 248001

E: info@vkalra.com | W: vkalra.com

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### For any further assistance contact our team at kmt@vkalra.com

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