BGM on GST Act(s)
and
Draft Rule(s), 2017

ICAI

The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

Introduction of GST in India, one of the biggest fiscal and economic reforms since independence, is inching close to its implementation with receipt of presidential assent to the four GST Acts viz. Central Goods & Services Tax Act, Union Territory Goods & Services Tax Act, Integrated Goods & Services Tax Act and the GST (Compensation to States) Act, 2017. To ensure smooth transition, the government and all related nodal agencies like Goods and Services Tax Council, GSTN etc. have been regularly interacting and taking decisions to resolve the issues being faced at various levels. As a partner in nation building, the ICAI also has been proactively providing all necessary support to all agencies at every stage.

The Goods and Services Tax Network, which has developed IT platform for Goods and Services Tax has already started migration of the existing assessees under different indirect taxes regime in a phased manner. With a view to support the Government's initiative of smooth migration and to assist the assessees, ICAI has launched a short video lecture on the process of GST migration and its benefits, available at https://youtu.be/Cc9UgEIKdFg. Live webcasts that were organized with the Government Officers are now available at https://goo.gl/pv2Rbg for offline viewing.

The Institute has been for the past 9 months taking various initiatives for increasing awareness among its members and public. Indirect Taxes Committee of ICAI (IDTC) has also made suggestions to make the GST law simple and easy for implementation, organizing certificate course, programmes, workshops on GST, live webcasts, releasing new publications etc. One of the efforts in this direction is this 'Background Material on GST Acts and Rules' which contains a clause by clause analysis of the four GST acts viz. CGST Act, UTGST Act, IGST Act and the GST (Compensation to States) Act, 2017 along with FAQ's, MCQ's, Flowcharts and Illustrations with a note on State GST Act etc. This is primarily meant as a course material for training of the officers of CBEC & VAT.

I appreciate the efforts put in by CA. Madhukar N. Hiregange, Chairman, CA. Sushil Kumar Goyal, Vice-Chairman and other members of the Indirect Taxes Committee of ICAI for undertaking this task and revising the material in a short span of time. I am sure readers will have fruitful and knowledge enriching experience from this material.

Date: 08.05.2017
Place: New Delhi

CA. Nilesh S. Vikamsey
President, ICAI


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Preface

The 4 GST legislations have received presidential assent, 14 draft GST Rules are in public domain and 8 states have cleared their SGST Acts. In this constantly changing scenario, the Institute has been pro-actively supporting the Government by contributing its suggestions on the one hand and disseminating awareness among the members and other stakeholders on the other hand. The Committee has been organising large number of awareness program covering more than 35,000 members till date. It has also taken up online awareness/ in depth analysis by way of a series of webcasts, hosted Video lectures etc. These are being viewed by many more professionals and non professionals from across the world.

This Background Material is comprehensive containing clause by clause analysis of the GST Law along with FAQ's, MCQ's, Flowcharts and Illustrations etc. to make the reading and understanding easier.

We thank CA.NileshVikamsey, President, CA. Naveen ND Gupta, Vice-President, ICAI for support for this initiative.

We would like to acknowledge the members of the Committee especially CA. S. Venkatramani for their support as the backbone for the issue of all three editions of this BGM ably supported by CA Jatin Christopher.We also thank the Study Groups of the Indirect Tax Committee located at study groupsfor their effort and contribution.We appreciate the Secretariat for their unstinted support and efforts.

We welcome the readers to an intellectual learning spree. The attending fo the 10 day certificate course revision through watching of the web cast series by the end of this month along with this material could provide the most comprehensive learning in GST available in India today. Interested members may join the IDT/ GST update facility and may visit website of the Committee www.idtc.icai.org.We also welcome suggestions at idtc@icai.in and

CA. Madhukar Narayan Hiregange
Chairman
Indirect Taxes Committee

CA. Sushil Kumar Goyal
Vice-Chairman
Indirect Taxes Committee

Date: 08.05.2017

Place: New Delhi


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Contents

[1] Corrigendum

THE CONSTITUTION (ONE HUNDRED AND FIRST AMENDMENT) ACT, 2016

An

ACT

Further to amend the Constitution of India.

BE it enacted by Parliament in the Sixty-seventh Year of the Republic of India as follows:—

Short title and commencement

1. (1) This Act may be called the Constitution (One Hundred and First Amendment) Act, 2016.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the commencement of that provision.

Insertion of new article 246A

2. After article 246 of the Constitution, the following article shall be inserted, namely:—

Special provision with respect to goods and services tax

"246A.(1)Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.

(2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

Explanation.—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5), of article 279A, take effect from the date recommended by the Goods and Services Tax Council.''.

Amendment of article 248

3. In article 248 of the Constitution, in clause (1), for the word "Parliament", the words, figures and letter "Subject to article 246A, Parliament" shall be substituted.

Amendment of article 249

4. In article 249 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted.

Amendment of article 250

5. In article 250 of the Constitution, in clause (1), after the words "with respect to", the words, figures and letter "goods and services tax provided under article 246A or" shall be inserted.

Amendment of article 268

6. In article 268 of the Constitution, in clause (1), the words "and such duties of excise on medicinal and toilet preparations" shall be omitted.

Omission of article 268A

7. Article 268A of the Constitution, as inserted by section 2 of the Constitution (Eighty-eighth Amendment) Act, 2003 shall be omitted.

Amendment of article 269

8. In article 269 of the Constitution, in clause (1), after the words "consignment of goods", the words, figures and letter "except as provided in article 269A" shall be inserted.

Insertion of new article 269A

9. After article 269 of the Constitution, the following article shall be inserted, namely:—

Levy and collection of goods and services tax in course of inter-State trade or commerce.

''269A. (1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation.—For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.''.

Amendment of article 270

10. In article 270 of the Constitution,—

(i) in clause (1), for the words, figures and letter "articles 268, 268A and article269", the words, figures and letter" articles 268, 269 and article 269A" shall be substituted;

(ii) after clause (1), the following clause shall be inserted, namely:—

''(1A) The tax collected by the Union under clause (1) of article 246A shall also be distributed between the Union and the States in the manner provided in clause (2).

(1B) The tax levied and collected by the Union under clause (2) of article 246A and article 269A, which has been used for payment of the tax levied by the Union under clause (1) of article 246A, and the amount apportioned to the Union under clause (1) of article 269A, shall also be distributed between the Union and the States in the manner provided in clause (2).''.

Amendment of article 271

11. In article 271 of the Constitution, after the words ''in those articles'', the words, figures and letter ''except the goods and services tax under article 246A,'' shall be inserted.

Insertion of new article 279A

12. After article 279 of the Constitution, the following article shall be inserted, namely:—

Goods and Services Tax Council

''279A. (1) The President shall, within sixty days from the date of commencement of the Constitution (One Hundred and First Amendment) Act, 2016, by order, constitute a Council to be called the Goods and Services Tax Council.

(2) The Goods and Services Tax Council shall consist of the following members, namely:—

(a) the Union Finance Minister…… Chairperson;

(b) the Union Minister of State in charge of Revenue or Finance…… Member;

(c) the Minister in charge of Finance or Taxation or any other Minister nominated by each State Government…… Members.

(3) The Members of the Goods and Services Tax Council referred to in sub-clause (c) of clause (2) shall, as soon as may be, choose one amongst themselves to be the Vice-Chairperson of the Council for such period as they may decide.

(4) The Goods and Services Tax Council shall make recommendations to the Union and the States on—

(a) the taxes, cesses and surcharges levied by the Union, the States and the local bodies which may be subsumed in the goods and services tax;

(b) the goods and services that may be subjected to, or exempted from the goods and services tax;

(c) model Goods and Services Tax Laws, principles of levy, apportionment of Goods and Services Tax levied on supplies in the course of inter-State trade or commerce under article 269A and the principles that govern the place of supply;

(d) the threshold limit of turnover below which goods and services may be exempted from goods and services tax;

(e) the rates including floor rates with bands of goods and services tax;

(f) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster;

(g) special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and

(h) any other matter relating to the goods and services tax, as the Council may decide.

(5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

(6) While discharging the functions conferred by this article, the Goods and Services Tax Council shall be guided by the need for a harmonised structure of goods and services tax and for the development of a harmonised national market for goods and services.

(7) One half of the total number of Members of the Goods and Services Tax Council shall constitute the quorum at its meetings.

(8) The Goods and Services Tax Council shall determine the procedure in the performance of its functions.

(9) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than three-fourths of the weighted votes of the members present and voting, in accordance with the following principles, namely:—

(a) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(b) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast, in that meeting.

(10) No act or proceedings of the Goods and Services Tax Council shall be invalid merely by reason of—

(a) any vacancy in, or any defect in, the constitution of the Council; or

(b) any defect in the appointment of a person as a member of the Council; or

(c) any procedural irregularity of the Council not affecting the merits of the case.

(11) The Goods and Services Tax Council shall establish a mechanism to adjudicate any dispute —

(a) between the Government of India and one or more States; or

(b) between the Government of India and any State or States on one side and one or more other States on the other side; or

(c) between two or more States,

Amendment of article 286

13. In article 286 of the Constitution,—

(i) in clause (1),—

(A) for the words "the sale or purchase of goods where such sale or purchase takes place", the words "the supply of goods or of services or both, where such supply takes place" shall be substituted;

(B) in sub-clause (b), for the word "goods", at both the places where it occurs the words "goods or services or both" shall be substituted;

(ii) in clause (2), for the words "sale or purchase of goods takes place", the words "supply of goods or of services or both" shall be substituted;

(iii) clause (3) shall be omitted.

Amendment of article 366

14. In article 366 of the Constitution,—

(i) after clause (12), the following clause shall be inserted, namely:—

'(12A) "goods and services tax" means any tax on supply of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption;';

(ii) after clause (26), the following clauses shall be inserted, namely:—

'(26A) "Services" means anything other than goods;

(26B) "State" with reference to articles 246A, 268, 269, 269A and article

279A includes a Union territory with Legislature;'.

Amendment of article 368

15. In article 368 of the Constitution, in clause (2), in the proviso, in clause (a), for the words and figures "article 162 or article 241", the words, figures and letter "article 162, article241 or article 279A" shall be substituted.

Amendment of Sixth Schedule

16. In the Sixth Schedule to the Constitution, in paragraph 8, in sub-paragraph (3),—

(i) in clause (c), the word "and" occurring at the end shall be omitted;

(ii) in clause (d), the word "and" shall be inserted at the end;

(iii) after clause (d), the following clause shall be inserted, namely:—

"(e) taxes on entertainment and amusements.".

Amendment of Seventh Schedule.

17. In the Seventh Schedule to the Constitution,—

(a) in List I — Union List,—

(i) for entry 84, the following entry shall be substituted, namely:—

"84. Duties of excise on the following goods manufactured or produced in India, namely:—

(a) petroleum crude;

(b) high speed diesel;

(c) motor spirit (commonly known as petrol);

(d) natural gas;

(e) aviation turbine fuel; and

(f) tobacco and tobacco products.";

(ii) entries 92 and 92C shall be omitted;

(b) in List II — State List,—

(i) entry 52 shall be omitted;

(ii) for entry 54, the following entry shall be substituted, namely:—

"54. Taxes on the sale of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas, aviation turbine fuel and alcoholic liquor for human consumption, but not including sale in the course of inter-State trade or commerce or sale in the course of international trade or commerce of such goods.";

(iii) entry 55 shall be omitted;

(iv) for entry 62, the following entry shall be substituted, namely:—

"62. Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality or a Regional Council or a District Council.".

Compensation to States for loss of revenue on account of introduction of goods and services tax

18. Parliament may, by law, on the recommendation of the Goods and Services Tax Council, provide for compensation to the States for loss of revenue arising on account

of implementation of the goods and services tax for such period which may extend to five years.

Transitional provisions

19. Notwithstanding anything in this Act, any provision of any law relating to tax on goods or services or on both in force in any State immediately before the commencement of this Act, which is inconsistent with the provisions of the Constitution as amended by this Act shall continue to be inforce until amended or repealed by a competent Legislature or other competent authority or until expiration of one year from such commencement, whichever is earlier.

Power of President to remove difficulties

20. (1) If any difficulty arises in giving effect to the provisions of the Constitution as amended by this Act (including any difficulty in relation to the transition from the provisions of the Constitution as they stood immediately before the date of assent of the President to this Act to the provisions of the Constitution as amended by this Act), the President may, by order, make such provisions, including any adaptation or modification of any provision of the Constitution as amended by this Act or law, as appear to the President to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of three years from the date of such assent.

(2) Every order made under sub-section (1) shall, as soon as may be after it is made, be laid before each House of Parliament.

STATEMENT OF OBJECTS AND REASONS

(As provided in the Bill introduced in Loksabha on 18th December, 2014)

1. The Constitution is proposed to be amended to introduce the goods and services tax for conferring concurrent taxing powers on the Union as well as the States including Union territory with Legislature to make laws for levying goods and services tax on every transaction of supply of goods or services or both. The goods and services tax shall replace a number of indirect taxes being levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services. The proposed Central and State goods and services tax will be levied on all transactions involving supply of goods and services, except those which are kept out of the purview of the goods and services tax.

2. The proposed Bill, which seeks further to amend the Constitution, *inter alia*, provides for—

   (a) subsuming of various Central indirect taxes and levies such as Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, Service Tax, Additional Customs Duty commonly known as Countervailing Duty, Special Additional Duty of Customs, and Central Surcharges and Cesses so far as they relate to the supply of goods and services;

   (b) subsuming of State Value Added Tax/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry tax, Purchase Tax, Luxury tax, Taxes on lottery, betting and gambling; and State Cesses and surcharges in so far as they relate to supply of goods and services;

   (c) dispensing with the concept of 'declared goods of special importance' under the Constitution;

   (d) levy of Integrated Goods and Services Tax on inter-State transactions of goods and services;

   (e) levy of an additional tax on supply of goods, not exceeding one per cent. In the course of inter-State trade or commerce to be collected by the Government of India for a period of two years, and assigned to the States from where the supply originates;

   (f) conferring concurrent power upon Parliament and the State Legislatures to make laws governing goods and services tax;

   (g) coverage of all goods and services, except alcoholic liquor for human consumption, for the levy of goods and services tax. In case of petroleum and petroleum products, it has been provided that these goods shall not be subject

to the levy of Goods and Services Tax till a date notified on the recommendation of the Goods and Services Tax Council.

(h) compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for a period which may extend to five years;

(i) creation of Goods and Services Tax Council to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates, exemption list and threshold limits. The Council shall function under the Chairmanship of the Union Finance Minister and will have the Union Minister of State in charge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government. Itis further provided that every decision of the Council shall be taken by a majority of not less than three-fourths of the weighted votes of the members present and voting in accordance with the following principles:—

(A) the vote of the Central Government shall have a weightage of one-third of the total votes cast, and

(B) the votes of all the State Governments taken together shall have a weightage of two-thirds of the total votes cast in that meeting.

Illustration:

In terms of clause (9) of the proposed article 279A, the "weighted votes of the members present and voting" in favour of a proposal in the Goods and Services Tax Council shall be determined as under:—

WT = WC+WS

Where,

$$WT = WC+WS\left(\frac{WST}{SP}\right) \times SF$$

Wherein—

WT = Total weighted votes of all members in favour of a proposal.

WC = Weighted vote of the Union = $\frac{1}{3}$ *i.e.,* 33.33% if the Union is in favour of the proposal and be taken as "0" if, Union is not in favour of a proposal.

WS = Weighted votes of the States in favour of a proposal.

SP = Number of States present and voting.

WST = Weighted votes of all States present and voting *i.e.* $\frac{1}{3}$ *i.e.,* 66.67%

SF = Number of States voting in favour of a proposal.

(j) Clause 20 of the proposed Bill makes transitional provisions to take care of any inconsistency which may arise with respect to any law relating to tax on goods or services or on both in force in any State on the commencement of the provisions of the Constitution as amended by this Act within a period of one year.

3. the Bill seeks to achieve the above objects.

NEW DELHI; ARUN JAITLEY

The 18th December, 2014

PRESIDENT'S RECOMMENDATION UNDER ARTICLE 117 OF THE CONSTITUTION OF INDIA

[Copy of letter No. S-31011/07/2014-SO(ST), dated the 18th December, 2014 from Shri Arun Jaitley, Minister of Finance to the Secretary-General, Lok Sabha.]

The President, having been informed of the subject matter of the proposed Bill, recommends under clauses (1) and (3) of article 117, read with clause (1) of article 274, of the Constitution of India, the introduction of the Constitution (One Hundred and Twenty-second Amendment) Bill, 2014 in Lok Sabha and also the consideration of the Bill.

FINANCIAL MEMORANDUM

Clause 12 of the Bill seeks to insert a new article 279A in the Constitution relating to

Constitution of Goods and Services Tax Council. The Council shall function under the Chairmanship of the Union Finance Minister and will have the Union Minister of State in charge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government.

2. The creation of Goods and Services Tax Council will involve expenditure on office expenses, salaries and allowances of the officers and staff. The objective that the introduction of goods and services tax will make the Indian trade and industry more competitive, domestically as well as internationally and contribute significantly to the growth of the economy, such additional expenditure on the Council will not be significant.

3. At this stage, it will be difficult to make an estimate of the expenditure, both recurring and non-recurring on account of the Constitution of the Council.

4. Further, it is provided for compensation to the States for loss of revenue arising on account of implementation of the Goods and Services Tax for such period which may extend to five years. The exact compensation can be worked out only when the provisions of the Bill are implemented.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill seeks to insert a new article 279A relating to the constitution of a

Council to be called the Goods and Services Tax Council. Clause (1) of the proposed new article 279A provides that the President, shall within sixty days from the date of the commencement of the Constitution (One Hundred and Twenty-second Amendment) Act, 2014, by order, constitute a Council to be called the Goods and Services Tax Council. Clause (8) of the said article provides that the Council shall determine the procedure in the performance of its functions.

2. The procedures, as may be laid down by the Goods and Services Tax Council in the performance of its functions, are matters of procedure and details. The delegation of legislative power is, therefore, of a normal character.

THE CENTRALGOODS AND SERVICE TAX ACT, 2017

Statement of Objects and Reasons:

The Central Government is currently empowered to levy customs duty on imports, excise duty on manufacture, service tax on provision of services and Central Sales Tax on inter-State sale of goods, whereas the State Government is empowered to levy VAT on sale of goods, Entry Tax on entry of goods in the State, Luxury Tax, Entertainment tax, Purchase Tax, Octroi, Local Body Tax (LBT) etc. This has led to a multiplicity of indirect taxes being levied by various authorities.

The difficulties faced in the current indirect tax system are:

(i) Non-availability of cross-utilization of taxes i.e. utilization of Central Government levies against State Government levies and vice-versa, leading to cascading of taxes.

(ii) Non-availability of certain State Government levies as set off against other State or Central Government levies.

(iii) Formation of separate economic spheres on account of varied VAT laws in the country with different rates and tax practices.

(iv) Creation of tariff and non-tariff trade and tax barriers such as octroi, entry tax, check posts etc. hindering free flow of trade.

(v) High compliance costs in the form of payments, returns etc. due to multiplicity of taxes.

Levy of a single tax called Goods and Service Tax is considered necessary on the supply of goods or services or both from the stage of manufacture/ import till the retail level. Goods and Service Tax will be a dual levy where the Central Government will levy Central Tax (CGST) and the State Government will levy State Tax (SGST) on intra-State supply of goods or services or both. This apart, imports and inter-State supplies would attract GST. The new legislation, among others, broadly:

(i) Provides for levy of tax on all intra-State supplies of goods or services or both, except alcoholic liquor for human consumption, at the rates recommended by the GST Council (not exceeding 20%);

(ii) Provides for widening the base to avail tax credits by allowing input tax credits on supply of goods or services or both used in the course/ furtherance of business;

(iii) Provides for collection of TCS at 1% of the net taxable supplies made by electronic commerce operators out of payments to suppliers for supplies made through their portals/ platforms;

(iv) Provides for self-assessment of taxes by registered persons and also audit of registered persons to ensure compliance;

(v) Empowers recovery of tax, interest or penalty payable by a person and remaining unpaid;

(vi) Empowers establishing an Advance Ruling Authority & a GST Appellate Tribunal for hearing appeals against orders by Appellate/ Revisional Authority;

(vii) Provides for introduction of anti-profiteering clause to ensure that businesses pass on the benefit of reduced tax incidence to the customers;

(viii) Provides for elaborate transitional provisions for smooth transition of existing taxpayers to GST regime.

Chapter I
Preliminary

Statutory Provision

1.	Short title, extent and commencement
(1)	This Act may be called the Central Goods and Services Tax Act, 2017.
(2)	It extends to the whole of India except the State of Jammu and Kashmir.
(3)	It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint: Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Title:

All Acts enacted by the Parliament since the introduction of the Indian Short Titles Act, 1897 carry a long and a short title. The *long title*, set out at the head of a statute, gives a fairly full description of the general purpose of the Act and broadly covers the scope of the Act.

The *short title*, serves simply as an ease of reference and is considered a statutory nickname to obviate the necessity of referring to the Act under its full and descriptive title. Its object is identification, and not description, of the purpose of the Act.

Extent:

Part I of the Constitution of India states: "India, that is Bharat, shall be a Union of States". It provides that territory of India shall comprise the States and the Union Territories specified in the First Schedule of the Constitution of India. The First Schedule provides for twenty-nine (29) States and seven (7) Union Territories.

Part VI of the Constitution of India provides that for every State, there shall be a Legislature, while Part VIII provides that every Union Territory shall be administered by the President through an 'Administrator' appointed by him. However, the Union Territories of Delhi and Puducherry have been Provided with Legislatures with powers and functions as required for their administration.

India is a summation of three categories of territories namely – (i) States (29); (ii) Union Territories with Legislature (2); and (iii) Union Territories without Legislature (5).

The State of Jammu and Kashmir enjoys a special status in the Indian Constitution in terms of Article 370 of the Indian Constitution. The Parliament has power to make laws only on Defence, External Affairs and Communication related matters of Jammu and Kashmir. As regards the laws related on any other matter, subsequent ratification by the Government of Jammu and Kashmir is necessary to make it applicable to that State.

Therefore, the State of Jammu & Kashmir will have to pass special laws to be able to implement the Goods and Services Tax Acts as its current Constitutional status does not mandate the applicability of the Goods and Services Tax Acts in the State. Once the laws are passed by the State of Jammu & Kashmir, the Union Government will have to amend the Central Goods and Services Act, 2017 to delete the phrase that such provisions do not apply to the State of Jammu & Kashmir.

Commencement:

The CGST Act will to come into operation on the date appointed by the Central Government by means of a notification in the Official Gazette (tentatively 1st July, 2017). A provision has been made to notify different dates for commencement of different provisions of the Act.

It is expected that a notification with a prospective date of commencement of the CGST Act i.e. a specific date succeeding the date of notification in the Official Gazette would be issued. A notification providing for a retrospective date for commencement of the CGST Act cannot be issued, since that would result in simultaneous operation of two laws governing the same subject matter i.e. the existing law (s) and the CGST Act being in force during the period starting from such date of commencement until the date of notification in the Official Gazette.

2. Definitions

In this Act, unless the context otherwise requires-

(1) "actionable claim" shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882;

One may refer to section 130 of Transfer of Property Act, 1882 regarding the manner of 'transferring' actionable claims. Transfer of actionable claim can be with consideration or without consideration per the Transfer of Property Act, 1882.

Actionable claim represents a debt and the holder of the actionable claim enjoys the right to demand "action" against any person. Acknowledgement of liability by a creditor to honor a claim, when made, does not constitute actionable claim in the hands of such creditor.

The following aspects need to be noted:

- Assignment of actionable claim without permanently supplanting the holder of the claim would not be supply.
- Under the GST regime, actionable claim relating to lottery, betting and gambling alone will be regarded as 'goods' since the definition of goods includes actionable claim.

(2) "address of delivery" means the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both;

"Address of delivery" is relevant to determine Place of Supply of goods (other than imports/ exports). Although currently this phrase does not find a mention in the GST Act/ Rules (other than in the definition clause), it is understood that the address of delivery would be a crucial pointer towards the location of goods at the time of delivery to the recipient. The place of

supply of goods or services or both (other than imports/ exports) would primarily be the location of the goods or services or both at the time of delivery to the recipient.

(3) "address on record" means the address of the recipient as available in the records of the supplier;

'Address on record' is relevant to determine Place of Supply in case of supplies made by a registered person to an un-registered person in relation to services. In such cases, where the Place of Supply has not been specifically Provided for under the law, the address on record available in the records of the supplier would be regarded the Place of Supply.

(4) "adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Excise and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the Appellate Authority and the Appellate Tribunal;

The following authorities are not permitted to pass an order/ decision under the GST laws:

(a) The Central Board of Excise and Customs

(b) Revisional Authority

(c) Authority for Advance Ruling

(d) Appellate Authority for Advance Ruling

(e) Appellate Authority

(f) Appellate Tribunal

Under the Act, the Revisional Authority, Appellate Authority and the Appellate Tribunal are empowered to pass/ issue order as they think fit, after giving the affording the parties a reasonable opportunity of being heard. However, such powers are limited to cases where an order has been passed by an authority of a lower rank, before it becomes a subject matter of revision/ appeal.

(5) "agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

This definition appears to illustrate the principle of agency defined in Section 182 of the Indian Contract Act, 1872. Agency is a relationship that can be formed validly even without consideration in terms of Section 185 of the Indian Contract Act, 1872. Agent can work purely on commission basis. Even e-commerce companies like Flipkart, Amazon and Uber may be covered in some fact situations.

(6) "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

The phrase "aggregate turnover" is widely used under the GST laws. Aggregate Turnover is

an all-encompassing term covering all the supplies effected by a person having the same PAN. It specifically excludes:

- Inward supplies effected by a person which are liable to tax under reverse charge mechanism, However, it is not to be understood that the value of such inward supplies is to be reduced from the value of outward supplies to arrive at aggregate turnover; and
- Various taxes under the GST law, Compensation cess.

There is a certain amount of ambiguity as to whether the value of inward supplies would form part of 'aggregate turnover' since the definition covers *all taxable supplies* and excludes only inward supplies to the extent liable to tax under reverse charge mechanism.

The different kinds of supplies covered are:

(a) Taxable supplies;

(b) Exempt Supplies:

- supplies that have a 'NIL' rate of tax;
- supplies that are wholly exempted from UTGST, CGST or IGST; and
- supplies that are not taxable under the Act (alcoholic liquor for human consumption);

(c) Export of goods or services or both, including zero-rated supplies.

The following aspects among others need to be noted:

- Aggregate turnover is relevant to a person to determine:
  - Threshold limit to opt for composition scheme: Rs. 50 Lakhs in a financial year;
  - Threshold limit to obtain registration under the Act: 20 Lakhs (or 10 Lakhs in case of supplies effected from Special Category States, as explained in our analysis on Section 22) in a financial year.
- Inter-State supplies between units of a person with the same PAN will also form part of aggregate turnover.
- For an agent, the supplies made by him on behalf of all his principals would have to be considered while analysing the threshold limits.
- For a job-worker, the following supplies effected on completion of job work would not be included in his 'aggregate turnover':
- Goods returned to the principal
- Goods sent to another job worker on the instruction of the principal
- Goods directly supplied from the job worker's premises (by the principal): It would be included in the 'aggregate turnover' of the principal.

(7) "agriculturist" means an individual or a Hindu Undivided Family who undertakes cultivation of land—

(a) by own labour, or

(b) by the labour of family, or

(c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family;

An individual or HUF undertaking cultivation of land, whether own or not, would be regarded as an agriculturist. The cultivation should be undertaken by own labour/ family labour/ servants on wages or hired labour.

The following aspects need to be noted:

- An agriculturalist is not liable to obtain registration under the Act to the extent of supply of produce out of cultivation of land. Therefore, if he effects supplies other than what would qualify as 'a produce from the cultivation of land', he would be liable to obtain registration in which case, the aggregate turnover would exclude the produce out of cultivation of land;
- The scope of the definition is restricted to an Individual or a Hindu Undivided Family. Any other "person" as defined in section 2(84), carrying on the activity of agriculture will not be considered as an Agriculturist and hence will not be exempted from registration provisions as Provided in section 23 (1)(b), of the Act.

(8) "Appellate Authority" means an authority appointed or authorised to hear appeals as referred to in section 107;

It refers to an authority before whom a person aggrieved by a decision/ order under the CGST/ SGST/ UTGST Act may appeal. An order passed by the Appellate Authority would be final and binding on all the parties. If a person is further aggrieved by the order passed by the Appellate Authority, he may prefer an appeal before the Appellate Tribunal or Courts.

(9) "Appellate Tribunal" means the Goods and Services Tax Appellate Tribunal constituted under section 109;

It refers to an authority before whom a person aggrieved by a decision/ order under the CGST/ SGST/ UTGST Act passed by the Appellate Authority/ Revision Authority may appeal. An order passed by the Appellate Tribunal would be final and binding on all the parties. If a person is further aggrieved by the order passed by the Appellate Tribunal, he may prefer an appeal before the High Court.

(10) "appointed day" means the date on which the provisions of this Act shall come into force;

The provisions of the CGST Act are expected to be implemented with effect from 1st July 2017 with powers vested to notify different dates for effective date of commencement of different provisions of the Act.

(11) "assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;

The types of assessment covered under the Act are:

(a) Self-assessment (Section 59)

(b) Provisional assessment (Section 60)

(c) Summary assessment (Section 62) including best judgement assessment

The CGST Act also provides for determination of tax liability by:

(a) Scrutiny of returns filed by registered persons (Section 61)

(b) Assessment of non-filers of returns (Section 62)

(c) Assessment of un-registered persons (Section 63)

It may, however, be noted that there is no provision permitting a Proper Officer to re-assess the tax liability of taxable person. As such, reference to such re-assessment in the definition may have to be suitably read down.

(12) "associated enterprises" shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961;

'Associated enterprise' is referred to only in the context of time of supply of services where the supplier is an associated enterprise (located outside India) of the recipient.

- In such cases, the time of supply will be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.
- This in turn means that provision entries made at the time of closure of books of account for a year (on accrual basis) may trigger GST liability in the hands of the recipient, under reverse charge mechanism.

It may be noted that in addition to associated enterprise, the Act also defines 'related person', the reference to which is made in the context of deemed supply (Schedule I) and valuation.

(13) "audit" means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder;

The definition of 'audit' under the Act is a wide term covering the examination of records, returns and documents maintained/ furnished under this Act or Rules and under any other law in force. Any document, record maintained by a registered person under any law can thus be called upon and audited. It becomes critical for the person to maintain true documents/ records to ensure correctness and smooth conduct of audit.

(14) "authorised bank" shall mean a bank or a branch of a bank authorised by the Government to collect the tax or any other amount payable under this Act;

The date of credit to the account of the Government (i.e., the Central Government in respect of CGST, IGST and UTGST or the relevant State Government in respect of SGST) in the authorized bank will be considered as the date of deposit in electronic cash ledger.

(15) "authorised representative" means the representative as referred to in section 116;

An authorized representative is a person authorized on one's behalf to appear before an Officer of the Act, Appellate Authority or Appellate Tribunal in connection to proceedings under the Act. Any of the following persons can act as authorized representatives:

(a) His relative/ regular employee;

(b) Practicing advocate who is not debarred;

(c) Practicing Chartered Accountant, Cost Accountant or Company Secretary who is not debarred;

(d) Retired Officer of the Commercial Tax Department of any State/ Union Territory not below the post of Group-B Gazetted Officer of 2 years' service;

(e) GST practitioner

The following persons cannot act as authorized representatives:

(a) Who is dismissed/ removed from Government service;

(b) Who is convicted of an offence under any law dealing with imposition of taxes;

(c) Who is guilty of misconduct by the prescribed authority;

(d) Who is adjudged as an insolvent.

(16) "Board" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963;

(17) "business" includes—

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);

(c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;

(f) admission, for a consideration, of persons to any premises;

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;

(h) services Provided by a race club by way of totalisator or a licence to book maker in such club; and

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

Excise / Service tax laws do not define the term 'business'. However, it is defined under the CST Act / State VAT laws. The definition in the GST law is a modified version of the definition under CST / VAT laws, in as much as the scope is substantially expanded to include among others wager, profession and vocation. This definition is very wide and covers all the transactions that are currently subjected to various taxes that are being subsumed in the GST Laws.

This definition assumes significance as the proposed levy is on supplies undertaken in the course or furtherance of business. The definition may be understood in two parts, namely:

(a) General activity - trade, commerce, etc., including incidental activities whether or not there is volume, frequency, continuity or regularity of such transactions. Principle of *ejusdem generis* provides that similar activity would be determined by the previous enumerated ones.

(b) Specific activity – acquisition of goods including capital goods, supply by association/ club, admission of persons to a premises and services by a race club.

The following aspects need to be noted:

- 'Wager' is also included in the definition of business to impose GST on betting transactions;
- Educational services would be covered under profession or business;
- Charitable or religious activities are not specifically covered;
- Clause (g) may require understanding of employment as differentiated from profession. For instance, if a CA in practice provides CFO or Independent Director services, the service Provided by him may be treated as 'business' and not 'employment'.

(18) "business vertical" means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals.

Explanation—For the purposes of this clause, factors that should be considered in determining whether goods or services are related include—

(a) the nature of the goods or services;

(b) the nature of the production processes;

(c) the type or class of customers for the goods or services;

(d) the methods used to distribute the goods or supply of services; and

(e) the nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;

A person having multiple business verticals in a State/ Union Territory is permitted to obtain separate registrations for each such business vertical. Therefore, the person will have an option to avail a single registration (covering all business verticals in a State or Union Territory) or separate registration for each business vertical in a State or Union Territory.

The following aspects need to be noted:

- The component must be a distinguishable component of the person, which is capable of being transferred or to function without affecting any other business of that person. A component cannot become a 'business vertical' merely based on geographical differentiation;
- The supplies made one business vertical unit should be:
  (a) individual goods or services or a group of related goods or services; and
  (b) subject to risks and returns different from those of the other business verticals;
- The risk and returns of supplies forming part of a business vertical should be same;
- Supplies between business verticals are deemed to be taxable supplies;
- Lastly, the option to avail composition scheme is PAN-based and hence, a person has to opt for composition scheme for all the business verticals across India. He cannot opt for the scheme only in a particular business vertical;

(19) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;

An attempt has been made to align the meaning of capital goods to the generally accepted standards of accounting. Goods will be regarded as capital goods if the following conditions are satisfied:

(a) The value of such goods is capitalised in the books of account of the person claiming input tax credit;

(b) Such goods are used or intended to be used in the course or furtherance of business.

The following aspects need to be noted:

(a) Assuming that the value of capital goods was not capitalised in the books of account, the person purchasing the capital goods would still be eligible to claim input tax credit on such capital goods since the definition of 'input tax' applies to goods as a whole (including capital goods).

(b) Capital goods lying at the job-workers premises would also be considered as 'capital goods' in the hands of the purchaser as long as the said capital goods are capitalized in his books of account.

(20) "casual taxable person" means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business;

A person would be regarded as a casual taxable person if he undertakes supply of goods or services or both:

(a) Occasionally, and not on a regular basis;

(b) Either as principal or agent or in any other capacity;

(c) In a State/ Union Territory where he has no fixed place of business.

A trader, businessman, service provider, etc. undertaking occasional transactions like supplies made in trade fairs would be treated as a 'casual taxable person' and will have to obtain registration in that capacity and pay tax. E.g., A jeweller carrying on a business in Mumbai, who conducts an exhibition-cum-sale in Delhi where he has no fixed place of business, would be treated as a 'casual taxable person' in Delhi.

The following aspects need to be noted:

- The threshold limits for registration would not apply and he would be required to obtain registration irrespective of his turnover;
- He is required to apply for registration at least 5 days prior to commencement of business;
- The registration would be valid for 90 days or such period as specified in the application, whichever is shorter;
- An advance deposit of the estimated tax liability is required to be made along with the application for registration.

(21) "Central tax" means the central goods and services tax levied under section 9;

Tax levied under this Act is referred to as "Central tax" as opposed to "CGST" as used in the model GST laws. It refers to the tax charged under this Act on intra-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 20% and thereafter, the rates for goods and services will be notified by the Central Government based on the recommendation of the Council.

(22) "cess" shall have the same meaning as assigned to it in the Goods and Services Tax (Compensation to States) Act;

It refers to the 'cess' levied on certain supplies (inter-State or intra-State) as may be notified, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of GST, for a period of five years (or extended period, as may be prescribed).

(23) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;

(24) "Commissioner" means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act;

(25) "Commissioner in the Board" means the Commissioner referred to in section 168;

It refers to the Commissioner or Joint Secretary posted in the Central Board of Excise and

Customs. Such a Commissioner or Joint Secretary is empowered to exercise the function of the Commissioner with the approval of the Board.

(26) "common portal" means the common goods and services tax electronic portal referred to in section 146;

The Common Goods and Service Tax Electronic Portal ("GST portal") is a common electronic portal set up by the Goods and Service Tax Network (GSTN) that facilitates among others registration, payment of tax, filing of returns, computation and settlement of IGST, electronic way-bill and other functions under the Act.

(27) "common working days" in respect of a State or Union territory shall mean such days in succession which are not declared as gazetted holidays by the Central Government or the concerned State or Union territory Government;

Common working days refer to such days *in succession* which are not a declared holiday for the Centre as well as State/ Union Territory.

The relevance of working days primarily arises in relation to registration provisions. Every person obtaining a registration under the Act is required to make an online application in the GST portal. The application for registration, along with the accompanying documents will be examined by the Proper Officer and if found in order, the registration will be granted within 3 working days. If the proper officer fails to take any action within 3 working days, the application is deemed approved.

Since the reference to 'common workings days' has been replaced by 'working days', it remains to be seen whether the applicant will be granted a deemed registration after 3 working days in case of inaction by the Proper Officer even if the third day was a holiday for a particular State.

(28) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980;

(29) "competent authority" means such authority as may be notified by the Government;

In terms of Explanation to entry 5(b) of the Schedule II to the Act, "Competent Authority" in relation to construction of a complex, building, civil structure covers:

(a) Authority authorised to issue completion certificate (local municipal authorities like BDA/ BBMP in Bangalore, PMC in Pune)

(b) Architect

(c) Chartered Engineer

(d) Licensed Surveyor

(30) "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration– Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

A supply will be regarded as a 'composite supply' if the following elements are present:

(a) The supply should consist of two or more taxable supplies;

(b) The supplies may be of goods or services or both;

(c) The supplies should be naturally bundled;

(d) They should be supplied in conjunction with each other in the ordinary course of business;

(e) One of the supplies should be a principal supply (Principal supply means the predominant supply of goods or services of a composite supply and to which any other supply is ancillary).

The following aspects need to be noted:

- The way the supplies are bundled must be examined. Mere conjoint supply of two or more goods or services does not constitute composite supply.
- The two (or more) supplies must appear natural when bundled and presented to the recipient.
- The ancillary supply becomes necessary only because of the acceptance of the predominant supply.
- The method of billing, assignment of separate prices etc. may not be relevant.
- The tax treatment of a composite supply would be as applicable to the principal supply.

Illustrations of composite supply are as follows:

(a) Supply of laptop and carry case;

(b) Supply of equipment and installation of the same;

(c) Supply of repair services on computer along with requisite parts;

(d) Supply of health care services along with medicaments.

(31) "consideration" in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

The following aspects need to be noted:

- It refers to the payment received by the supplier in relation to the supply, whether from the recipient or any other person. Therefore, a third party to a contract can also contribute towards consideration;
- Consideration, therefore, is not the amount that the recipient pays but the amount that the supplier collects whether from the recipient or any third party. This would be particularly relevant in dealing with complex arrangements in digital economy and new-age business;
- Consideration can be in the form of *money or otherwise*. E.g.: Under a JDA model, the flats handed by the developer to the landowner will be considered as 'consideration' for the development rights given to the developer by the landowner;
- Deposits, as such, are not liable to tax. However, where such deposits have been applied as consideration for the supply it would tantamount to masking of advances and in such cases, will be liable to tax. Merely altering the nomenclature of the payment as 'deposit' would not change the nature of the receipt. However, trade practices and the terms, used play an important role in identifying whether an amount is a 'deposit' or an 'advance' or any payment as consideration for the supply;
- The suppliers may have to park the deposits in a separate bank account in case of refundable deposits, to comply with this provision. However, whether the amount is refundable or not is not a criterion to determine whether such amount is a 'deposit';
- This is an inclusive definition.

(32) "continuous supply of goods" means a supply of goods which is Provided, or agreed to be Provided, continuously or on recurrent basis, under a contract, whether by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

It refers to supply of goods continuously or on recurrent basis under a contract, with periodic payment obligations.

The following aspects need to be noted:

- It should be a contract for supply on a recurrent basis and cannot be a one-time supply contract;
- The contract should be a case of periodic billing and periodic payments - viz., the billing and receipts thereto should be on a periodic basis (e.g.: every fortnight; every Monday etc.) and not one-time. Further, the contract should specify this periodicity/ frequency of billing/ payment;

- The mode of supply would not be relevant - viz., such supply may be through a wire, cable, pipeline or other conduit or any other mode;
- The Government is empowered to notify certain supplies as continuous supply of goods.

Examples of continuous supply of goods are:

(a) Open purchase orders with an understanding of fortnightly billing;

(b) VMI (vendor managed inventory) where the agreed periodicity for billing is, say, monthly/ fortnightly etc.;

(c) Supply of gases through pipeline with a weekly billing schedule;

(d) Supply of say, 5 litre water cans on an as and when required basis with a frequency of monthly billing under a contract.

(33) "continuous supply of services" means a supply of services which is Provided, or agreed to be Provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;

It refers to supply of services continuously or on recurrent basis under a contract for a period exceeding 3 months, with periodic payment obligations.

The determination of stage of completion of services is an abstract one, unless specifically defined by contract, unlike in the case of goods where the volume of goods supplied can be easily tracked/ identified. Hence, a contract for supply of service spanning over a definite period has been treated as a continuous supply, so that the tax dues are collected periodically.

The law categorically provides for time limit to issue invoices as under:

(a) where due date of payment is ascertainable: On or before the due date of payment;

(b) where the due date of payment is not ascertainable: Before or at the time of receipt of payment;

(c) where the payment is linked to the completion of an event (milestones): On or before the date of completion of that event.

The following aspects need to be noted:

- It should be a contract for supply on a recurrent basis and cannot be a one-time supply contract;
- The period of contract of supply should be more than 3 months - viz., services should be supplied on a recurring basis for at least 3 months;
- The contract should be a case of periodic billing and periodic payments - viz., the billing and receipts thereto should be on a periodic basis (say for e.g.: every fortnight; every

Monday etc.) and not one-time. Further, the contract should specify this periodicity/ frequency of billing/ payment;

- The Government is empowered to notify certain supplies as continuous supply of goods.

Examples of continuous supply of services:

(a) Annual maintenance contracts;

(b) Licensing of software or brand names;

(c) Renting of immovable property

(34) "conveyance" includes a vessel, an aircraft and a vehicle;

It can be understood as a medium of transportation.

(35) "cost accountant" means a cost accountant as defined in clause (c) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959;

(36) "Council" means the Goods and Services Tax Council established under article 279A of the Constitution;

GST Council is an authority constituted under the Constitution of India and will be the governing body responsible for the administration of the GST across India. The administrative powers will be vested with this authority for taxing goods and services.

The Council will consist of the Union Finance Minister (as Chairman), the Union Minister of State in charge of Revenue or Finance, and the Minister in charge of Finance or Taxation, or any other nominated by each State government, thereby ensuring a proper blend of the Central and State ministry.

The GST Council will be the body responsible for the following (primarily):

(a) Administration of the GST laws

(b) Specify the taxes to be levied and collected by the Centre, States and Union Territories under the GST regime

(c) Specify the goods or services or both that will be subjected/ exempted under the GST regime

(d) Specify the GST rates

(e) Specify the threshold limits for registrations and payment of taxes

(f) Apportionment of IGST between Centre and States/ Union Territories

(g) Approval of compensation to be paid to the States (for loss on account of implementation of GST)

(h) Levy of any special rate or rates of tax for a specified period, to raise additional resources during any natural calamity or disaster.

(i) Resolution of disputes arising out of its recommendations

(j) Imposition of additional taxes in times of calamities and disasters

(37) "credit note" means a document issued by a registered person under sub-section (1) of section 34;

A credit note can be issued by a supplier only in the following circumstances:

(a) The taxable value shown in the invoice exceeds the taxable value of the supply;

(b) The tax charged in the invoice exceeds the tax payable on the supply;

(c) The goods supplied are returned by the recipient;

(d) The goods/ services are found to be deficient.

The following aspects need to be noted:

- Where there is no change in the taxable value/ tax amount, a credit note need not be issued unlike existing business practices;
- A credit note has to be issued by the supplier. A credit note issued by a recipient, say for accounting purposes, is not a relevant document for GST purposes;
- Once a credit note is issued, the details of the credit note should be declared by the supplier in the return of the month of the issue of credit note. However, if not declared in that month, it can be declared in any return prior to September of the year following the year in which the original tax invoice was issued (or filing of annual return, whichever is earlier);
- The supplier will not be permitted to claim reduction in the output tax liability if the incidence of tax and interest has been passed on to any person, or if the recipient fails to declare the details of the credit note in his returns;
- The issuance of credit note would not be relevant if the recipient treats the return of goods as an outward supply and raises a tax invoice in this regard.

(38) "debit note" means a document issued by a registered person under sub-section (3) of section 34;

A debit note should be issued by a supplier in the following circumstances:

(a) The taxable value shown in the invoice is lesser than the taxable value of the supply; or

(b) The tax charged in the invoice is less than the tax payable on the supply.

The following aspects need to be noted:

- Where there is no change in the taxable value/ tax amount, a debit note need not be issued;
- A debit note has to be issued by the supplier. A debit note issued by a recipient, say for accounting purposes, is not a relevant document for GST purposes;
- The details of the debit note have to be declared by the supplier in the return of the month of the issue of debit note;
- Debit note includes a supplementary invoice.

(39) "deemed exports" means such supplies of goods as may be notified under section 147;

Deemed exports are those supplies of goods that are notified as 'deemed exports' where:

(a) The goods supplied do not leave India;

(b) Payment for such supplies is received in Indian Rupees/ Convertible Foreign Exchange; and

(c) Such goods are manufactured in India.

The definition of 'deemed exports' under this Act is in line with the definition of 'Deemed Exports' under Chapter 07.01 of the Foreign Trade Policy 2015-20. 'Deemed Export' under the FTP 2015-20 covers supply of goods to EOU/STP/EHTP/BTP, supply of goods under advance authorisation etc. and hence provides for refund, drawback and advance authorisation to the supplier of goods. On the other hand, the relevance of 'deemed export' under the GST laws is limited to the grant of refund of taxes on supply of goods as 'deemed export'.

Therefore, a provision has been made under the Act to notify certain transactions as 'deemed export' to avoid situations where the persons might claim refund of taxes on 'deemed export' defined in the FTP 2015-20.

(40) "designated authority" means such authority as may be notified by the Board;

Currently, the term does not find a reference in the Act and will be notified by the Board from time to time.

(41) "document" includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000;

An electronic record, in terms of Section 2(t) of the Information Technology Act, 2000 means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche. A document includes both manual and electronic forms of records.

(42) "drawback" in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods;

This is relevant to understand the contours of refund under the GST laws. Refund of unutilized input tax credit is allowed in case of zero-rated supplies (including exports) and inverted tax rate structure. The law provides that refund of unutilized input tax credit will not be allowed if the supplier has availed drawback of such tax.

(43) "electronic cash ledger" means the electronic cash ledger referred to in sub-section (1) of section 49;

Electronic cash ledger means a cash ledger maintained in electronic form by each registered person. The amount deposited through various modes of payment (viz., internet banking, debit/ credit cards, NEFT/ RTGS or by any other mode), shall be credited to the electronic cash ledger. The amount available in this ledger can be used for the payment of:

(a) Tax

(b) Interest

(c) Penalty

(d) Fees or

(e) Any other amount payable.

(44) "electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;

Physical stores/ outlets that supply goods or services or both with the help of a digital network which is facilitated by a third party will fall within the scope of this definition. Electronic commerce is not to be understood as the activity of the operator of the digital network alone. Some experts believe that there is a certain amount of ambiguity as to whether a platform run by a person to supply own goods or services would also be covered in this definition.

(45) "electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

It includes every person who, directly or indirectly, owns, operates or manages a digital/ electronic facility or platform for supply of goods or services or both. There is a certain ambiguity as to whether persons engaged in supply of such goods or services on their own behalf would also be covered in this definition.

While an aggregator (Ola, Swiggy, etc.) only connects the customer with the supplier/ service provider, an e-commerce operator (Flipkart) facilitates the entire process of the supply of goods/ provision of service. Under the GST law, even aggregators would be covered under the definition of 'electronic commerce operator'.

The following aspects need to be noted:

- The threshold limits for registration would not apply and he would be required to obtain registration irrespective of his turnover;
- He is required to deduct an amount as tax out of the consideration paid or payable by him to the actual supplier of goods or services or both made through such operator;
- The law requires the operator to collect tax at source in respect of supplies where the consideration is collected by the electronic commerce operator. However, these provisions would not apply to a transaction where monies are received by the supplier on delivery (COD basis) and the delivery is made directly by the supplier.

(46) "electronic credit ledger" means the electronic credit ledger referred to in sub-section (2) of section 49;

Electronic credit ledger means the input tax credit register required to be maintained in an electronic form by each registered person. As a process, based on details of outward supplies filed by the suppliers, the electronic credit ledger of the recipient of goods/ services would be

auto populated in the GSTN under the categories matched, un-matched and provisional. The tax payer claiming input credits should review the same and accept the relevant ones for claiming input credit.

The electronic credit ledger will be debited with the amount of liability so adjusted against the input tax credit lying in the ledger, and will stand reduced to the extent of the claim of refund of unutilised input tax credit, if any.

The amount of CGST credit available in this ledger can be used only towards discharging the liability on account of output tax under CGST/ IGST/ UTGST law only. Similarly, the amount of credit of other GST taxes can be used only towards discharging the liability of taxes under the GST laws, and not towards payment of interest, penalty or other sums due.

It is relevant to note that since 'output tax' excludes tax payable under reverse charge basis, some experts are of the view that the tax payable under reverse charge basis must be discharged by cash only and credit cannot be utilized for discharging such a liability.

(47) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

The meaning of exempt supply is like the meaning assigned to it under the UTGST law with the exception that supplies that are partly exempted from tax under this Act will not be considered as 'exempt supply'. On the contrary, partially exempted supplies would be considered as 'exempt supplies' under the UTGST Act.

Exempt supplies comprise the following 3 types of supplies:

(a) Supplies taxable at a 'NIL' rate of tax;

(b) Supplies that are wholly or partially exempted from CGST or IGST, by way of a notification;

(c) Non-taxable supplies as defined under Section 2(78) – supplies that are not taxable under the Act (viz. alcoholic liquor for human consumption).

The following aspects need to be noted:

- Zero-rated supplies such as exports would not be treated as supplies taxable at 'NIL' rate of tax;
- Input tax credit attributable to exempt supplies will not be available for utilisation/ set-off.

(48) "existing law" means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;

This covers all the existing Central and State laws (along with the relevant notifications, orders, and regulations), relating to levy of tax on goods or services like Service Tax law,

Central Excise law, State VAT laws, etc. Therefore, laws that do not levy tax or duty on goods or services, such as the Indian Stamp Act, 1899, would not be covered here.

(49) "family" means, —

(i) the spouse and children of the person, and

(ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;

The relevance of the term 'family' is to:

- Understand whether two persons are related persons under the Act and the consequential valuation provisions applicable in case of related persons;
- Examine whether a person is an agriculturalist as defined under Section 2(7) of the Act.

(50) "fixed establishment" means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs;

The following three elements are critical to determine whether a place is a 'fixed establishment':

(a) Having a sufficient degree of permanence;

(b) Having a structure of human and technical resources; and

(c) Other than a registered place of business.

The following aspects need to be noted:

- A fixed establishment refers to a place of business which is not registered;
- The person should undertake supply of services or should receive and use services for own needs in such place;
- Not every temporary or interim location of a project site or transit-warehouse will become a fixed establishment of the taxable person.
- Temporary presence of staff in a place by way of a short visit to a place or so does not make that place a fixed establishment;
- E.g.: A service provider in the business of renting of immovable property services has his registered office at Bangalore and the property for rent along with an office is located in Chennai. In this case, the registered office will be the principal place of business and the property in Chennai along with the office will be regarded as a fixed establishment of the service provider.

(51) "Fund" means the Consumer Welfare Fund established under section 57;

This refers to the Consumer Welfare Fund constituted by the Government where the unutilized input tax credits of a person will be credited if an application to that effect has been made. The amount will be credited to the Fund only upon an order being passed by the Proper Officer after being satisfied that the amount claimed as refund is refundable.

(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

The following aspects need to be noted:

- Although various courts have held that the term 'goods' includes actionable claim under the VAT laws, as trade practice, actionable claims were kept outside the taxation net under the current laws. Now, the GST law seeks to change this understanding by including actionable claim in the definition of goods. Thus, under the GST laws, actionable claims would be reckoned as goods;
- The words 'but includes' is an exception to the "exclusion" of money and securities. In other words, if the actionable claim represents property that is money or securities, it can be held that such forms of actionable claims continue to be excluded;
- Actionable claim, other than lottery, betting and gambling will not be treated as supply of goods or services by virtue of Schedule III (Activities or transactions which shall be treated neither as a supply of goods nor a supply of services);
- Intangibles like DEPB license, copyright and carbon credit would continue to be covered under 'goods'.

(53) "Government" means the Central Government;

(54) "Goods and Services Tax (Compensation to States) Act" means the Goods and Services Tax (Compensation to States) Act, 2017;

The Goods and Services Tax (Compensation to States) Act (for brevity "Compensation Act") provides for compensation to the States for the loss of revenue arising due to implementation of GST for a period of 5 years from the said date of implementation. The cess paid on the supply of goods or services will be available as credit for utilization towards payment of said cess on outward supply of goods and services on which such cess is leviable.

(55) "goods and services tax practitioner" means any person who has been approved under section 48 to act as such practitioner;

A goods and service tax practitioner (GST practitioner) is a person who can undertake the following activities on behalf of a registered person (if so authorized):

(a) Furnish details of outward and inward supplies;

(b) Furnish monthly, quarterly, annual or final return;

(c) Make deposits in the Electronic Credit Ledger;

(d) File a claim for refund;

(e) File an application for amendment/ cancellation of registration.

The following aspects need to be noted:

- A person desirous of being enrolled as a GST Practitioner should make an application in Form GST PCT-1 and satisfy the conditions required;

- The GST practitioner is required to affix his digital signature on the statements prepared by him/ electronically verify using his credentials;
- The responsibility of correctness of the details furnished will lie on the registered person only.

(56) "India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters;

The definition of India extends not only to the landmass, but also to the territorial waters and the air space above the Indian territory and territorial waters. Hence, all the supplies made in such areas will be treated as supplies made in India.

E.g.: Musical performance by an artist on board a ship sailing from Chennai to Vishakhapatnam, food supplied on an aircraft flying from Delhi to Trivandrum.

(57) "Integrated Goods and Services Tax Act" means the Integrated Goods and Services Tax Act, 2017;

It refers to the Act under which provides for principles to determine what is an inter-State or intra-State supply tax, and levy of tax on inter-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption).

(58) "integrated tax" means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act;

Tax levied under the IGST Act is referred to as "Integrated tax" as opposed to "IGST" as used in the model GST laws. It refers to the tax charged under the IGST Act on inter-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 40% and will be notified by the Central Government based on the recommendation of the Council.

(59) "input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

The term "input" refers to goods as defined under the GST law, and excludes capital goods. Unlike the definitions given to the term "capital goods" in the existing laws such as Central Excise, VAT, etc., the term is given a very simple meaning in the GST law.

It is sufficient for any goods which are used or intended for use in the course or furtherance of business to be capitalised in the books of account, for them to be treated as capital goods under GST. Accordingly, if a person who is engaged in the sale of laptops capitalises one laptop in his books of account, and such laptop is for business-use, (say for invoicing purposes), that laptop shall be treated as capital goods under GST law as well.

The second condition for goods to be treated as inputs, is that they must be used or intended to be used by the person who has inwarded (say by way of purchase, exchange, etc.) those

goods '*in the course or furtherance of business*'. This phrase encompasses a wide range of functions within the business.

- The term "business" as defined under the GST law includes any activity or transaction which may be connected, or incidental or ancillary to the trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity.
- There is neither a requirement of continuity nor frequency of such activities or transactions for them to be regarded as 'business'.
- The law poses no restriction that the goods must be used on the shop floor, or that they must be supplied as such/ as part of other goods/ services. It would be sufficient if the goods are used in the course of business, of for furthering the business.
- The term 'course of business' is one that can be stretched beyond the boundaries consolidating activities that have direct nexus to outward supply. What is usually done in the ordinary routine of a business by its management is said to be done in the "course of business". Moreover, the term "ordinary" is missing before "course" in the phrase.
- From the above, it can be inferred that the purchase/ inward supply of goods need not be a regular activity, and may even be a one-time procurement. This is further clarified with the other phrase "furtherance of business", which has not been of use in the indirect taxes thus far.
- "Furtherance of business" is a new term, and an entirely new concept, that has been introduced with GST.

Additionally, there is no other condition attached to the term "input", especially in relation to the outward supply. Consequently, a person engaged in supplying services would also be entitled to treat the goods inwarded as "inputs", where the conditions of not being capital goods, and the usage in the course or furtherance of business, Thus, laptops procured by a supplier of pure services which are meant for use of the employees for business making reports, will be eligible to be treated as "inputs" for such a person, and consequently, the taxes paid on such goods will be available as credit to the service provider, on meeting other conditions mandated for claiming credit.

Further, the law provides a flexibility for this purpose by inserting the words "or intended to be used" before "in the course…". By this, the law secures the meaning of the term "input" even for cases where goods have been purchased but, are yet to be used in the business. Thus, the conditions of *ready-to-use* and *put-to-use* would not be relevant for considering goods as "inputs", unless the condition takes route through rules/ other sections. However, no such conditions appear even for claiming input tax credit.

(60) "input service" means any service used or intended to be used by a supplier in the course or furtherance of business;

Any services that is used or intended to be used by a supplier of goods or services, or both, in the course or furtherance of business would be treated as "input service".

The meaning of the term "service" under the GST law is very vast to include everything that is not goods, barring securities, and monies that are do not amount to activity relating to the use of money or conversion of money. Therefore, anything received by a person who is a supplier, which is not goods, and is neither securities nor money as such, would be treated as 'input service', so long as it is used or meant to be used in the course or furtherance of business.

Unlike the existing law, there is no requirement for it to have direct nexus with the outward supply. In other words, the service received may not be directly linked to the outward supply of the supplier receiving the service, and the outward supply may be goods or services. Regardless of the outward supply, the service received would qualify as "input service" to him, when the same is used in the course or furtherance of business. Therefore, a retailer who receives housekeeping services of the business premised will be eligible to treat the services as 'input services' given that such services are received in due course of business.

Further, while the existing law required that the services must be received only up to the place of removal for them to qualify as "input services", there is no such condition attached to the term under GST, where such services are received in the course or furtherance of business. This means that goods transportation services availed by the supplier, would qualify as input services to him, even if the transportation is up to the place of delivery to the recipient, say the factory of the recipient, although the transportation does not add value to the goods itself, but adds value to the supply made by him.

(61) "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;

The concept of input service distributor exists even in the current service tax law. This has been borrowed into GST, entitling a person who is registered as an Input Service Distributor (ISD) to distribute the credit in respect of input services (and not inputs) received in its name. Given that services are intangible, it is not practicable to trace every service to the ultimate recipient of the service, as is distinguishable in case of goods, justifying the need for a distributor to services.

Generally, the head office of the person, or the corporate office, by whatever name called, would be the location to which the services would be billed. However, there is no implication by law that an ISD must be the head office. Further, the law also places no limit on the number of offices that can be registered as ISD. Therefore, a single company may choose to have multiple regional offices based on its business requirements.

To distribute the credit of input services, the ISD would be required to follow the manner prescribed by the rules, including:

- Issue of an ISD invoice to each recipient of credit on every distribution.
- Recipients of credit to are those taxable persons to whom it is attributable (whether or

not they are registered), being persons having the same PAN (as issued under the Income Tax Law) as that of the ISD.

- The credit of integrated tax should be distributed as integrated tax irrespective of the location of the ISD, and so also:
  - Where the ISD is located in a State other than that of the recipient of credit, the aggregate of Central tax, State tax and Union territory tax, as integrated tax.
  - Where the ISD is located in the same State as that of the recipient, the Central tax and State tax (or Union territory tax) should be distributed as the Central tax and State tax (or Union territory tax), respectively.
- Each type of tax must be distributed through a separate ISD invoice. However, there is no requirement to issue ISD invoices at an invoice-level (received from the supplier of the service).

(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

(a) the integrated goods and services tax charged on import of goods;

(b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

(c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;

(d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

(e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

but does not include the tax paid under the composition levy;

From the opening of the definition, it can be understood that input tax can arise only in respect of registered persons, and the tax is only available on supplies *made to him*. Therefore, no tax paid on outward supplies can ever qualify as input tax to the person making the supply (who may or may not be registered), and shall only be treated as 'input tax' by the person receiving the supplies.

The law also makes it amply clear that input tax is to a registration, and cannot be loosely associated with various GST registrations of the single legal person.

Further, for 'input tax', the law makes no distinction between Central tax, State tax, Union territory tax and integrated tax.

The law specifically provides certain inclusions and an exclusion to clarify the scope of the term:

- The specific inclusions are of two types, i.e., the integrated tax applicable on import of goods (in lieu of the presently applicable CVD and SAD), and the taxes payable on

reverse charge basis on account of supplies being those supplies that are notified in this regard, or on account of being inwarded from unregistered persons. From the language used, it must be understood that these inclusions are not limited to those that have been discharged, on the premise that the law used the words "charged" or "taxable" and not "paid".

- While it is clear that composition suppliers will not be entitled to collect taxes, from this definition, it can be inferred that the amounts paid by composition in lieu of tax, cannot, in turn, be treated as input tax either for the composition supplier or for the recipient of the supplies.

Further, the GST Compensation law reserves right to levy cess on certain supplies. However, this cannot be treated as input tax for the purposes of GST. Although the GST Compensation law provides that the provisions of input tax would apply *mutatis mutandis* to cess, it categorically specifies that the input credit of cess can only be utilised for discharging the liability on such cess.

(63) "input tax credit" means the credit of input tax;

For a tax to qualify as "input tax credit", it must first be "input tax". The law creates a separate terminology for this purpose as all input tax would not qualify as credit. Credit of input tax would be available subject to specific conditions and restrictions, and to specific persons being registered persons.

(64) "intra-State supply of goods" shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;

The principles for determining a supply as an intra-State supply are Provided in the IGST law. Drawing reference to the relevant Section, every supply of goods, where the location of the supplier of the goods and the place of supply as determined under Section 10 of the Act, are in the same State (or same Union Territory), would be an intra-State supply of such goods. Accordingly, an import or export of goods can never be an intra-State supply.

Every taxable supply that is an intra-State supply shall be liable to both Central tax and the respective State tax (or Union territory tax), unless otherwise exempted.

The 'place of supply' referred to in this regard is a legal terminology and should not be understood for the colloquial usage, if any. Section 10 of the IGST Act provides situation-specific conditions for determining the 'place of supply'.

(65) "intra-State supply of services" shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;

As in case of goods, where the location of the supplier of the service and the place of supply as determined under Section 12 of the IGST Act, are in the same State (or same Union Territory), the supply would be an intra-State supply of such services.

Every taxable supply of service that is an intra-State supply shall be liable to both central tax and the respective State tax (or Union territory tax), unless otherwise exempted. The 'place of

supply' should be determined in accordance with Section 12 or Section 13, as the case may be, of the IGST Act provides situation-specific conditions for determining the 'place of supply'.

Note: Section 13 of the IGST Act specifies the conditions for determining place of supply in cases where either the location of the supplier or the location of the recipient (or both) are located outside India.

(66) "invoice" or "tax invoice" means the tax invoice referred to in section 31;

On a plain reading of the law, it appears that the terms "invoice" and "tax invoice" have been used inter-changeably to refer to that document that is prescribed by law, as a document that shall be issued by the registered person on making taxable supplies. The tax invoice should contain all the prescribed details such as the description of the goods, quantity, value and tax charged on the supply.

- In respect of goods: A tax invoice can be issued at or before the time of removal of the goods for making the supply, where the supply can be made only on moving the goods (either by the supplier or by the recipient, or any other person).
  - However, where the supply to the recipient does not involve movement of the goods, the tax invoice would be due at the time of delivery or making the goods available to the recipient. It is not necessary that every supply requires movement of goods on the basis that all goods are movable in nature.
  - The time of removal would matter only in cases where the removal of goods and the movement of goods is by virtue of the supply.
  - Consider the case of sale on approval basis. Goods would be removed at a certain time, and may be delivered to the location of the recipient. However, it is not known at the time of removal, whether the transaction results in a supply. Therefore, the time of confirmation by the recipient that he wishes to retain the goods would be the due date for issuing the tax invoice.
  - The Government is also empowered to notify certain categories of supplies in respect of which it can prescribe a separate time limit for issuance of tax invoice.
- In respect of services: A tax invoice for supplying services should be issued within 30 days from the date of supply of the taxable service.
  - However, the Government is empowered to notify certain categories of services wherein any other document relatable to the supply would be treated as the tax invoice, or for which no tax invoice is required to be issued at all.

The provisions of Section 31 of the CGST Act also provide for invoices or other documents such as bill of supply, payment voucher, receipt voucher, etc. in for specific situations.

(67) "inward supply" in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration;

Inward supplies may be of goods or of services, or of both. The key in this definition is to note that 'inward supply' is not necessarily a supply and has a larger scope by covering 'receipt' of goods or services.

It may be questioned as to whether an inward supply is not particular to a registration, or whether an inward supply can be associated with any of the registered persons having the same pan, on the premise that it is in relation to "a person". However, that would not be the intent of the law; it is to enable correlation with a person, whether or not he is a taxable person. In other words, reference to inward supply may be in relation to any person, whether he is registered, or unregistered taxable person, or person not liable to tax.

(68) "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly;

To start with, the expression "job work" refers to a "treatment" or "process", which is undertaken by one person, who may or may not be registered, to another registered person.

While treatment and processing are commonly understood as services, there is no implication that job work is purely services, or that goods would not be used for such treatment or processing. However, Schedule II of the CGST Act which specifies activities to be treated as supply of goods or supply of services, inter alia provides that any treatment or process which is applied to another person's goods is a supply of services. Such a deeming fiction in respect of job work is given effect to, based on the primary objective of any job work, which is to provide a service.

The following aspects need to be noted:

- Capital goods may be sent for job work, or for the purpose of carrying out the treatment or process.
- A job worker is free to effect inward supplies on his own account for carrying out the job work. The law does not require that goods applied for the treatment or process must also be sent by the registered person on whose goods the job work is undertaken.
- As regards the job worker per se, the law makes no insistence that such person must be a registered person.
- The law requires that the treatment or process undertaken by the job worker must be on goods belonging to "*another*" registered person.
    - From the usage of the term "another" before "registered person", it is clear that the law intends to segregate the units being different persons, or different registrations.
    - The reference to the principal is made by using "another registered person" and not "another person".
    - It may be safely be understood that, if one unit of a company supplies goods for further processing to another unit of the same company, having a different registration from that of the supplying unit, the unit undertaking the processing activity can be treated as a job worker.

(69) "local authority" means—

(a) a "Panchayat" as defined in clause (d) of article 243 of the Constitution;

(b) a "Municipality" as defined in clause (e) of article 243P of the Constitution;

(c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;

(d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;

(e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

(f) a Development Board constituted under article 371 of the Constitution; or

(g) a Regional Council constituted under article 371A of the Constitution;

A 'local authority' is also a 'person' for the GST law. A local authority would enjoy the same treatment as is received by a 'Government' such as in the case of supplies that shall be treated as neither a supply of goods nor a supply of services, requirement to deduct tax at source on supplies made to it, etc.

(70) "location of the recipient of services" means, —

(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient;

Given that services are not tangible, the determination of the location of the recipient of service could result in complications. The 'location of the recipient of services' is essential to determine whether the supply is an inter-State or an intra-State supply, as such location is the residuary clause for determining the place of supply of services.

Broadly, the meaning given to the phrase "location of the recipient of services" is oriented towards determining the place of supply of the services. The most relatable location of the recipient can be determined in the following order – if the place of supply of the service happens to be:

(a) a 'place of business' which is a registered place of business, such place;

(b) a 'place' which is a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources), such fixed establishment;

(c) at multiple 'places' which may include places of business or fixed establishments, that one place to which the supply is most directly attributable;

(d) a place that cannot be identified from the above three clause, the usual location of the recipient (address where the person is legally registered/ constituted in case of recipients other than individuals).

Note: The definition uses the term "place", and not the phrase "State or Union Territory". Therefore, a view may be taken that the location of the recipient of the service could be determined under the residuary clause (i.e., usual place of residence), merely because it is received in a place of business with is neither registered as an additional place of business, nor a fixed establishment, although the place of receipt is in the same State as another place of business which is registered.

E.g.: Event management services received in Mangalore by M/s. ABC Ltd. The registered office of the company is in Mumbai (also having a GST registration), and has a branch office in Bangalore which is registered under GST. Mangalore location neither has an additional place of business, nor a fixed establishment. In such a case, a view may be taken that the location of the recipient of service is the Mumbai office, and not the Bangalore office, although Bangalore and Mangalore are in the same State.

(71) "location of the supplier of services" means, —

(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier;

The determination of the location of the supplier of services is equally complicated, as is in case of the recipient. The 'location of the supplier of services' is principally essential to determine whether the supply is an inter-State or an intra-State supply (i.e., where location of supplier and place of supply are in the same State or Union Territory, the supply would be an intra-State supply, and will be an inter-State supply in any other case).

(72) "manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;

The meaning of the term "manufacture" comes with a great deal of significance in the current indirect tax regime, given that chargeability excise duty relies solely on whether an activity results in manufacture. However, in the GST regime, the triggering taxable event is a "supply" and tax is leviable whether or not the supply followed 'manufacture' of goods. Hence, the term loses its significance in the GST regime. However, a definition has been Provided as references to this term are inadvertently essential even in the GST law, listed below:

- Composition levy: The composition tax rate in case of manufacturers is different as compared to that of suppliers not being manufacturers (expected cap rate of 2% as against 1%, respectively, being the aggregate of central and State tax/ Union Territory tax). Further, manufacturers of certain notified goods would not be eligible to exercise the option to avail the benefit of composition scheme. Such a restriction is however, not placed on other classes of persons, say traders of the same notified goods.
- Concept of deemed exports: One of the pre-conditions for any such supply to qualify as deemed export is that the goods in question must be manufactured in India. Therefore, even where the goods are of the nature that are notified by the Government as goods that qualify as "deemed exports" on meeting certain conditions, if such goods are not manufactured in India (or, any processing performed on any imported goods does not result in manufacture), they cannot enjoy the benefit of the deeming fiction.
- Maintenance of accounts: A manufacturer shall be required to maintain a record of production/ manufacture of goods, in addition to recording the details of inward and outward supplies.

(73) "market value" shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related;

This term finds reference only in the provisions in relation confiscation of goods or conveyance arising on account of contravention of the provisions of the law (say supplies made by a taxable person who has failed to obtain registration, etc.). The law provides that the owner of the goods will be given an option to pay a fine, not exceeding the market value of the goods in question, to safeguard his goods or conveyance from being confiscated.

Goods or services of like kind and quality means *any other* goods or services ("comparables") made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services in question, is the same as, or closely or substantially resembles, that of the comparables.

The meaning of the term 'related', must be understood from the definition Provided in respect of 'related persons' under Section 15.

(74) "mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Illustration: – A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;

When two (or more) goods, or two or more services, or a combination of goods and services, that each have individual identity and can be supplied separately, are deliberately supplied conjointly for a single consolidated price, the supply would be treated as a mixed supply.

Most importantly, such a supply should not qualify as a composite supply, for it to be treated as a mixed supply, i.e., in case of a mixed supply:

- The two or more supplies are not naturally bundled and supplied conjointly in the ordinary course of business;
- The principal supply cannot be identified – more than one of the supplies form the "predominant element" of the supply.

Where the conjoint supply is neither a composite supply, nor supplied for a single price, the two or more supplies would be treated as individual supplies, and not as a 'mixed supply'.

Illustrations for consideration:

(a) Supply of toothpaste, brush, plastic container for the two: The three goods can be said to be naturally bundled and supplied in the ordinary course of business. While the plastic container is ancillary to the supply, both toothbrush and toothpaste could be the predominant elements of the supply. In a composite supply, there can be only one principal supply and therefore, this supply would be a mixed supply.

(b) Supply of laptop and printer: Although a printer is used for the purpose of printing, the commands for which can be given through the laptop, the two goods are not naturally bundled and supplied conjointly in the ordinary course of business. Therefore, this supply is a mixed supply.

(c) Supply of lectures in a coaching centre and monthly excursions such as trekking, etc.: The two services are not naturally bundled in the ordinary course of business. Therefore, this supply is a mixed supply.

The tax rates applicable in case of mixed supply would be the rate of tax attributable to that one supply (goods, or services) which suffers the highest rate of tax from amongst the supplies forming part of the mixed supply. Therefore, a mechanism for separating the supplies could be examined, in case of mixed supplies where tax rates are differing.

(75) "money" means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value;

The meaning attributed to this term in the GST law is a polished adoption of the definition Provided under the Service Tax law. Additionally, money as defined in the GST law includes any foreign currency as well. The significance of this term is that it is out of the scope of taxation under GST. Money would neither be goods nor services under the GST law. However, there is no exemption given to activities relating to the use of money or its conversion. So also, sale of money, say a coin collection set of 100 coins, would be chargeable to tax, as such coins are held for their numismatic value.

It is also interesting to note that this term is no longer relevant for understanding whether a

transaction is for consideration, as the meaning assigned to the term 'consideration' under the GST law may be in money or in another form.

(76) "motor vehicle" shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988;

Section 2(28) reads as under:

"motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres.

From this, it can be understood that all vehicles such as cars, scooters, bikes, auto-rickshaws, trucks, buses, tempo-travellers, etc. that are meant for usage on roads will be covered within the meaning of 'motor vehicles'. The implication of this definition is that input tax credit is not available in respect of inward supply of motor vehicles, unless they are used for specific purposes (being transportation of goods, or for making taxable supplies of further supply of such vehicles, or supplying passenger transportation services or for imparting training in relation to such vehicles).

(77) "non-resident taxable person" means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India;

The meaning of the term 'non-resident taxable person' covers all person who undertake transactions involving supply of goods or services or both, whether or not such supplies are taxable, so long as such person neither has a fixed place of business nor residence in India.

Every such person who intends to affect any taxable supplies under the GST law, should compulsorily obtain registration under the GST law before commencing business, irrespective of the turnover during the year. The application for registration shall be made at least 5 days prior to the commencement of business.

However, a person who does not undertake transactions involving any supplies "occasionally", he would not be treated as a non-resident taxable person. The law does not define the frequency implied by the expression "occasionally". Therefore, where there is a reasonable frequency of occurrence of supplies in India, it must be construed as transactions occurring occasionally.

Note: This definition is adequately large to also include foreigners effecting supplies outside India. The law makes no specification any requirement that the "occasional" undertaking of supplies must be in India. This could make room for GST officers to question such foreign entities/ persons as to why they should not take registration under the GST law, although the intent of the law is only to cover those persons who occasionally undertaking transactions involving supplies in India.

(78) "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

A transaction must be a 'supply' as defined under the GST law, to qualify as a non-taxable supply under the GST law.

The following aspects need to be noted:

- Stock transfers to unit within the State for which no separate registration is obtained, which does not qualify as a 'supply' as defined under Section 7 of the CGST Act, cannot be said to be a non-taxable supply.
- Transactions specified in Schedule III which are treated as neither a supply of goods nor a supply of services, would also not qualify as non-taxable supplies.
- Supplies that enjoy the benefit of being wholly exempted from taxes, nil-rated supplies and zero-rated supplies are also not covered under the umbrella of 'non-taxable supplies' given that the goods or services are in fact liable to tax, and such tax is exempted by virtue of an exemption notification, or the tax rate is nil.
- Only those supplies that are excluded from the scope of taxation under GST are covered by this definition – i.e., alcoholic liquor for human consumption.

(79) "non-taxable territory" means the territory which is outside the taxable territory;

A taxable territory means the territory to which the provisions of the GST law applies. Accordingly, in case of CGST law, the taxable territory would cover all locations covered under the extent of the law – i.e., whole of India except the State of Jammu and Kashmir.

- Accordingly, locations outside India, and the State of Jammu and Kashmir would be considered as non-taxable territory, being the territory outside the taxable territory.
- Similarly, for the State GST law, non-taxable territory would cover all those locations where the provisions of the particular State GST law would not apply. For instance, for the purpose of the State GST law of Maharashtra, all other States and Union Territories of India, and locations outside India, would be non-taxable territory.

In this regard, it would be relevant to understand the geographical extent covered within the meaning of the term 'India' – *refer analysis of Section 2(56)*.

Supply taking place in a 'non-taxable territory' would be outside the jurisdiction for imposing any GST. High sea sales (first supply) are not liable to GST because goods that involve movement are located outside the taxable territory even though the recipient may be inside.

(80) "notification" means a notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;

The Central Government and the State Governments are empowered to issue notifications to give effect to certain provisions such as goods and services that would be liable to tax on reverse charge basis, supplies that are exempted from tax, supply of goods that shall be treated as supply of services, etc. For a notification to be valid under GST, it must be

published in the Official Gazette of India, as published by the Government of India's Department of Publication, Ministry of Urban Development.

Every notification published in the Official Gazette will come into force from the date of such publication, unless another date is specified for this purpose, in the notification.

(81) "other territory" includes territories other than those comprising in a State and those referred to in sub-clauses (a) to (e) of clause (114);

By definition, the expression 'other territory' is inclusive of all territories that do not form part of any State (including the two Union Territories with Legislature being Delhi and Puducherry), and excludes the Union Territories (i.e., the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, and Chandigarh).

All territories that fall into the ambit of 'other territory' as defined above would also form part of the meaning of the term 'Union territory' as defined under Section 2(114), to leave no territory that is claimed by any of the States or Union Territories, outside the scope of taxation under GST, so long as such territory is in India. Although there is no specific explanation that the extent of the term should be limited to the territory of India, we should not consider locations outside India to also fall into the scope of 'other territory' defined above, as I would defeat the purpose of law.

(82) "output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

The output tax chargeable on intra-State taxable supply of goods or services can be summarised as under:

Type of Supply	Output tax	Reference
Supplies within a State (or UT with Legislature)	CGST + Specific SGST (intra-State supply)	Section 8(1) and 8(2) of the IGST Act
Supplies within a UT without Legislature	CGST + UTGST (intra-State supply)	Section 8(1) and 8(2) of the IGST Act

The following aspects need to be noted:

- While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the law from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but who have failed to obtain registration.
- The amount covered under this term is the amount of tax that is 'chargeable', and not the amount that is 'charged'. Therefore, in case a person wrongly charges tax, or charges an excess rate of tax, as compared to the applicable tax rate, such excess would not qualify as output tax.

- Some experts are of the view that taxes payable by recipient of supply, on account of making inward supplies of such categories of supply as are notified for the purpose of reverse chargeability of tax, or making inward supplies from unregistered persons, would also be out of the scope of 'output tax'.
- The implication of the exclusions mentioned above is that the input tax credit cannot be utilised for making payment of any amount that does not qualify as output tax. Discharge of liability in such cases has to be by way of cash payments (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).
- The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the tax paid on such supplies as output tax in the hands of the supplier.

(83) "outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business;

For any transaction or activity to qualify as an outward supply, it must first be a 'supply' in terms of the GST law, unlike inward supplies, which could merely be receipts, not amounting to supply. Further, an outward supply is closely associated with a 'taxable person' being, a unit of a person that has, or is required to have, a separate registration.

The phrase 'outward supply' can be applied to a supply only when such supply is made in the course or furtherance of business. Say, for instance, business assets are put to personal use. In such a case, even if the transaction is deemed to be a supply (made without consideration), it cannot be treated as an 'outward supply', since the application of the business asset for personal use was neither in the course nor furtherance of business.

The following aspects need to be noted:

- Supplies not qualifying as outward supplies would also be included for the purpose of computing the 'aggregate turnover';
- In case of a composition supplier, where he engages with a recipient outside the State, and if the transaction does not result in an 'outward supply', (say, sending goods for job work outside the State), the conditions imposed on him as a composition supplier would not be violated (i.e., making inter-State outward supplies);
- Details of supplies on which tax is payable, but which do not amount to 'outward supplies' would also have to be declared in the return for outward supplies (GSTR-1);
- By treating goods or services agreed to be suppled as 'outward supply', the law authoresses imposition of GST on advance payments.

(84) "person" includes—

(a) an individual;

(b) a Hindu Undivided Family;

(c) a company;

(d) a firm;

(e) a Limited Liability Partnership;

(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;

(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;

(h) any body corporate incorporated by or under the laws of a country outside India;

(i) a co-operative society registered under any law relating to co-operative societies;

(j) a local authority;

(k) Central Government or a State Government;

(l) society as defined under the Societies Registration Act, 1860;

(m) trust; and

(n) every artificial juridical person, not falling within any of the above;

This definition is to be read along with the fiction in Section 2(107) where a 'taxable person' is understood to be sub-units of a person such that transactions between two taxable persons is also a taxable supply. Every 'person' is understood to have a separate identity, under the GST law.

For instance, a trust set up by a company will be treated as a separate person from the company, or a limited liability partnership holding all the shares of a company will be treated as a separate person from the company.

(85) "place of business" includes—

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called;

The inclusive nature of the definition indicates that the places or locations listed in the definition are illustrative and not exhaustive. From the three clauses of such illustrative locations, it can be seen that each clause makes a reference to 'taxable person'. Therefore, place of business should be understood as a term that is specific to each taxable person, having (or requiring) distinct registrations. Say, in the case of a company having operations across 10 cities in two States, the set of cities being the places of business for one State would be mutually exclusive from that of the other.

Below are other implications in relation to place of business:

- Registration of such places as additional place of business – although there is no explicit requirement under law to declare all places of business as additional places of business. This would facilitate transportation of goods between places of business, or from the job worker's premises to any of the places of business, which can be supported with the delivery challan, the details of which would form part of Form Waybill;
- Maintenance of separate accounts in relation to each place of business such as details of production or manufacture of goods, inward and outward supply, stock records of goods, input tax credit availed, output tax payable and paid;
- Departmental audit can be carried out in respect of registered persons at any of its places of business; this apart, authorised officers can demand access to any such places to inspect books, documents, computers, etc.

(86) "place of supply" means the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act;

Chapter V of the IGST Act provides for determination of the 'place of supply' in respect of any supply of goods or supply of services. This expression has the utmost significance in determining the nature of tax payable on a supply. Simply put, a supply shall be intra-State (liable to CGST, SGST) where the location of the supplier and place of supply as determined under the said Chapter are in the same State (or Union Territory), and neither the supplier nor the recipient are SEZ units/ developers. In any other case, the supply would be treated as an inter-State supply, liable to IGST.

Chapter V deals with determination of 'place of supply' under the following brackets:

(a) Goods, other than supply of goods imported into, or exported from India.

(b) Goods imported into, or exported from India.

(c) Services where location of supplier and recipient is in India.

(d) Services where location of supplier or location of recipient is outside India.

(e) Online information and database access or retrieval services (OIADARS) Provided by a person located in a non-taxable territory to a non-taxable online recipient (i.e., Government, governmental or local authorities, individuals, other persons receiving such services for purpose other than commerce, industry, business, profession, but located in taxable territory).

(87) "prescribed" means prescribed by rules made under this Act on the recommendations of the Council;

The law empowers the Government to issue rules to facilitate the implementation of the provisions of the Act, or to carry out the objects of the law. Whenever the term 'prescribed' is used in the Act, one must draw reference to the relevant rules that may be issued in respect thereof.

(88) "principal" means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;

The law uses the term 'principal' in the context of two relationships – one in case of the principal and job worker, and the other in case of principal and agent. However, in the provisions relating to job work, the term has a separate meaning, the reference of which is separately Provided for. Therefore, one must understand the meaning of the term 'principal' wherever else the term finds a mention, as a reference to the principal-agent relationship.

Agent of the principal is one who carries on the business of supply or receipt of goods or services or both on behalf of another person, being the principal. The agent functions as an extended arm of the principal and therefore, supplies (inward and outward) effected by an agent on behalf of the principal will be treated as supplies effected by the principal.

(89) "principal place of business" means the place of business specified as the principal place of business in the certificate of registration;

The principal place of business is could be any of the places of business of a person, which is located in the same State in which the registration is intended to be obtained. Generally, this location would be the head office or the corporate office or the billing address of the person, or the address registered under a statute such as the Companies Act, or as specified in the partnership deed. Once a location is chosen, it would be used for correspondences by the GST officers, and should therefore be mentioned on the certificate of registration.

The law requires that the books of account shall be maintained at the principal place of business, or may be maintained electronically, on fulfilling the conditions prescribed by the rules.

(90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

The concept of 'a principal supply' emerges only for determining whether a supply is a composite supply or not, and where it is a composite supply, the rate of tax applicable for the composite supply.

Principal supply recognises two or more supplies, and arranges them in a two-step hierarchy – a single predominant supply and the ancillary supply(ies).

(a) Supply of laptop and a carry case – In this case, the case only adds value to the supply of laptop and therefore, the case would be ancillary while the laptop comprises the predominant element of the supply. Even where the brand of the case is not the same as that of the laptop, and the supplier can establish that the case is naturally bundled with the laptop in the ordinary course of his business, the supply can be treated as a composite supply.

(b) Supply of equipment and installation/ commissioning of the same – While the recipient actually purchases the equipment, making the equipment the principal supply, the installation makes the equipment usable by the recipient. Even if there is a separate

charge for the installation of the equipment, since the service is naturally bundled and Provided in the ordinary course of business, the supply would be a composite supply.

(c) Supply of repair services of laptop with parts – As such, it is the skill and expertise of the supplier that makes the laptop function as desired. Whether replacement is necessary or a mere resetting of the existing parts restores the functionality of the laptop is not known to the customer. Where the object of the contract is unknown to the customer, that object cannot be the purpose of the contract. The only object that is known to the customer is the 'repair service' which makes it the predominant object of supply. This would be the position even if the cost of the parts replaced is higher than the cost of service. *However, this theory can apply only where such a replacement is done in the ordinary course of the business of repairing laptops, and such a replacement is naturally bundled with the repair service.*

(91) "proper officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

The Government would appoint persons to act as officers of specified classes. However, all such officers would not be 'proper officers' under the GST law. It may be understood that the term 'proper officer' is to a case or a category of cases. Therefore, a Commissioner having jurisdiction in respect of a taxable person, may authorise certain officers of the GST law to act as proper officer in respect of such taxable person.

Further, the officers appointed under the SGST and UTGST laws are authorised to be the proper officers for the purposes of the CGST law.

(92) "quarter" shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year;

In terms of the definition Provided above, we can understand that the following would be the four quarters for the purposes of GST:

(a) January, February and March;

(b) April, May and June;

(c) July, August and September; and

(d) October, November and December.

For any reason, whatsoever, the term 'quarter' cannot be associated with three consecutive months other than those mentioned above. For instance, a composition supplier is required to furnish returns on a quarterly basis – this does not entitle him to furnish a return for the periods June, July and August, even if he obtained registration only on 29th June.

(93) "recipient" of supply of goods or services or both, means—

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

In transactions involving more than 2 persons, it could result in an ambiguity as to who should be treated as the 'recipient' for filing the return of inward supplies, paying tax on reverse charge basis, determining whether the relationship with the supplier will impact valuation, etc. In this regard, the definition specified the following:

- Where consideration payable: The recipient of supply and place of supply do not affect one another where a consideration is payable for the supply. Irrespective of the place of supply, the person who is liable for payment of consideration would be the recipient. This would hold good even in the case where the supply is made to person on the instruction of another – i.e., even if the goods are received by a person, if the person on whose instruction the goods are delivered is the person liable to pay consideration, such person giving the instruction would be the recipient.
- Where no consideration payable:
  - Goods: The actual receiver of the goods would be the recipient. Say, for instance, a supplier keeps a counter in the premises of another company for issuing free samples to the employees of the company. The recipients would be the employees, and not the company permitting the use of its premises.
  - Services: The actual receiver of the services would be the recipient.
- The definition of 'consideration' in Section 2(31) clearly provides that the consideration can from the recipient or by any other person. However, the law provides that the person paying the consideration shall be treated as the 'recipient'. It appears that the term 'recipient' referred to in Section 2(31) should be read as 'receiver of the supply', and not 'recipient' as defined above.
- In case an agent is appointed by the principal, such agent may also be treated as the recipient of the goods or services or both.

(94) "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number;

The law makes several references to this term. The most significant implication of this reference is that it is confined to a registration of a person, who may have (or is required to have) more than one registration.

Every person/ unit of a person requiring registration, i.e., every taxable person, will be treated as a registered person the moment registration is granted to it, excluding cases where a Unique Identity Number ("UIN") is granted.

A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other persons who are notified by the Commissioner shall be granted a UIN for certain purposes – such as for refund of taxes on the notified supplies of goods or services or both received by them.

(95) "regulations" means the regulations made by the Board under this Act on the recommendations of the Council;

The Central Board of Excise and Customs* constituted under the Central Boards of Revenue Act, 1963 ("Board") is empowered to make regulations consistent with the Act and the rules made under the Act, to carry out the provisions of the Act.

Every regulation made by the Board under the Act would be laid after it is made or issued, before each House of Parliament, while it is in session, at the earliest. Where both Houses agree in making any modification, or that the regulation should not be made, the regulation shall have effect only in such modified form or be of no effect from such date (i.e., no retrospective effect of the modifications/ rejection by the Houses of the Parliament).

**Note: The name of the Board may be altered to Central Board of Indirect Taxes.*

(96) "removal'' in relation to goods, means—

(a) despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier; or

(b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;

The term "removal'' is relevant on in the case of supply of goods. Under the Central Excise Rules, 2002, the term 'removal' also included the act of issue of the goods for captive consumption. However, under the GST law, there must be a supplier, and a recipient who is distinct from the supplier. Therefore, removal of goods used within the factory would not constitute an outward supply (while input tax credit restriction implications could arise).

Under the GST law, the significance of this term arises for raising invoice, which in turn, is an element essential to determine the time of supply. The law clearly specifies that the removal need not be effected by the supplier himself, but could also be a result of collection of the goods by the recipient or a person acting on his behalf. Further, this term would be relevant only to the extent of supplies requiring movement of goods.

(97) "return" means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder;

The term 'return' is used in this law, as under other taxation laws, to refer to a document by

which details of transactions are furnished to the relevant tax department. This term is also used under the GST law, to refer to return of goods upon after they have been received (commonly known as purchase returns, sale returns). However, the term defined above also refers to documents to be furnished by persons who are required to furnish the prescribed details, in the form and manner prescribed by the rules.

Further, this term does not refer to a return under the GST law, but refers to "any return" prescribed under the law. Below are the various returns under the GST law:

Return to furnish the below details	Return	Due date for filing
Outward supplies (other than composition supplier, ISD)	GSTR 1	10th of next month
Inward supplies received (other than composition supplier, ISD)	GSTR 2	15th of next month
Monthly return (other than composition supplier, ISD)	GSTR 3	20th of next month
Quarterly return for composition supplier	GSTR 4	18th of the next month after the quarter
Periodic return by non-residents	GSTR 5	20th of the next month (or 7 days from the last date of registration, if earlier)
Return for Input Service Distributor (ISD)	GSTR 6	13th of next month
Return for Tax Deducted at Source	GSTR 7	10th of next month
Return for Tax collected at Source	GSTR 8	10th of next month
Annual Return	GSTR 9/A	Dec 31st of next FY
Final return	GSTR 10	Upon cancellation of registration
Details of inward supplies of persons having UIN	GSTR 11	

(98) "reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act;

The scheme of payment of tax under reverse charge mechanism would prevail under the GST Law, as is existent in specific cases of services, and in case purchases from unregistered dealers under the VAT law. However, in the GST law, the scope of reverse charge is expanded to include:

(a) Goods (in addition to services) that may be notified, even if the supplier is registered;

(b) Services (in addition to goods), for taxation on reverse charge basis where the supplier is unregistered, and the recipient is registered.

The following aspects need to be noted:

- The scheme of partial reverse charge of joint charge, currently prevailing under the Service tax laws would be discontinued;
- Persons required to pay tax under reverse charge are required to obtain registration under the GST whether or not they make any outward supplies, and without having regard to the threshold limits for registration – in case of notified goods and services;
- Composition suppliers being recipients of supplies on which tax is payable on reverse charge basis, will have to remit tax at the applicable rates, and not the concessional composition tax rates;
- The recipient paying tax on reverse charge basis, should issue a 'payment voucher' at the time of making paying to the supplier;
- The recipient paying tax on reverse charge basis on account of effecting inward supplies from unregistered persons, should issue an invoice in respect of the goods or services inwarded, at the time of receipt of such goods or services.

(99) "Revisional Authority" means an authority appointed or authorised for revision of decision or orders as referred to in section 108;

The Revisional Authority is empowered pass an order to enhance or modify or annul a decision/ order under CGST/ SGST/ UTGST Acts as is passed by an officer sub-ordinate to him, where he finds it to be prejudicial to the interest of revenue if it is erroneous, illegal, improper or has not considered material facts (whether or not available at the time of the original decision/ order). However, such powers are not available to him in case of non-appealable orders.

(100) "Schedule" means a Schedule appended to this Act;

The following three schedules are Provided under the CGST Act to describe the extent/ limitation of the meaning of the term 'supply':

(a) Schedule I: Activities to be treated as supply even if made without consideration

- Permanent transfer or disposal of business, supplies between related persons or taxable persons having the same PAN, supply of goods by a principal to his agent and vice versa, import of services for business purpose, by a taxable person from a related person.

(b) Schedule II: Activities to be treated as supply of goods or supply of services

- Goods: Transfer of title in goods under an agreement where property in goods passes upon payment of full consideration, supply of goods by any unincorporated association or body of persons to a member for cash, deferred payment or other valuable consideration, etc.
- Services: Transfer of right or undivided share in goods without transfer of title, treatment/ process applied to another person's goods, renting of immovable property,

temporary transfer/ permitting the use or enjoyment of IPRs, development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software, works contract, etc.

(c) Schedule III: Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

- Services by employee to employer in the course/ relation to employment, Services of funeral, burial, crematorium or mortuary, sale of land, sale of completed buildings, actionable claims (other than lottery, betting and gambling), services by any court or Tribunal, the functions performed by the Members of Parliament, etc.

(101) "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

Section 2(h) of the Securities Contracts (Regulation) Act, 1956 provides an inclusive definition to the term "securities", listing the following—

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ii) Government securities;

(iia) such other instruments as may be declared by the Central Government to be securities; and

(iib) rights or interest in securities.

Securities are neither treated as goods nor as services, by way of a specific exclusion in the respective definitions. For this reason, 'securities' would not be included in the meaning of 'non-taxable supplies' which are in turn included within the meaning of 'exempt supplies'. Therefore, for the limited purpose of restricting input tax credits, the meaning of exempt supplies would include 'securities', and therefore, input tax credit attributable to transactions in securities would be liable for reversal

(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Express exclusion of goods implies its inclusion within the definition of services. Therefore,

understanding the exact scope and boundaries of the definition of goods is required to recognize all those transactions or activities that would fall under the meaning of 'services', on being left out of the definition of 'goods'. Transactions in money (other than its conversion) are excluded both from the definition of goods and from the definition of services.

The following aspects need to be noted:

- The word "anything" could be read as "everything", i.e., services means everything that is not goods, and is not specifically excluded (such as money, securities, transactions specified in Schedule III, etc.)
- Schedule II of the CGST Act lists down matters which shall be regarded as a supply of goods, or supply of services.
- The GST law empowers the Government to require treatment of supply of notified goods as supply of services, and vice versa.

(103) "State" includes a Union territory with Legislature;

However, each State derives its respective meaning Provided in the First Schedule in the Constitution of India. There are 29 States and 7 Union Territories in India. Of the 7 Union Territories, Delhi and Puducherry have Legislatures of their own. Therefore, for the GST law, by the expression 'State', Delhi and Puducherry, though Union Territories, will be included.

The Legislative Assemblies of Delhi and Puducherry would pass State GST Acts for intra-State levies, while the remaining 5 Union Territories will be governed commonly under the UTGST Act.

(104) "State tax" means the tax levied under any State Goods and Services Tax Act;

Tax levied under the State GST laws is referred to as "State tax" as opposed to "SGST" as used in the model GST laws. State tax is that component of GST that levied on intra-State supplies by the State Governments (of the Legislatures of Delhi and Puducherry), under the respective State-specific GST laws.

(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

The reference to whom the meaning of the term 'supplier' is fitted is 'person', as against 'taxable person' or 'registered person'. This is because the law does not keep persons who are not liable to tax under GST, outside the scope of this term. For instance, in case of purchases from unregistered persons, who are not liable for registration, would also be treated as suppliers, while the recipient of the supply is liable tax on reverse charge basis if such recipient is registered.

Agents supplying on behalf of the supplier are also included within the meaning of 'supplier'. This is to ensure that invoices raised by the agent on behalf of the supplier for effecting sales on his behalf qualify as valid invoices, as if they were issued by the supplier himself.

(106) "tax period" means the period for which the return is required to be furnished;

Given that the term 'return' is not limited to any particular return, the term tax period can also vary for each return prescribed under the law. A 'tax period' would ordinarily be the calendar months (or quarters ending on the last dates of March, June, September and December in case of composition suppliers). However, it can also include a period of one financial year, for the annual return.

(107) "taxable person" means a person who is registered or liable to be registered under section 22 or section 24;

Every 'supplier' shall be liable to be registered under the GST law in the State (or Union territory) from where he makes any taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds the specified limit (Rs. 20 Lacs or Rs. 10 Lacs – refer Section 22 for details).

The following persons (amongst others) are also compulsorily required to obtain registration, whether or not their turnover exceeds the threshold limit:

- Non-resident taxable persons, casual taxable persons making any taxable supply
- Persons making any inter-State taxable supply;
- Recipients of supplies of goods or services that are notified for tax on reverse charge basis;
- Persons such as agents who make taxable supplies on behalf of other taxable persons;
- Electronic commerce operator and persons effecting supplies through them;
- Person supplying OIADAR services from a place outside India to an unregistered person in India.

(108) "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;

For a transaction to qualify as a taxable supply, the following components are compulsory:

- The transaction must involve either goods or services, or both of them;
- Such goods or services should not be specified under Schedule III (neither a supply of goods nor a supply of services);
- The transaction should fall within the meaning of 'supply' in terms of Section 7 of the CGST Act;
- The supply should be leviable to GST – i.e., it should not be covered within the meaning of 'non-taxable supply' as defined under Section 2(78) – i.e., alcoholic liquor for human consumption. This implies that supplies enjoying a full exemption from tax by way of an exemption notification would also be treated as taxable supplies.

(109) "taxable territory" means the territory to which the provisions of this Act apply;

The scope of taxable territory extends to the whole of India except the State of Jammu and Kashmir.

(110) "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means;

The scope of the term 'telecommunication service' is so vast that it covers services starting from the landline facility for making calls, text messages, voice messages, communication through media such as WhatsApp, Skype, etc., to services Provided by Gmail, yahoo, etc.

(111) "the State Goods and Services Tax Act" means the respective State Goods and Services Tax Act, 2017;

The SGST Act means that SGST Act of the relevant State (or Delhi or Puducherry), as the case may be, which provides for levy and collection of tax on all intra-State supplies of goods or services or both (except alcoholic liquor for human consumption), i.e., the supply of goods or services or both where the location of the supplier and the place of supply as determined under Chapter V of the IGST Act are located within the same State. Upon passing of the GST law in each of the "States", there would be 31 SGST Acts in India.

(112) "turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess;

The expression 'turnover in State' (or UT,) is a replica of the expression 'aggregate turnover', but for the fact that 'turnover in State' is restricted to the turnover of a taxable person, as opposed to aggregate turnover with is PAN-based (i.e., all taxable persons having the same PAN, across States). The following references are made in to the phrase in the Act:

- Payment of tax under composition scheme: The tax rate will be applicable on the 'turnover in State' particular to a taxable person, which should be paid by him in the State in which he has obtained registration;
- Distribution of input tax credit by an ISD: In case of the distribution of credit that is attributable to two or more units of the person, the credit shall be distributed amongst such units on a pro rata basis (i.e., ratio of their respective 'turnover in State' to the aggregate of the 'turnover in State' of all such units).

(113) "usual place of residence" means—

(a) in case of an individual, the place where he ordinarily resides;

(b) in other cases, the place where the person is incorporated or otherwise legally constituted;

The expression 'usual place of residence' comes of use to determine the location of supplier/ recipient of services where no other location is relatable to the supply/ receipt of service.

(114) "Union territory" means the territory of—

(a) the Andaman and Nicobar Islands;

(b) Lakshadweep;

(c) Dadra and Nagar Haveli;

(d) Daman and Diu;

(e) Chandigarh; and

(f) other territory.

Explanation. ––For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;

All the Union Territories and "other territory" (as defined in Section 2(81) supra) in India will be governed under the UTGST Act, except Delhi and Puducherry. Given that the said two UTs have a Legislature, they will be regarded as 'States' for the purpose of GST, and will be governed by their respective SGST laws, instead of the UTGST law.

(115) "Union territory tax" means the Union territory goods and services tax levied under the Union Territory Goods and Services Tax Act;

It refers to the tax charged under the UTGST Act on intra-State supply of goods or services or both (i.e., supplies effected within a Union Territory not having a Legislature), in addition to the tax levied under the CGST law. The rate of UT tax is capped at 20%, and will be notified by the Central Government based on the recommendation of the Council.

(116) "Union Territory Goods and Services Tax Act" means the Union Territory Goods and Services Tax Act, 2017;

The UTGST Act provides for levy and collection of tax on all intra-State supplies of goods or services or both (except alcoholic liquor for human consumption), i.e., the supply of goods or services or both where the location of the supplier and the place of supply as determined under Chapter V of the IGST Act are located within the same UT.

(117) "valid return" means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full;

The term 'valid return' is attributable only to the monthly return in Form GSTR-3, to be filed by every registered person (except a composition supplier, non-resident taxable person, ISD, person liable to deduct tax at source and person liable to collect tax at source). The return will be treated as a valid return only where the tax liability determined in the return is fully remitted.

The following aspects need to be noted:

- The law mandates that the liability determined in the returns of previous months must be discharged prior to discharging the liability determined in the returns of current month;
- Input tax credit will become available to the recipient only if the return furnished by the supplier is a 'valid return'.

(118) "voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;

'Voucher', for the purposes of GST, necessarily means that instrument which should be accepted as consideration (wholly or partly) for a supply. Therefore, a voucher is an asset for the recipient, and without a recipient, a 'voucher' would lose its meaning. Therefore, in a case of a supplier issuing a voucher to a recipient of goods, on his making a purchase from the supplier, the voucher is not being viewed as an additional outcome of the supply made to the recipient. Rather, it is an instrument that can be used in place of money (or other consideration) which can be used on effecting yet another inward supply. E.g. coupons, tokens, promo-codes, etc.

However, where the supply can be identifiable at the time of issue of voucher, the tax should be remitted for the month in which the voucher is issued, as if it were an advance received for a supply to be made at a future date.

(119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

The expression 'works contract' is limited to contracts to do with immoveable property, unlike the existing understanding of the phrase which also extends to moveable property. A contract will amount to a 'works contract' only where there is a transfer of property in goods, while such a transfer may result in goods or anything else (i.e., immoveable property). A contract in relation to movable property, however, would be treated as a 'composite supply' of goods or services depending on the principal supply (refer analysis of Section 8).

For GST law, works contract as defined above will be treated as a supply of service, thereby putting a closure to the deliberation on the methodology of segregating the works contract between goods and services.

(120) words and expressions used and not defined in this Act but defined in the Integrated Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods

and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;

Certain words and expressions like exports, import, etc. defined in the IGST/ UTGST/ Compensation laws as are used under the CGST law will have the same meaning as assigned in such laws.

(121) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.

From the extent-clause Provided in Section 1 of the CGST Act, it is clear that the CGST Act is not applicable in the State of Jammu and Kashmir. However, the State of Jammu and Kashmir is vested with special powers to pass a law to enable the provisions of this Act to become operational in the State. In such a case, wherever a reference to another law is drawn in the CGST Act, (say reference to the Service tax laws), for the State of Jammu and Kashmir, such a reference should be understood as a reference to the corresponding operational law in the State (i.e., the Jammu And Kashmir General Sales Tax Act,1962).

Chapter II
Administration

Statutory Provision

3. Officers under this Act

The Government shall, by notification, appoint the following classes of officers for the purposes of this Act, namely: —

(*a*) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,

(*b*) Chief Commissioners of Central Tax or Directors General of Central Tax,

(*c*) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,

(*d*) Commissioners of Central Tax or Additional Directors General of Central Tax,

(*e*) Additional Commissioners of Central Tax or Additional Directors of Central Tax,

(*f*) Joint Commissioners of Central Tax or Joint Directors of Central Tax,

(*g*) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,

(*h*) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and

(*i*) any other class of officers as it may deem fit:

Provided that the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.

3.1 Introduction

The CGST Act confers powers for performing various statutory functions on various officers. Officers who are to discharge these functions derive their power and authority from section 3. It is therefore necessary for the efficient administration of the law that often Authority be conferred on designated persons who will be the incumbents occupying positions identified in the law as being the authorized persons to discharge the said functions.

3.2 Analysis

Specific categories of officers have been named in this section whose appointment requires notification by the government. Notifications issued under this section do not require to be laid before Parliament as 'laying before Parliament' is a requirement limited only to exemption notifications and not designating officers under section 3. Only recently, Central excise act has been amended perhaps to align itself in the administrative framework in view of the imminent introduction of GST. Accordingly, Officers under the Central excise act are deemed to be officers appointed under this act.

Statutory Provision

4. Appointment of Officers

(*1*) The Board may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think fit to be the officers under this Act.

(*2*) Without prejudice to the provisions of sub-section (*1*), the Board may, by order, authorise any officer referred to in clauses (*a*) to (*h*) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.

4.1 Introduction

All statutory functions cannot be performed by executive officers. There is a necessity to appoint administrative staff to assist executive officers.

4.2 Analysis

The power to appoint executive officers remains with the government but the authority to appoint administrative staff is left to the Board – Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963. The administrative staff make up the entire working team of administrative staff also called 'field formations'. While the authority to appoint administrative staff is vested with the Board, express provision is made to permit officers under section 3 to appoint, for the purposes of Central Tax, certain administrative staff.

This provision ensures an executive order issued by (say) Principal Chief Commissioner or Principal Director-General or any subordinate officer to immediately confer status administrative staff to the existing field formations for purposes of Central Tax.

Statutory Provision

5. Powers of Officers

(1) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(*2*) An officer of central tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.

(*3*) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.

(*4*) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.

5.1 Introduction

Delgatus potest non delegare – the delegate must exercise the power conferred and not sub-

delegate. While this is true on the principle of construction of statutes, the very law that creates the power also empowers creation of exception to this principle.

5.2 Analysis

An officer duly appointed under this act needs to be supplied with guidance as regards the manner of exercise of his authority including the boundaries for the same. The more is required to prescribe conditions and limitations for the exercise of powers conferred on officers of central tax during discharging their duties under this act.

Apart from the boundaries laid down, very interestingly power of sub-delegation is conferred on officers of Central Tax. Please note in the event of sub-delegation, the duty to provide superintendence is implicit. While sub-delegation appears to subvert the course of administrative power, in the wisdom of the lawmaker the liberty to sub-delegate can at least be enabled in such a historical and hard-to-amend legislation. It would be interesting to see how this power would be exercised without causing too much dilution and subversion. All the administrative flexibility is Provided or at least enabled have been wisely limited to executive officers and not to appellate authorities.

Statutory Provision

6. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances

(*1*) Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(*2*) Subject to the conditions specified in the notification issued under sub-section (*1*), —

(*a*) where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;

(*b*) where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(*3*) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.

6.1 Introduction

With the similarity of the taxing base, it is necessary to develop a mechanism to avoid duplication of tax administration by officers of Central Tax and by officers of State /UT Tax.

6.2 Analysis

for purposes of administration of this act, it is permitted to authorise officers of State/UT Tax to

simultaneously also be the officer of Central Tax. It is interesting to note that officers of State/UT Tax do not relinquish their authority but accept additional authority as officers of Central Tax. However, to do so requires the recommendations of the Council and adherence to the conditions that the government may impose in this regard.

In order to establish non-overlapping of administrative power, it is Provided that an officer in respect of central tax is required to duly exercise his authority even in respect of State/UT Tax where the executive action is in respect of the same taxing base. In so doing, the officer of central tax is required to intimate the officer of State/UT Tax in respect of all his actions. Further in administrative power has been invoked by the officer of the State/UT Tax is any proceeding, such action will preclude the officer of central tax from exercising any administrative power in respect of transactions covered by the said proceedings.

The officer who has exercised administrative power in any proceeding will continue to be the forum to entertain appeal, rectification or revision in respect of that matter until it is concluded. Surely, this will not result in competition for tax administration enable clear and unambiguous jurisdiction in respect of each proceeding. Industry will closely examine who will exercise administrative power without causing duplication in appearing before tax administration for GST compliance.

Please note that this provision enabling mutual allocation of administrative power between officers of central tax and officers of State/UT Tax opens with the words *"Without prejudice ...."*. As such the provisions conferring power to officers of central tax will prevail over the provisions enabling its mutual allocation. The role of the Council in guiding such mutual allocation is paramount as also the conditions that the government is authorised to impose in such an exercise.

Chapter-III
Levy and Collection of Tax

Statutory Provision

7. Scope of supply

(1) For the purposes of this Act, the expression "supply" includes—

(*a*) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(*b*) import of services for a consideration whether or not in the course or furtherance of business;

(*c*) the activities specified in Schedule I, made or agreed to be made without a consideration; and

(*d*) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

(*2*) Notwithstanding anything contained in sub-section (*1*), —

(*a*) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

(*3*) Subject to the provisions of sub-sections (*1*) and (*2*), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(*a*) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: —

(*a*) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(*b*) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

9. (1) Subject to the provisions of sub-section (*2*), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15

and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(*2*) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(*3*) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both

(*4*) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(*5*) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also, he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

9.1 Introduction

(i) Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. The Charging Section is a must in any taxing statute for levy and collection of tax. Before imposing any tax, it must be shown that the transaction falls within the ambit of the taxable event and that the person on whom the tax is so imposed also gets covered within the scope and ambit of the charging Section by clear words used in the Section. No one can be taxed by implication.

(ii) Section 9 is the charging provision of the CGST Act. It provides that all intra-State supplies would be liable to CGST. The levy is on supply of all goods or services or both except on the supply of alcoholic liquor for human consumption. Besides, supply of petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel are also included in GST. However, the tax will be levied on these goods

only with effect from such date as may be notified by the Government after recommendation of the Council. It also provides for the value on which tax shall be paid, the maximum rate of tax that can be levied on such supplies, the manner of collection of tax by the Government and the person who will be liable to pay such tax.

(iii) Under the GST law, the levy of tax is as follows:

(a) In the hands of the supplier - on the supply of goods and / or services (referred to as tax under forward charge mechanism);

(b) In the hands of the recipient – on receipt of goods and / or services (referred to as tax under reverse charge mechanism)

(iv) In the normal course, the tax would be payable by the supplier of goods and / or services. However, in specific cases (as may be notified), the onus of payment of tax is shifted to the recipient of goods and / or services. To impose tax on reverse charge basis, the following conditions would be mandatory:

(a) Notification to be issued by the Central Government specifying the categories of supply of goods and / or services.

(b) Should be notified only on recommendation of the Council.

(v) When the goods/ services are supplied by a supplier, who is un-registered person to a receiver, who is registered person, the liability to pay tax on such supplies will be on recipient under reverse charge basis. Thus, a registered person would be required to pay GST on all supplies received by it from un-registered persons. Note: This is applicable to both, goods as well as, services.

(vi) Additionally, where any supply of services is effected through e-commerce operators (commonly known as services Provided by aggregators), the law provides that the Central / State Government may on recommendation of the Council specify (notify) that the e-commerce operator will be liable to discharge the tax on such supplies. It is important to note that, in such supplies, the e-commerce operator is neither the actual supplier of service/s nor does he actually receive the services. The actual supplier of services is a third party who provides such service to the customer through e-commerce operator. Instead of levying tax on such actual supplier, the law has imposed levy on e-commerce operator. Therefore, this would be an exception to the imposition of tax as specified in para supra. It is important to note that this exception is carved out only in respect of supply of services through an e-commerce operator and will not be applicable / relevant to supply of any goods through an e-commerce operator.

Further, where the e-commerce operator does not have a physical presence in the taxable territory, the representative (being agent / any other person) of the operator (if any) shall be the person liable to pay tax. Where such representative also does not have presence in such territory, the operator should appoint a person specifically for this purpose.

9.2 Analysis

Levy of tax: Every supply will be liable to tax. The nature of tax would depend upon the nature of supply, viz., inter-State supplies will be liable to IGST and intra-State supplies will be liable to CGST and SGST (UTGST).

(i) Supply should involve goods and / or services – viz., either as wholly goods or wholly services. Even where a supply involves both, goods and services, the law provides that such supplies would classifiable either as, wholly goods or wholly services. Schedule II of the Act provides for this classification.

(ii) Where a supply involves multiple (more than one) goods or services, or a combination of goods and services, the treatment of such supplies would be as follows:

(a) If it involves more than one goods and / or services which are naturally bundled together: These are referred to as composite supply of goods and / or services. It shall be deemed to be a supply of those goods or services, which constitutes the principal supply therein.

Illustration (Provided in Section 2(27)): Where goods are packed, and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply. This implies that the supply will be taxed wholly as supply of goods.

Other examples: If a contract is entered for (i) supply of certain goods and erection and installation of the same thereto or (ii) supply of certain goods along with installation and warranty thereto, it is important to note that these are naturally bundled and therefore would qualify as 'composite supply'. Accordingly, it would qualify as supply of the goods therein, which is essentially the principal supply in the contract. Thus, the value attributable to erection and installation or installation and warranty thereto will also be taxable as if they are supply of the goods therein.

(b) If it involves supply of more than one goods and / or services which are not naturally bundled together: These are referred to as mixed supply of goods and / or services. It shall be deemed to be a supply of that goods or services therein, which are liable to tax at the highest rate of GST.

A supply of more than one goods and / or services as a bundle will be reckoned as 'mixed supply' if: (i) such goods and / or services are supplied together for a single price (ii) they are not naturally bundled together and (iii) it does not qualify as composite supply.

Illustration (Provided in Section 2(66)): A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately. This implies that the supply will be taxed wholly as supply of those goods which are liable to the highest rate of GST.

Other examples: If a tooth paste (say for instance it is liable to GST at 12%) is bundled along with a tooth brush (say for instance it is liable to GST at 18%) and is sold as a single unit for a single price, it would be reckoned as a mixed supply. This would therefore be liable to GST at 18% (higher of 12% or 18% applicable to each of the goods therein).

While there are no infallible tests for such determination, the following guiding principles could be adopted to determine whether a supply would be a composite supply or a mixed supply. However, every supply should be independently analysed.

Description	Composite Supply	Mixed Supply
Naturally bundled	Yes	No
Supplied together	Yes	Yes
Can be supplied separately	No	Yes
One is predominant supply for recipient	Yes	No
Other supply is not 'aim in itself' of recipient	Yes	No
Each supply priced separately	No	No
All supplies are goods	Yes	Yes
All supplies are services	Yes	Yes
One supply is goods and other supply is services	Yes	Yes

(iii) Supply will be an intra-State supply if the location of the supplier and the place of supply are within the same State and the transaction will be an inter-State supply if the location of the supplier and the place of supply are in different States: To be determined under Section 10 to 13 of the IGST Law. (Refer Section 7 & 8 of the IGST Law to understand the meaning of inter-state supply and intra-State supply).

Tax shall be payable by a 'taxable person': The tax shall be payable by a 'taxable person' i.e. person/ separate establishments of persons registered or liable to be registered under sections 22 and 24 of the CGST Act. *Please refer to the discussion under Section 25 for a thorough understanding of this.*

Tax payable: Every intra-State supply will attract CGST as well as SGST, as follows:

(a) Imposition of CGST by the Government of India,

(b) Imposition of SGST by the respective State or (UTGST by Central Government through Administrator in case of specified Union Territories and other territories as defined)

Rate and value of tax: The rate of tax will be as specified in the notification that would be issued in this regard, subject to a maximum of 20%. The rates would be determined based on the recommendation of the Council and the rate of tax so notified will apply on the value of supplies as determined under Section 15.

Supply:

(a) Generic meaning of 'supply': Supply includes all forms of supply (goods and / or services) and includes agreeing to supply when they are for a consideration and in the course or furtherance of business (as defined under Section 7 of the Act). It specifically includes:

(i) Sale

(ii) Transfer

(iii) Barter

(iv) Exchange

(v) License

(vi) Rental

(vii) Lease

(viii) Disposal

The word 'supply' is all-encompassing, subject to exceptions carved out in the relevant provisions.

E.g.:

Supplies mentioned in Schedule III of the Act

Such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as Public Authorities, as may be notified by Government on recommendation of the Council.

The law has Provided an inclusive meaning to the word 'supply' which implies that the specific transactions which are listed in the said section are only illustrative.

Supply should be by a person engaged in business: It is essential that such supplies should be by the supplier who is engaged in business. ('Business' as defined in Section 2(17) of the Act). However, in case of import of services for a consideration, even if such services are imported otherwise than in the course or furtherance of business, it would be deemed to be a supply.

The word 'supply' should be understood as follows:

— It should involve delivery of goods and / or services to another person;

— The supply will be treated as wholly one supply – goods, or services, based on Schedule II and the provisions pertaining to composite supply and mixed supply;

— It should involve quid-pro-quo – viz., there should be something in return which the person supplying will obtain from the recipient (except in cases of matters specified in Schedule I where it is deemed to be a supply, even if it is made without consideration). It is not important that what is received in return is 'money'; it can be money's worth;

— Transfer of property in goods from the supplier to recipient is not necessary;

Under this clause, it is essential that all the above forms of transactions including the extended and generic meaning given to 'supply' should be made for a 'consideration'. Only exception for this will be cases specified in Schedule I. Absence of consideration (as defined in Section 2(31)) will take away the character of 'supply' under this clause.

(b) Supply should be in the course or furtherance of business: For a transaction to qualify as 'supply', it is essential that the same is 'in the course or furtherance of business'. This implies that any supply of goods and / or services by a business entity would be liable to tax, so long as it is in the course or furtherance of business. Supplies which are not in the course of business (or in furtherance of business) will not qualify as 'supply' for the levy of tax, except in case of import of service for consideration, where the service is a supply whether or not it is made in the course or furtherance of business.

Drawing similarities from the existing State level VAT laws, it follows that the said transaction should be with a commercial motive, whether or not there is a profit motive in it or its frequency / regularity. E.g.: sale of goods in an exhibition, participation in a trade fair, warranty supplies, supply of free samples to induce customers to purchase other goods, sale of used assets, etc. would be in the course of business.

(c) Import of service will be taxable in the hands of the recipient (importer): The word 'supply' includes import of a service, made for a consideration (as defined in Section 2(31)) and whether or not in the course or furtherance of business. This implies that import of services even for personal consumption would qualify as 'supply' and therefore would be liable to tax. This would not be subject to the threshold limit as tax is expected to be payable on reverse charge basis, and the threshold limits do not apply in case of supplies attracting tax on reverse charge basis.

Note: Import of services is included within the meaning of 'supply' under the CGST / SGST Acts. However, it would be liable to IGST since it would not be an intra-State supply. In fact, Section 2(21) of IGST Act has adopted the meaning of 'supply' from CGST/SGST Act.

(d) Transactions without consideration: The law provides that in certain cases, even though there is no consideration, the same would be treated as 'supply'. Such cases are listed in Schedule I.

(i) Permanent transfer of business assets where input tax credit has been availed: The word 'transfer' in this clause suggests that there should be another person who would receive the business assets at the other end.

The use of the words 'permanent transfer' implies that the goods should be transferred without any intention or requirement of having to receive the goods back. However, even in these types of transactions, it is essential that there is delivery of the business assets.

E.g.: Goods sent on job work or goods sent for testing or goods sent for certification would not qualify as 'supply' under this clause since there is no permanence in transfer.

Typically, donation of business assets or scrapping or disposal in any other manner (other than as a sale – i.e., for a consideration) would qualify as 'supply' under this clause, where input tax credit has been claimed on the same.

The law requires that such transactions should be treated as supply only when any input tax has been availed on the business assets. For instance, in case of cars purchased by the company for use by directors would not qualify for input tax credit and such input tax credit would therefore, not have been claimed. Say, after a few years, the same car is transferred to such director on a free of cost basis - this would not be treated as a supply for Schedule I as no input tax credit was availed on such car.

(ii) Supply of goods and / or services between related person, or between distinct persons as specified in Section 25(4) or 25(5), when made in the course or furtherance of business: Any supply of goods and / or services in the course of business or furtherance of business by a taxable person to a related person (as defined by way of explanation below Section15(5)), or by one taxable person to another taxable person (as Provided in Section 25 of the Act), when made without consideration, would qualify as 'supply'.

E.g.; Free supplies to related persons, stock transfers to a unit outside the State/ a different business vertical, etc. will be reckoned as supplies.

(iii) Supply of goods by a principal to his agent, where the agent undertakes to supply such goods on behalf of the principal: E.g. A company is located in the suburbs and employs an agent in the city to undertake sales on behalf of the company. Goods transferred by the company to the premises of the agent in the city would be qualify as a 'supply'.

(iv) Supply of goods by an agent to his principal, where the agent undertakes to receive such goods on behalf of the principal: E.g. A company is located in the suburbs and employs an agent in the small town nearby to undertake purchases on behalf of the company. Goods procured and transferred by the agent to the company would qualify as a 'supply'.

(v) Import of services by a taxable person from a related person, or from any of his other establishments outside India, in the course or furtherance of business: Importation of services as covered by the definition does not include importation without consideration. Therefore, this clause is inserted to rope in such services that are received from related persons / their establishments outside India. E.g.: ABC Inc. is incorporated in the US by A Ltd in India, for its operations in the US. A Ltd. together with B Ltd. in India, holds C Ltd. Where services are imported by B Ltd from ABC Inc. in the US without consideration, the import will be deemed to be a supply for Schedule I.

(e) Certain supplies will be neither a supply of goods, nor a supply of services: The law lists down matters which shall not be considered as 'supply' for GST. This list includes:

(a) Activities/ transactions in Schedule III:

(i) Services by an employee to an employer in the course or in relation to his employment;

(ii) Services by any Court or Tribunal established under any law for the time being in force;

(iii) Functions performed by MPs, MLAs, etc.; the duties performed by a person who holds any post in pursuance of the provisions of the Constitution in that capacity; the duties performed by specified persons in a body established by the Central State Government or local authority, not deemed as an employee;

(iv) Sale of land and Sale of Building (except sale of under-construction premises where the part or full consideration is received before issuance of completion certificate or before its first occupation, whichever is earlier.;

(v) Actionable claims, other than lottery, betting and gambling and

(vi) Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

(b) An employer and employee are treated as "related persons" and hence any supply of goods or services by employer to employee without consideration would be considered as supply as per schedule I. However, gifts not exceeding Rs. 50,000 in value in a financial year by an employer to employee shall not be treated as supply of goods or services or both.

(f) To be notified: The Central Government or the State Government may notify such other transactions to either qualify as 'supply of goods' or as 'supply of services' This notification must be issued only upon recommendations from the Council.

In summary, supply can be understood as follows:

Section 3 - Meaning and scope of supply			
Section 7(1)(a)	Section 7(1)(b)	Section 7(1)(c)	Other matters – Section 8
All forms of supply of goods and/ or services, • for a consideration • in the course or • furtherance of business • such as: • sale, • transfer, • barter, • exchange, • license, • rental,	Import of service, • for a consideration • whether or not in the course or furtherance of business	Supplies specified* To be treated as supplies *made without a consideration* *Schedule I: 1. Permanent transfer/ disposal of business assets for which ITC availed on such assets 2. Supplies between related	• Composite Supply • Mixed Supply

• lease or • disposal		persons/ distinct persons (as specified in section 25) in the course or furtherance of business 3. Supply of goods by principal (or agent) to agent (or principal) 4. Import of service from a related person in the course or furtherance of business.	

Reverse charge mechanism: Normally, the supplier of goods and / or services will be liable to discharge tax on the supplies effected. However, the Central or State Governments upon recommendation of the GST Council are empowered to specify by notification the categories of supplies in respect of which the recipient of goods and / or services will be liable to discharge the tax.

All other provisions of this Act will apply to the recipient of such goods and / or services, as if the recipient is the supplier of such goods and / or services – viz., for the limited purpose of such transactions, the recipient would be deemed to be the 'supplier'.

Similarly, when any registered taxable persons receive any supply from unregistered person, he shall be required to pay tax on such inward supplies under reverse charge mechanism. *Ex: Mr A is not registered in GST as his aggregate turnover of taxable supplies is below threshold limit. Mr. B purchased goods from Mr. A. In such case, Mr. A would be required to pay tax under reverse charge on value of such goods. It therefore appears that, threshold exemption for not-obtaining registration given under section 22(1) is only an administrative relief given to small business entities and it would not render the supplies made by them exempt.*

It's also important to note that, a taxable person who is eligible for payment of tax under composition scheme under section 10 of CGST/SGST Act, is also under obligation to pay tax under normal rates in respect of supply of goods/service received by him from unregistered persons, failing which benefit of composition scheme would not be applicable to him.

Applicability in respect of e-commerce operators: Refer discussion under para 9.1 (vi) of the CGST Act for an understanding of the applicability of this provision for e-commerce operators.

(i) In so far as e-commerce operators are concerned, care must be exercised to determine the nature of business of such operators. Essentially, there are four models of e-commerce business:

(ii) Market-place – the question of supply by the e-commerce operator does not arise. For this reason, they are liable for TCS under section 52.

(iii) Fulfillment center – here States have been contesting that this model is one involving 'buy-sell' and accordingly liable to GST. The test here is to establish the fact that the supply is by supplier directly to the end customer and not 'through' the e-commerce operator.

(iv) Hybrid (of above 2) – all though not widely prevalent, this is a case where both buy-sell as well as market-place models are employed. It is important for such business to clearly demarcate the two lines-of-business or choose to merge into either of the two so that the respective incidence of tax follows.

(v) Agency – this is employed by few business involving supply of industrial inputs. The *modus operandi* is that the principal logs-in to the portal and routes the supplies to the end customer. The agreements are so framed that the e-commerce operator becomes responsible for the delivery and collection of payment. This renders the e-commerce Operator to constitute an agency involving handling of the inventory themselves. Such arrangements may be reviewed to ensure the inference of agency . And where such transactions inter se come within the operation of entry 3 of Schedule I of the CGST Act states that transactions between Principal and Agent are treated be a supply and liable to tax. This consequence may be borne in mind even by e-commerce businesses.

9.3 Comparative review

Under the current tax laws, Central Excise is levied on 'manufacture of goods', VAT / CST is levied on 'sale of goods' and service tax is charged on 'service Provided or agreed to be Provided'. Unlike such different incidences, under the GST law, it is 'supply' which would be the taxable event. Under the current law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST – however, under the GST law, it would be taxable as a 'supply' if such supplies are between distinct persons under section 25(4) or 25(5). Further, free supplies would be liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit; under the GST law, the treatment would be similar to the present VAT laws, where the supplies are made without any consideration (monetary/ otherwise). However, where the free supplies are made between distinct persons or between related persons then such supplies may be regarded as supply under schedule I, para 2.

In the current law, there are multiple transactions which apparently qualify as both 'sale of goods' as well as 'provision of services'. E.g.: license of software, providing a right to use a brand name, etc. To avoid this situation, GST law clarifies as to whether a transaction would qualify as a 'supply of goods' or as 'supply of services' by introducing a deeming fiction. A transaction composite contracts would either qualify as goods or as services, under the GST law (Schedule II of the Act, concept of composite supply and mixed supply).

The payment of VAT in the hands of the purchaser (registered dealer) on purchase of goods from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism in respect of say, advocate services, import of services, sponsorship services etc. are comparable to the 'reverse charge mechanism' prescribed herein. However, the concept of partial reverse charge/ joint charge is not expected to continue in the GST regime, viz., every supply will be liable either to forward charge or full reverse charge, Further, under existing law, the concept of reverse charge only exists in relation to services. The GST law, however, permits the supply of goods also to be subjected to reverse charge.

9.4 Related provisions

Section	Description
Section 7 read with Schedule I, II and III	Definition of 'supply'
Section 2(17)	Definition of 'business'
Section 2(107) read with 25 (4) & (5)	Meaning of 'taxable person' and distinct persons
Section 2(31)	Meaning of consideration
Section 2(30) read with Section 2(90)	Meaning of composite supply to be read with Principal supply
Section 2(74)	Meaning of mixed supply
Section 49	Payment of tax
Section 8	Meaning of intra-State supplies
Section 5	Levy and collection of IGST

9.5 FAQ

Q1. Is the reverse charge mechanism applicable only to services?

Ans. No, reverse charge applies to supplies of both goods and services.

Q2. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. The receiver of goods would be liable to pay tax under reverse charge.

Q3. In respect of exchange of goods, namely gold watch for restaurant services, will the transaction be taxable as two different supplies or will it taxable only in the hands of the main supplier?

Ans. Yes, the transaction of exchange is specifically included in the scope of "supply" under Section 7. Thus, exchange could be taxable both ways. (A different view can also be possible depends on the facts of the case).

Q4. Whether money is included in service?

Ans. No, money is not included in definition of service.

Q5. What are examples of 'disposals' as used in 'supply'?

Ans. "Disposals" could include donation in kinds or supplies in a manner other than sale.

Q6. Will a not-for-profit entity be liable to tax on any supplies effected by it – e.g.: supply of assets received as donation?

Ans. Yes, it would be liable to tax on value as may be determined under Section 15, for said sale of donated assets.

9.6 MCQ

Q1. As per Section 9, which of the following would attract levy of CGST?

(a) Inter-state supplies

(b) Intra-state supplies

(c) Any of the above

(d) None of the above

Ans. (b) Intra-state supplies

Q2. Which of the following forms of supply are included in Schedule I?

(a) Permanent transfer of business assets on which input tax credit has been claimed

(b) Agency transactions

(c) Barter

Ans. (a) Permanent transfer of business assets on which input tax credit has been claimed

Q3. Who can notify a transaction to be supply of 'goods' or 'services'?

(a) Board

(b) Central Government

(c) GST Council

(d) None of the above

Ans. (b) Central Government

Statutory Provision

10. Composition levy

(1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (*3*) and (*4*) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding, –––

(*a*) one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,

(*b*) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (*b*) of paragraph 6 of Schedule II, and

(*c*) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers, subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.

(*2*) The registered person shall be eligible to opt under sub-section (*1*), if: —

(*a*) he is not engaged in the supply of services other than supplies referred to in clause (*b*) of paragraph 6 of Schedule II;

(*b*) he is not engaged in making any supply of goods which are not leviable to tax under this Act;

(*c*) he is not engaged in making any inter-State outward supplies of goods;

(*d*) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and

(*e*) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (*1*) unless all such registered persons opt to pay tax under that sub-section.

(*3*) The option availed of by a registered person under sub-section (*1*) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (*1*).

(*4*) A taxable person to whom the provisions of sub-section (*1*) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.

(*5*) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (*1*) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, *mutatis mutandis*, apply for determination of tax and penalty.

10.1 Introduction

This provision deals with the composition scheme for payment of tax by eligible taxable persons, subject to certain conditions. The conditions, restrictions, procedures and the documentation would be contained in the Rules, to be prescribed.

10.2 Analysis

Composition scheme is an option:

Tax payment under this scheme is an option available to the taxable person. This scheme would be available only to certain eligible taxable persons (conditions / criteria discussed).

The taxable person should make an application exercising his option to pay tax under this scheme. There are three possibilities in which such option can be exercised:

(a) Taxable Person migrating from existing registration to GST registration: Exercising Option in Form GST CMP 01 prior to appointed date or within 30 days after the appointed date. In this case, the option to pay tax under composition scheme shall be effective from the appointed date.

(b) Taxable Person obtaining new registration under GST laws: Such option can be exercised at the time of obtaining registration under section 22 in Part B of Form GST-REG-1. In this case, the option to pay tax under composition scheme shall be effective from the effective date of registration.

(c) Taxable Person paying tax under normal levy in one financial year and wants to opt for composition scheme in next financial year, under the GST regime – Such option can be exercised by filing intimation in Form GST CMP 02 prior to commencement of the year for which the option to pay tax under composition scheme is exercised. In this case, the option to pay tax under composition scheme shall be effective from the beginning of the financial year. In such case, provisions of section 18(4) shall become applicable and person shall be required to file statement containing details of stock and inward supply of goods received from un-registered persons, held in stock, on the immediately preceding the date from which he opts for composition levy, in Form GST CMP 03 within 60 days of the date from which such option is exercised.

Once granted, the eligibility would be valid unless the permission is cancelled or is withdrawn or the person becomes ineligible for the scheme.

Scheme will be applicable for all goods:

Composition scheme may be opted for by taxable persons, in respect of supply of any goods (without any reference to classification or type of goods). The option of the scheme will be qua-taxable person and not qua-class of goods – once opted it will be applicable for all supplies by the taxable person; it must be noted that a taxable person cannot opt for payment of taxes under composition scheme, say for supply of one class of goods and opt for regular scheme of payment of taxes for supply of other classes of goods or services.

Suppliers who are engaged in making any supply of goods which are not leviable to tax under CGST/SGST (UTGST) Act are not entitled to avail composition scheme. Hence, suppliers supplying alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel, or making inter-state outward supply of goods on which tax is levied under IGST Act are apparently not eligible for composition scheme. Besides, supplier engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52 is also not eligible for this scheme. The scheme is also not applicable to the manufacturers of notified goods (i.e. goods which are notified by the Government on recommendations of the Council).

Composition scheme is not available for services:

Suppliers of services are excluded from opting to pay tax under composition scheme, except

composite supply, by way of or as a part of any service, in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption) which is deemed to be a service under Schedule II, Para 6 (b) (i.e. food/restaurant services)

Rate of tax:

The rate of tax would be as under:

(a) 2% (CGST+SGST) of the turnover in the State/UT in case of manufacturers.

(b) 5% (CGST+SGST) of the turnover in the State/UT in case of food/restaurant services.

(c) 1% of the turnover in the State/UT in case of other suppliers (like traders / agents)

Eligibility to pay tax under composition scheme:

Only taxable persons whose 'aggregate turnover' (aggregate of turnover in all States) does not exceed ₹ 50 lacs in the preceding financial year will be eligible to opt for payment of tax under the composition scheme.

Since the composition scheme is applicable only in respect of persons making intra-state supply, in terms of Section 2(6) of the CGST Act, 2017 'aggregate turnover in a State' means 'Value of all (Taxable supplies + Exempt supplies) – (GST Value of inward supplies taxable under reverse charge) of all persons having the same PAN. The permission granted for paying tax under this scheme would stand withdrawn from the day on which this threshold limit is exceeded.

The Government, by notification and with recommendation of Council, is empowered to increase this threshold limit up to Rs.1 crore.

The threshold of ₹ 50 lacs would be applicable to a person having the same PAN and should be understood as follows:

— All taxable persons covered by the same PAN shall be under composition across India. Any intimation of option to avail composition scheme in respect of any place of business in any State or UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN;

— Goods supplied by the person which are chargeable to tax on reverse charge basis will not be includable in computing the aggregate turnover; such inward supplies will be liable to tax in the hands of the composition dealer, as it will be liable to tax when received by non-composition taxable persons.

— Will include value of supply of goods in all forms (supply of goods simplicitor and mixed and composite supplies which are taxed as supply of goods);

— Will include value of supplies of all business verticals of the same taxable person.

Conditions for opting to pay tax under composition scheme:

(i) Restricted from making supply of goods which are not liable to GST: Certain goods are not liable to GST, e.g. petroleum, alcohol for human consumption, etc. - a person opting for composition scheme shall not be entitled to make any supply of non-

GST goods. A plain reading of the proviso to Section 9(1) would imply that the restriction on supplies would be applicable only to sales / dispatches (outwards supplies).

(ii) Restricted from effecting inter-State outward supplies: The taxable person should not affect any inter-State outward supplies. This means that even stock transfers to branches outside the State would not be permitted. However, insofar as it relates to inter-State inward procurements / receipts, there is no restriction.

To explain further, where a taxable person effects inter-State barter transaction (supply) or inter-State warranty contract (supply), he will not be eligible to opt for composition scheme.

(iii) Restricted from making supplies through an e-commerce operator: A person opting for composition scheme is not allowed to affect any supply of goods through an e-commerce portal, unless such portal is owned by the same person.

(iv) Restriction on manufacture of notified goods: The person opting for the scheme should not be a manufacturer of certain goods as are notified in this regard. However, there is no restriction in case the person is engaged in trading of such goods.

(v) Would be applicable for all transactions under the same PAN: Composition scheme would become applicable for all the business verticals having separate registrations within the State and all other registrations outside the State which are held by the person with same PAN.

To clarify further, if a taxable person has multiple business verticals and if he has opted for separate registrations for each such vertical, composition scheme would become applicable for all the business verticals and it cannot be applied for select verticals only.

e.g.: If a taxable person has the following businesses separately registered:

— Sale of footwear (Registered in Karnataka)

— Sale of mobiles (Registered in Karnataka)

— Franchisee of McDonalds (Registered in Kerala)

In the above scenario, the composition scheme would be applicable for all the 3 units. Taxable person will not be eligible to opt for composition scheme say for sale of footwear and sale of mobiles and opt to pay taxes under the regular scheme for franchisee of McDonalds.

(vi) Shall not collect tax: Taxable person opting to pay tax under the composition scheme is prohibited from collecting tax on the outward supplies.

(vii) Not entitled to input tax credit: Taxable person opting to pay tax under the composition scheme will not be eligible to claim any input tax credits.

However, if the taxable person becomes ineligible to remain under composition scheme, the taxable person will become entitled to take input tax in respect of inputs held in stock (as inputs, contained in semi-finished or finished goods) on the day immediately preceding the date from which he becomes liable to pay tax under Section 9. (Refer

Section 18(1)(c) for the provision. A statement of stock shall be filed in Form GST ITC-1 within 30 days from the date from which the option is withdrawn or the order cancelling the composition option is passed).

(viii) Additional conditions under the Rules: The following additional conditions are prescribed in the Composition Rules, in order to be eligible for the composition scheme

— Not applicable to persons who are casual taxable persons or non-resident taxable persons.

— In case of migration of existing registration into registration under GST, option to avail composition scheme under GST can be exercised only if the goods held in stock by such taxable person, on the appointed day have not been purchased in the course of inter-state trade or commerce or imported from a place outside India or received from his branch situated outside the State, or from his agent or principal outside the State.

Composition scheme not applicable for tax payable under RCM: It is important to note that for any tax payable under reverse charge mechanism, the option of payment under this scheme will not be available. In other words, a taxable person opting for composition scheme will be required to pay tax on supplies taxable under RCM at regular rates and not the composition rate.

Withdrawal of application under composition scheme:

The registered taxable person who intends to withdraw from the composition scheme shall before the date of such withdrawal, file an application in Form GST CMP 04. Where the option of composition scheme is lapsed due to non-compliance of any of the eligibility conditions under Section 10 or rules made thereunder, then taxable person shall file an intimation of withdrawal in the same Form GST CMP 04 within 7 days of the occurrence of event leading to disability under the scheme. An intimation for withdrawal or cancellation of permission in respect of any place of business in a State or UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

Cancellation of permission:

Where the proper officer has reasons to believe that the taxable person was not eligible to the composition scheme, the proper officer may cancel the permission and demand the following:

— Differential tax and interest – viz., tax payable under the other provisions of the Act after deducting the tax paid under composition scheme

— Penalty determined based on the demand provisions under Section 73 or 74.

However, it is essential that a show cause notice is issued and the taxable person is afforded an opportunity of being heard before proceeding with the demand. Such show cause notice shall be issued in Form GST CMP 05. The reply to such notice shall be filed in Form GST CMP 07. On receipt of such reply, the proper officer shall within 30 days of receipt of such reply, either accept the reply or deny the option to pay tax under section 10 from the date of option or from the date of event occurring the contravention of section 10 or rules thereunder, by passing an order in Form GST CMP 07.

Please note:

Exemption under CGST Act	Deemed to exempt under SGST Act
	Deemed to exempt under UTGST Act
Exemption under IGST Act	No auto-application of exemption

10.3 Comparative review

Under the current tax laws, the scheme of composition is Provided for in most State level VAT laws. The conditions prescribed under the GST law for composition scheme is broadly comparable to the conditions / restrictions under the State level VAT laws.

10.4 Related provisions

Section	Description	Remarks
Section 9(3) & (4)	Levy of CGST	This is the other charging Section for levy of tax payable on reverse charge by person receiving goods and/ or services and is not withstanding the regular tax payable under Section 9
Section 2(6)	Meaning of 'aggregate turnover'	Only if the value of aggregate turnover is less than ₹ 50 lacs, composition scheme can be opted for
Section 2(112)	Meaning of 'turnover in a State'	The composition rate of tax will be payable on the 'turnover in a State'
Sections 73, 74	Demand provisions	These provisions would determine the quantum of penalty, if any

10.5 FAQ

Q1. Can the composition tax be lower than 1%?

Ans. No. Composition tax cannot be lower than 1%.

Q2. Will a taxable person be eligible to opt for composition scheme only for one out of 3 business verticals?

Ans. No. Composition scheme would become applicable for all the business verticals / registrations which are separately held by the person with same PAN.

Q3. Can composition scheme be availed if the taxable person effects inter-State supplies?

Ans. No. Composition scheme is applicable subject to the condition that the taxable person does not affect inter-state outward supplies.

Q4. Can the taxable person under composition scheme claim input tax credit?

Ans. No. Taxable person under composition scheme is not eligible to claim input tax credit.

Q5. Can the customer who buys from a taxable person who is under the composition scheme claim composition tax as input tax credit?

Ans. No. customer who buys goods from taxable person who is under composition scheme is not eligible for composition input tax credit.

Q6. Can composition tax be collected from customers?

Ans. No. The taxable person under composition scheme is restricted from collecting tax.

Q7. What is the threshold for opting to pay tax under the composition scheme?

Ans. The threshold for composition scheme is upto 50 Lakhs of aggregate turnover in the preceding financial year.

Q8. How to compute 'aggregate turnover' to determine eligibility for composition scheme?

Ans. The methodology to compute aggregate turnover is given in Section 2(6). However, since composition scheme is applicable only to suppliers making intra-state supplies, 'aggregate turnover' means 'Value of all (taxable supplies + Exempt supplies) – (Taxes + Value of inward supplies taxable under reverse charge) of a person having the same PAN (i.e., across India).

Q9. What does a person having the same PAN mean?

Ans. "Person having the same PAN" means all the units across India having the same PAN as is issued under the Income Tax Law.

Q10. What are the penal consequences if a taxable person is not eligible for payment of tax under the Composition scheme?

Ans. Taxable person who is not eligible for the said scheme, could be imposed penalty as determined under Section 73 or 74.

Q11. What happens if a taxable person who has opted to pay taxes under the composition scheme crosses the threshold limit of ₹ 50 lakhs during the year?

Ans. In such case, from the day the taxable person crosses the threshold, the permission granted earlier is deemed to stand withdrawn, and he shall be liable to pay taxes under the regular scheme i.e. section 9 from such day.

10.6 MCQ

Q1. What is the minimum rate of tax prescribed for composition scheme?

(a) 4%

(b) 2%

(c) 1%

(d) 5%

Ans. (c): 1%

Statutory Provision

11. Power to grant exemption from tax

(*1*) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(*2*) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(*3*) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (*1*) or order issued under sub-section (*2*), insert an *explanation* in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (*1*) or order under sub-section (*2*), and every such *explanation* shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

11.1 Introduction

This provision confers powers on the Central Government to exempt either absolutely or conditionally goods or services or both of any specified description from whole or part of the central tax, on the recommendations of the Council. It also confers power on the Central Government to exempt from payment of tax any goods or services or both, by special order, on recommendation of the Council.

11.2 Analysis

The Central or the State Governments are empowered to grant exemptions from tax, subject to the following conditions:

(i) Exemption should be in public interest

(ii) By way of issue of notification

(iii) On recommendation from the Council

(iv) Absolute / conditional exemption may be for any goods and / or services

(v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature.

(vi) The registered person supplying the goods or services or both shall not collect the tax more than the effective rate as exempted by the Government.

With specific reference to the fourth condition indicated above, it is important to note that the exemption would be in respect of goods or services or both, and not specifically for any classes of persons. E.g.: An absolute exemption could be granted in respect of supply of water. A conditional exemption could be supply of goods to canteen stores department.

From the explanation Provided, there is one school of thought wherein it is opined / understood that in case of conditional exemptions, there is an option available to the taxable person to pay the tax (by which way, there would be no requirement for input tax credit reversals). However, an absolute exemption is required to be followed mandatorily. The other view is that neither of the exemptions are optional but are mandatory when the conditions relating to the exemption are satisfied.

In terms of sub-Section (2), the Government may issue a special order on a case-to-case basis exempting from payment of tax. The circumstances of exceptional nature would also have to be specified in the special order.

To provide more clarity to explain the exemption notification or the special order, it is Provided that the Government may issue an "Explanation" at any time within a period of 1 year from the date of notification or special order. The effect of this "Explanation" would be retrospective, viz., from the effective date of the relevant notification or special order.

Effective date of the notification or special order:

The effective date of the notification or the special order would be date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would be:

— Date of its issue for publication in the official gazette;

— Date on which it is made available on the official website of the Government Department

Illustrations for Absolute Exemptions:

1. The Central Government may exempt the tax payable under the CGST / UTGST / IGST Acts by any taxable person on supply of "salt" with effect from 01.10.2017

2. All kinds of training services with effect from 01.04.2018

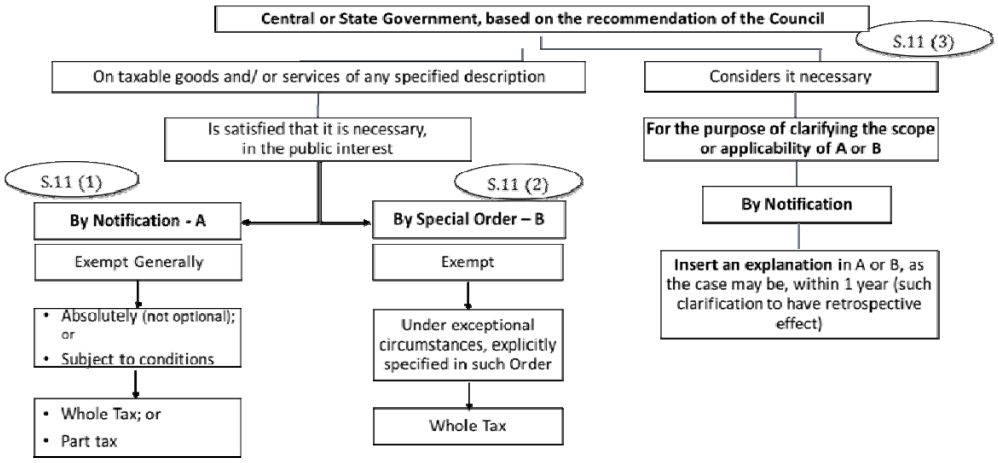
Illustrations for Conditional Exemptions:

1. The Central Government may exempt the tax payable under the CGST / UTGST / IGST Acts by any taxable person on supply of "footwear costing less than Rs. 100" with effect from 01.04.2018

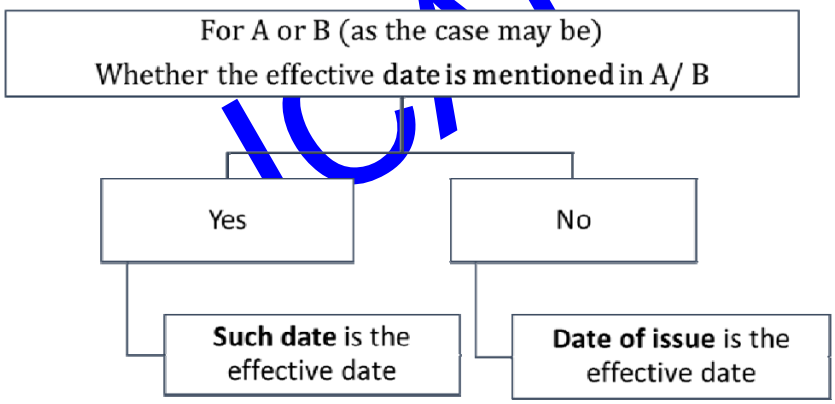
2. The Central Government may exempt the tax payable under the CGST / UTGST / IGST Acts by any taxable person on sale of goods or services or both with effect from 01.12.2017 in respect of all hotels located in Patna in Bihar, for a period of 3 months with effect from 01.01.2018 to 31.03.2018 in view of the flash floods.

The analysis of above provision in a pictorial form is summarised as follows:

Power to grant exemptions: Sec. 11



For the purpose Section 11, the effective date or date of issue of the Notification or Order, is determined as under:



Sec. 11 – Illustration I

Notification issued u/s 11(1): Conditional, partial exemption

- The tax payable by a registered taxable person under Section 9, on the supply of aluminium ingots, sows, billets and wire rods made, in the course of inter-State trade or commerce, to a recipient, being a registered taxable person, shall be calculated @ 1% subject to the condition that the recipient uses such goods as inputs in the manufacture of other goods

  Notification dt. 01.05.2017

Sec. 11 – Illustration II

Notification issued u/s 11(1): Absolute exemption

- Exemption to following taxable services from tax leviable thereon:
- Services Provided to the United Nations or a specified international organization
- Services by a veterinary clinic in relation to health care of animals or birds
- This notification shall come into force on the 1st day of June 2018

Notification No. 25/2018 dt. 20.05.2018

Sec. 11 – Illustration III

Special Order issued u/s 11(2)

Order: Whereas the recent floods and landslides has caused extensive damage to public and private property in the State of Assam and has adversely affected the life of the common man in the State. There is a need to provide support to ensure sustenance for the local population by revival of the hospitality industry; And whereas taxable supply in the State of Assam is chargeable to GST; Now therefore, in exercise of the powers conferred by sub-Section (2) of Section 11 of the CGST Act, the Central Government being satisfied that it is necessary so to do, that the circumstances of exceptional nature as mentioned above, hereby exempts the following taxable services supplied to any person in the State of Assam, from the whole of GST leviable thereon under Section 9 of the said Act, namely:-

- Services by way of renting of a room in a hotel, inn, guest house, club, campsite or other commercial place meant for residential or lodging purposes
- Services Provided in relation to serving of food or beverages by a restaurant

This exemption order is applicable for the above mentioned taxable services supplied during the period 1st July 2017 to 31st July 2017.

Exemption Order dt.17.09.2017

11.2 Comparative review

The provisions relating to exemption are broadly similar to the exemption provisions under the current tax regime. There are no significant differences.

11.3 FAQ

Q1. When exemption from whole of tax leviable on goods and/or services has been granted unconditionally, can taxable person pay tax?

Ans. No, the taxable person providing goods and/or services shall not pay the tax on such goods and/or services in respect of those supplies which are notified for absolute exemptions.

Q2. Under what circumstances can a special order be issued?

Ans. The Government may in public interest, issue a special order on recommendation of GST council, to exempt from payment of tax, any goods and/or services on which tax is leviable. The circumstances of exceptional nature would also have to be specified in the special order.

11.4 MCQ

Q1. Which of the following can be issued by Central Government/ State Government to exempt goods and/or services on which tax is leviable in exceptional cases?

(a) Exemption Notification

(b) Special order

(c) Other notifications

(d) None of the above

Ans. (b) Special Order

Chapter IV
Time and Value of Supply

Statutory Provision

12. Time of supply of goods

(*1*) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.

(*2*) The time of supply of goods shall be the earlier of the following dates, namely: —

(*a*) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (*1*) of section 31, to issue the invoice with respect to the supply; or

(*b*) the date on which the supplier receives the payment with respect to the supply:

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

Explanation 1.—For the purposes of clauses (*a*) and (*b*), "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.

Explanation 2. —For the purposes of clause (*b*), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

(*3*) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely: —

(*a*) the *date of the receipt of goods; or*

(b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(c) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (*a*) or clause (*b*) or clause (*c*), the time of supply shall be the date of entry in the books of account of the recipient of supply.

(*4*) In case of supply of vouchers by a supplier, the time of supply shall be—

(*a*) the date of issue of voucher, if the supply is identifiable at that point; or

(*b*) the date of redemption of voucher, in all other cases.

(*5*) Where it is not possible to determine the time of supply under the provisions of sub-section (*2*) or sub-section (*3*) or sub-section (*4*), the time of supply shall––

(*a*) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(b) in any other case, be the date on which the tax is paid.

(*6*) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

12.1 Analysis

(a) Introduction

Supply has been understood to hold the key to the incidence of GST, but it is the 'time of supply' that dictates the occasion when this incidence will come to rest. Taxable supply has been defined to mean a supply of goods and/or services which is chargeable to tax under this Act. It is interesting to note the use of the expression 'chargeable to tax' as opposed to 'leviable to tax'. It has been held that 'chargeable to tax' encompasses not only the incidence of tax but also its assessment.

The opening words in section 12(1) are very interesting and forceful as it is here that the liability to pay GST arises. The subject matter of levy – goods or services – becomes encumbered with the tax upon occurrence of the taxable event – supply. But the tax levied in terms of section 9, comes to reside only at the time determined by section 12 and 13. Accordingly, these sections play a stellar role in the imposition of GST.

The provisions state that the time of supply "shall be" and as such is a "must" to be examined closely. It signifies that "time of supply" is not a fact to be inquired by the taxable person but one that is to be admitted as the time of supply appointed by the will of legislature as declared in the section. In order to not allow any opportunity for a suggestion by the taxable person or even the tax administration as to any alternative to what could be the time of supply, the legislature retains for itself the exclusive authority to appoint the time of supply by employing the words "shall be". Therefore, the time of supply is what is stated in the law to be the time of supply and nothing else.

Invoice is commonly understood as 'proof of sale' but this common understanding is far from the truth. Invoice is a document recording the terms of an arrangement already entered - the underlying arrangement. Lease agreement, as an analogy, is a document in present evidencing the agreement reached between two parties is for the lease of property for certain duration in exchange for a certain consideration. A lease arrangement verbally entered into previously when documented by an indenture or deed does not bring into existence the lease when the document is prepared. In fact, the document merely is a record of an arrangement of lease entered previously, albeit verbally. Verbal arrangements are no less agreements in the

eyes of law. Similarly, an invoice does not bring into existence a sale agreement but merely records the terms of whatever arrangement that may have been entered into by the parties, involving the subject matter. Tax laws require the preparation of an invoice not as if the absence of an invoice defeats the levy but prescribes an unambiguous occasion when the tax may become recoverable with a proper record of the terms of the underlying arrangement. Therefore, an invoice can evidence not only a sale but every other form of supply such as transfer, barter, exchange, license, rental, lease or disposal. If issuance of an invoice is uncommon for barter or a rental arrangement, then it is to do with our own unfamiliarity and nothing to do with its impermissibility.

(b) Time of Supply – Forward Charge

Time of supply is prescribed (legislative will) to be the earlier of (a) date of issue of invoice and (b) date of receipt of payment. Date of issue of invoice requires us to examine section 31 which deals with the requirement to issue a "tax invoice". Here two kinds of situations are contemplated, namely:

(i) A case where the supply involves movement

(ii) Any other case

Before proceeding, it is necessary to admit the concept of 'person and taxable person'. Person is defined in the most familiar manner in section 2(84) but taxable person is explained in detail in section 25 (please refer to the relevant chapter for a detailed discussion). A proper reading of section 25 helps us understand – a State is the smallest registrable unit in GST – except where multiple business verticals are registered separately under section 24. A taxable person is therefore the presence of the person in a State where taxable supplies are made from in the name of such person. When a person becomes liable to be registered in a State at any place from where taxable supplies are made therein, every place in that State such person shall be a taxable person.

2(96) "removal", in relation to goods, means –

(a) despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier, or

(b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient

Now, we may return to our discussion regarding the two kinds of cases that are discussed on time of supply. It is noticeable that section 31 uses two expressions – 'removal of goods' and 'movement of goods' – which are not merely expressions of distinction without a difference. There is deliberate purpose for legislating in this manner. 'Removal of goods' is defined in section 2(85) and identifies the steps that may follow once the decision to supply is made. But, 'movement of goods' is not defined and is therefore an attribute of the goods at the time of supply. For example, machine tools on display at an exhibition in Mumbai agreed to be purchased by executives of an engineering company from Indore attending the exhibition, is a case of 'supply involving movement' even though the transportation is undertaken by representatives of the purchaser on their own. In the same example if the executives from Indore were to place an order at the same exhibition with instructions for delivery to be

ensured by the exhibitor (supplier) assured within six weeks, this would also be a case of 'supply involving movement' and the transportation being organised by the supplier through an independent transport agency from the factory or exhibitor site to the customer location.

It is for this reason that the language employed of seemingly similar or synonymous expressions – 'removal of goods' and 'movement of goods' – but demands to be supplied their separate and individual meanings and not be misled by their apparent similarity. To reiterate, 'removal of goods' is a question of fact to be examined from the steps that would ensue once the supply is decided whereas 'involves movement' is a question of the state-of-affairs of the goods being supplied.

Therefore, it is important even before the arrival of time of supply, that the goods to be supplied be classified into one of these two cases, that is, whether it is a case of supply that involves movement or one that does not involve movement of the goods. Only when this classification of the goods has been clearly made does section 31 come into operation. Where the supply involves movement of goods then an invoice must be issued at the exact time when the goods are about to be removed. And where the supply does not involve movement of goods then an invoice must be issued at whatever is the time when the goods are delivered or made available to the recipient. It is in this case – where supply does not involve movement – that the complexity remains even after making a proper classification. That is, determining the time when the goods are delivered or made available to the recipient. Delivery – the mode and the time – is the unilateral choice of the recipient and the supplier has no authority to decide 'how' and 'when' he will deliver the goods to the recipient. It only becomes easy in a contract for supply if it clearly records this 'choice' of the recipient regarding the mode and time of delivery. The supplier is always duty-bound to deliver in exactly the same way – manner and timing – which the recipient dictates. In fact, the supplier continues to be obligated until delivery is completed in the way it is stated by the recipient. In other words, delivery is not complete if there is any deviation in either the manner or the timing compared to that dictated by the recipient. When the delivery is to the satisfaction of the recipient, then the supplier is released from his obligation. Therefore, in all those cases (where supply does not involve movement) the additional question of fact to be determined is the mode and time of delivery dictated by the recipient and whether the same has been complied with, to the satisfaction of the recipient. It is now that section 31 comes into operation.

Unlike the case of VAT law where an invoice is required to be issued when 'transfer of property' takes place and invoice does not have to be kept pending until they are physically removed, GST requires issuance of an invoice at the time of their 'removal' or 'delivery', as the case may be, notwithstanding any delay in transfer of property. As explained earlier, an invoice does not by itself prove anything except that it is a record of the terms of understanding of the underlying transaction. Accordingly, referring back to our brief mention about 'person and taxable person', the tests requiring examination under section 31 must be administered not only in a transaction between two persons but even on all the transactions between two taxable persons even if they belong to the same person.

It is only upon undertaking a detailed enquiry into the questions of fact determined under

section 31 in the respective cases, will we be able to determine one of the two elements prescribed to be the 'time of supply' under section 12. Time of supply therefore is earlier of date of invoice as per section 31 or date of receipt of payment with respect to the supply.

Exceptions:

(i) when amount in excess of Rs. 1000 is received, the time of supply in respect of such excess at the option of the supplier shall be the date of such invoice

(ii) supply shall be deemed to have been made to the extent the value of supply indicated in the invoice or the value of payment received by the supplier

(iii) date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier

(c) Time of Supply – Reverse Charge

Where tax is payable on reverse charge basis, the time of supply is appointed to be the earliest of (a) date of receipt of goods, (b) date of payment or (c) 30 days from the date of issue of invoice by the supplier. If for any reason, one or these three dates cannot be determined then the time of supply will be the date of recording the supply in the books of the recipient.

Keeping in mind the definition of reverse charge in section 2(98), the above provision does not apply to payment of tax by an electronic commerce operator but only to those cases of supply which fall under sub-section 5 to section 9 of the Act.

Exceptions:

date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier

(d) Time of Supply – Vouchers

The Act introduces time of supply in respect of 'vouchers' as a separate category such that the provisions relating to time of supply of goods is made inapplicable when the supply is of such vouchers. Referring to chapter III where in the context of supply, definition of goods has been discussed at length, we find specific inclusion of 'actionable claims'.

In relation to actionable claims, Courts have held as follows:

(i) actionable claims come within the definition of goods as generally understood

(ii) VAT laws have deliberately excluded actionable claims from the definition of goods

(iii) actionable claims represent debt and accordingly carry a demand that can lawfully be made by one person against another

(iv) actionable claims represent property in non-physical (incorporeal) form

But in GST, unlike VAT laws, we find that by including actionable claims within the definition of

goods, they are made liable to tax. In relation to actionable claims under GST, please note the following key aspects:

(i) Actionable claims are included specifically in the definition of goods, but this inclusion is by creating an exception from an exclusion. In other words, while excluding money and securities from the definition of goods, actionable claims have been singled out. This means such forms of actionable claims that represent property in the form of money or securities are also excluded from the definition of goods. Therefore, from a large population of actionable claims, tax is applicable only on the subset of actionable claims which do not represent property in the form of money or securities and all other forms of actionable claims representing any other property is includable in the definition of goods. A receipt for having made payment is not actionable claim because that receipt represents money and not the result of a transaction resulting in debt or demand. Similarly, promissory notes, IOU slips and all other derivatives of such instruments are also not actionable claims for the purposes of GST because of the exclusion of money from the definition.

(ii) Actionable claims which are included within the definition of goods do not become includable in the definition of services due to the accommodative and expansive language used to define services. For this reason, the property that actionable claims represent even if they are in non-physical form will continue to remain goods and not become services. Actionable claims so understood may or may not be itself in any physical form. In other words, actionable claim is not the piece of paper carrying the detailed description of the actionable claim in question but the real property, though in nonphysical form, that is referred to in that piece of paper. In this digital age, piece of paper carrying the description of the actionable claim can even be present in electronic form and still retain the chart of actionable claim within the definition of goods. So, actionable claims can be in physical or electronic form as long as they represent real property.

About 'actionable claims' discussion in chapter III would have highlighted that the incidence is limited to 'lottery, betting and gambling'. Further, it is important to note that vouchers are not always referring only to actionable claims. Vouchers being treated as a separate category for the purposes of determining time of supply will need to be first identified in relation to supply before applying the relevant provision regarding its time of supply. Vouchers are not defined in the Act but its general definition is *"a small printed piece of paper that entitles the holder to a discount or that may be exchanged for goods or services"* and examples of voucher are coupon, token, ticket, license, permit, pass. Given the broad nature of this general definition and examples, it is important to await the exact scope intended in GST for vouchers.

Now, the time of supply in the case of vouchers is stated to be:

2(75) "money" means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its

(i) the date of issue of voucher if the supply is identifiable at that point or

(ii) and in all other instances, the date of redemption of the voucher

Please refer to the chapter regarding time of supply of services for detailed discussion on the overall aspect of vouchers. It is important to understand that a similar provision as specified in relation to time of supply of goods also exists in time of supply of services. It is reasonable to therefore infer that the Government in its wisdom, in all probability, will treat 'vouchers relating to goods' and 'vouchers relating to services' as distinct and separate class of transactions. What does one understand by 'vouchers relatable to goods' and 'vouchers relatable to services? A layman would comprehend that vouchers relatable to goods would be those class of transactions which can be exchanged for goods whereas vouchers relating to services being distinct and separate can be exchanged only for services. There can be a third class of transactions relating to vouchers, namely, a gift voucher issued by a bank which can be exchanged only for cash. But a plain reading of definition of goods and services indicates that they both exclude money. Therefore, such of those vouchers relatable to cash / money can be safely assumed to be outside the ambit of GST laws.

It is possible for one to construe that a voucher relating to goods can be embedded for the provision of services also. Such class of transactions must be read with schedule II to understand whether they are to be treated as goods or as services and thereafter apply the principles laid down to the transaction as if they were goods or services. And in such situations, await until time of redemption to determine the rate of tax and class of supply.

Interesting situations arise in respect of such transactions. For instance, the points accumulated in a credit card could be used to exchange for goods or issue of an air ticket. Difficulty arises in taxing such transactions in the hands of the person issuing such points. However, the taxability or otherwise of such accumulated points would need detailed deliberations based on facts and surrounding circumstances of each case.

(e) Time of Supply – Residuary

Where none of the above provisions are able to satisfactorily answer the time of supply, it is to be determined based on the residuary provision which states that the time of supply is:

(i) where a periodical return has to be filed, the due date prescribed for such return or

(ii) in any other case, the date of payment of the tax

Time of supply under this residuary provision is applicable only when the other provisions are found to be inapplicable and not merely when there is some difficulty in determining the facts that are sought for by the relevant provision.

(f) Time of Supply – Special Charges

Special charges imposed for delay in payment of consideration will enjoy the facility of time of supply being date of receipt of the charges imposed, that is, cash-basis of payment of GST. The various issues involved in these special charges are discussed in detail under time of supply of services which may kindly be referred.

	Concept illustrations Section 12(2)	Invoice date	Invoice due date	Payment entry in supplier's books	Credit in bank account	Time of supply
1	Invoice raised before removal	10-Oct-17	20-Oct-17	26-Oct-17	30-Oct-17	10-Oct-17
2	Advance received	30-Oct-17	20-Oct-17	10-Oct-17	30-Oct-17	10-Oct-17

	Supply involves movement of goods Section 12(2) r/w Section 31(1)(a)	Invoice/ document date	Removal of goods	Delivery of goods	Receipt of payment	Time of supply
3	Delayed issue of invoice	26-Oct-17	20-Oct-17	26-Oct-17	26-Oct-17	20-Oct-17
4	Inter-State stock transfer	10-Oct-17	20-Oct-17	26-Oct-17	-	10-Oct-17
5	Advance received, invoice for full amount issued on same day (40% advance, 60% post supply payment)	30-Oct-17	10-Nov-17	14-Nov-17	30-Oct-17	30-Oct-17
					20-Nov-17	30-Oct-17

	Supply otherwise than by involving movement of goods Section 12(2) r/w Section 31(1)(b)	Invoice date	Receipt of invoice by recipient	Delivery of goods	Receipt of payment	Time of supply
6	Delayed issue of invoice	30-Oct-17	05-Nov-17	26-Oct-17	10-Nov-17	26-Oct-17
7	Invoice issued prior to delivery	20-Oct-17	10-Nov-17	26-Oct-17	10-Nov-17	20-Oct-17

	Continuous supply of goods Section 12(2) r/w Section 31(4)	Invoice date	Removal of goods	SoA/ payments due date	Receipt of payment	Time of supply
8	Contract provides for successive statements of account/ successive payments	01-Nov-17	15-Oct-17	05-Nov-17	01-Nov-17	01-Nov-17
			25-Oct-17			
9		11-Dec-17	08-Nov-17	05-Dec-17	11-Dec-17	05-Dec-17
			30-Nov-17			
10		08-Jan-18	14-Dec-17	05-Jan-18	01-Jan-18	01-Jan-18
			23-Dec-17			

	Reverse charge Section 12(3)	Date of invoice issued by supplier	Removal of goods	Receipt of goods	Payment by recipient	Time of supply
11	General	31-Oct-17	31-Oct-17	20-Nov-17	30-Nov-17	20-Nov-17
12	Advance paid	31-Oct-17	31-Oct-17	20-Nov-17	05-Nov-17	05-Nov-17
13	No payment made for the supply	31-Oct-17	30-Dec-17	05-Jan-18	-	30-Nov-17

	Sale on approval basis Section 12(2) r/w Section 31(7)	Removal of goods	Issue of invoice	Accepted by recipient	Receipt of payment	Time of supply
14	Acceptance communicated within 6 months of removal	01-Nov-17	25-Nov-17	15-Nov-17	25-Nov-17	15-Nov-17
15	Amount paid to supplier before informing acceptance	01-Nov-17	25-Nov-17	15-Nov-17	12-Nov-17	12-Nov-17
16	Acceptance not communicated within 6 months of removal	01-Oct-17	15-May-18	15-May-18	02-May-18	01-Apr-18

Statutory Provision

13 Time of Supply of Services

(1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.

(*2*) The time of supply of services shall be the earliest of the following dates, namely:—

(*a*) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (*2*) of section 31 or the date of receipt of payment, whichever is earlier; or

(*b*) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (*2*) of section 31 or the date of receipt of payment, whichever is earlier; or

(*c*) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (*a*) or clause (*b*) do not apply:

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation. ––For the purposes of clauses (*a*) and (*b*)––

(*i*) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;

(ii) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

(*3*) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:––

(a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

(b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Provided that where it is not possible to determine the time of supply under clause (*a*) or clause (*b*), the time of supply shall be the date of entry in the books of account of the recipient of supply:

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

(*4*) In case of supply of vouchers by a supplier, the time of supply shall be––

(*a*) the date of issue of voucher, if the supply is identifiable at that point; or

(*b*) the date of redemption of voucher, in all other cases.

(*5*) Where it is not possible to determine the time of supply under the provisions of sub-section (*2*) or sub-section (*3*) or sub-section (*4*), the time of supply shall––

(*a*) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or

(*b*) in any other case, be the date on which the tax is paid.

(*6*) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

13.1 Analysis

(a) Time of Supply – Forward Charge

Similar to goods, time of supply of services is prescribed to be the earlier of date of issue of invoice and date of receipt of payment. Date of issue of invoice requires us to examine section 31 which deals with the requirement to issue a "tax invoice". In relation to services, section 31 requires that a tax invoice be issued whether before or after provision of service. Further, there is a time limit beyond which tax invoice to be issued in arrears cannot be delayed after completion of the provision of service.

Please recollect the discussion in chapter III where it has been explained that in accordance with schedule II, supplies involving goods may be treated as supply of services. In all such cases, as in the case of services ordinarily understood, this provision alone applies for determination of time of supply. One may also refer to chapter VII regarding issuance of tax invoice in all other circumstances and determine from there the fact of issuance of tax invoice.

Then when the tax invoice has been issued accordingly, the time of supply can be determined to be earlier of date of issuance of such tax invoice or date of receipt of payment.

Exceptions:

(i) When amount in excess of Rs. 1000 is received, the time of supply in respect of such excess at the option of the supplier shall be the date of such invoice

(ii) Supply shall be deemed to have been made to the extent the value of supply indicated in the invoice or the value of payment received by the supplier

(iii) Date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier

(b) Time of Supply – Reverse Charge

Where tax is payable on reverse charge basis, the time of supply is appointed to be the earlier of date of payment or 60 days from the date of issue of invoice by the supplier. If for any reason, one or all of these two dates cannot be determined then the time of supply will be the date of recording the supply in the books of the recipient. In case of transactions between 'associated enterprises' and the supplier is located outside India, the date of recording the supply in the books of the recipient alone will be relevant.

Again, please note that in view of the definition of reverse charge in section 2(98), the above

provision does not apply to payment of tax by an electronic commerce operator under sub-section 5 to section 9 of the Act.

Exceptions:

(i) date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier

(c) Time of Supply – Vouchers

Please refer to discussion regarding time of supply of goods for some background discussion about actionable claims. For purposes of this discussion on time of supply of services, please note the following comments:

(i) the discussion on actionable claims being includible as vouchers is relevant vis-à-vis services for the only reason that certain transactions involving goods are deliberately treated as supply of services by schedule II and to this extent actionable claims which are a sub-set of goods need to be referred in this chapter

(ii) vouchers are not entirely comprised only of actionable claims and services can also be included but the exact scope of vouchers is eagerly awaited when the Rules are published

Now, the time of supply in the case of vouchers is stated to be:

(i) the date of issue of voucher if the supply is identifiable at that point or

(ii) and in all other instances, the date of redemption of the voucher

From the provision, it can be seen that at the time of issue of voucher, it is possible that the supply is not identifiable. So, the following key statements can be considered in this regard:

(i) Vouchers maybe issued with specific or non-specific end-use

(ii) Vouchers are issued on payment of money

(iii) Vouchers themselves are not legal tender

(iv) Vouchers represent some carried value in money terms

(v) Vouchers are accepted as substitute for payment for a supply due to their carried value

(vi) Vouchers are not merely receipts for pre-payment received

(vii) Vouchers must be non-cancellable such that they cannot be reconverted back into money

(viii) Vouchers may be in physical or digital form but comprise the above characteristics

> 2(118) "voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;

When vouchers are issued for specific end-use, then they are taxable as supply Provided they otherwise satisfy the requirements of section 7 of the Act. Since, a specific provision exists in respect of time of supply of vouchers, they are not goods or services in themselves, but are singled out for the limited purposes of prescribing the time of their supply. And the rate of tax will be that applicable to goods or services they are issued in respect of or that applicable at the time of redemption. Vouchers are not merely receipts for pre-payment received because prescribing a specific time of supply would be redundant when time of supply already considers advance payments.

Please also note that the Government has issued the Payment and Settlement Systems Act, 2007 ('PSS Act') and accordingly, not everyone is permitted to issue instruments that may be used as a Payment System. RBI is expected to make major changes to the circulars issued in terms of the PSS Act by June 2017 but the framework or principles borrowed from the current circulars for the purposes of GST is expected to remain unaltered all though changes may come in areas of governance, ease of doing business and inclusive growth in e-payment offerings through these Pre-Paid Instruments or PPIs.

Description	Prepaid Payment Instruments (PSS Act, 2007)			Co-branded hybrid PPIs (7.4)	
	Closed	Semi-closed	Open	Semi-closed	Limited Open
Parties involved					
Issuer	Merchant	NBFC/Company	Bank	NBFC/Company	Bank
Brand	Issuer	Issuer	Issuer	Co-branded	Co-branded
Holder of PPI	Consumer	Consumer	Consumer	Consumer	Consumer
PPI usage	Issuer outlet only	Pre-defined outlets	Any or ATM	Any (or ATM)	Any (or ATM)
Description of PPI					
Card type	Physcial only	e-Card only	Any	e-Card only	Any
Payment type (2.1)	Acceptance	Settlement	Settlement	Settlement	Settlement
Reload allowed	No	Yes	Yes	Yes	Yes
Is as 'payment system'	No (2.4)	Yes	Yes	Yes	Yes
Regulatory prescriptions					
RBI approval	Required	Required	Authorization	Required	Gen. permission
Stored value < Rs.100,000/-	Not allowed (7.1)	Full KYC (7.2-iii)	Full KYC (7.2-iii)	Full KYC (7.2-iii)	Full KYC (7.2-iii)
Stored value < Rs.50,000/-	OVD (7.2-ii) *	OVD (7.2-ii) *	Full KYC (7.2-iii)	OVD (7.2-ii) *	Full KYC (7.2-iii)
Stored value < Rs.10,000/-	ID only (7.2-i)	ID only (7.2-i)	Full KYC (7.2-iii)	ID only (7.2-i)	Full KYC (7.2-iii)
** Officially valid document as per rule 2(d) of PML Rules, 2005*					
Cashflow / custody-flow steps					
Stored value paid by	Consumer	Consumer	Consumer	Consumer	Consumer
Stored value paid to	Issuer-merchant	Issuer	Issuer-bank	Issuer	Issuer-bank
Held as	Trade advance	Trade advance	Deposit	Trade advance	Deposit
Held with (8.2 & 8.3)	Any bank (escrow)	Any bank (escrow)	Issuer-bank	Any bank (escrow)	Issuer-bank
Held for (8.3-vii)	Issuer-merchant	Issuer	Consumer	Issuer	Consumer
Interest bearing account	No (8.3-xii)	No (8.3-xii)	Yes	No (8.3-xii)	Yes
'Lien or charge' of unspent value	Consumer	Consumer	No (8.2)	Consumer	No (8.2)
'Lien or charge' of spent value	Merchant	Merchant	Merchant	Merchant	Merchant
Unspent value stored (10.2 & .3)	Lapse & forfeit	Exhausts	Withdraw	Exhausts	Withdraw
Additional restrictions					
Resident of India	Yes	Yes	Any	Yes	Any
Non-commercial user	Yes	Yes	Any	Any	Any
Currency	INR only (6.3)	INR only (6.3)	Any (4.1)	INR only (6.3)	Any (4.1)
User verfication	Nil (bearer use)	PIN-based	PIN-OTP	PIN-OTP-Others	PIN-OTP-Others

Source: Circular RBI/2014-2015/105 DPSS.CO.PD.PPI.No.3/02.14.006/2014-15 dated July 1, 2014 (updated as on Dec 3, 2014); relevant para references in brackets.

Please refer to some interesting discussions on vouchers in section 12 above on time of supply.

(d) Time of Supply – Residuary

Where none of the above provisions are able to satisfactorily answer the time of supply, it is to be determined based on the residuary provision which states that the time of supply is:

(i) where a periodical return has to be filed, the due date prescribed for such return or

(ii) in any other case, the date of payment of the tax

(e) Time of Supply – Special Charges

Sometimes there may be charges imposed by the supplier on account of some deviation or special circumstance from the expected terms of contract on the part of the recipient. These special charges may be enabled by the contract though not necessarily attracted at the time of supply of the underlying goods or service (other than these special charges) or may be agreed later – when the special circumstance occurs. These special charges are listed as interest, late fee or penalty on account of delay in payment of consideration. In these cases, the time of supply is appointed to be the date of receipt by the supplier.

Please note that even though a debit note may be issued after reaching agreement with the recipient about the special charges imposed, the time of supply continues to remain 'date of receipt' of payment towards such special charges. This is a departure from the provisions on accrual principle in section 31. As this is a special provision, the same will prevail over all other general provisions.

It is important to understand that due to time of supply being prescribed, whether the imposition of these special charges is itself a supply or not? Please see the following comparative discussion:

Special Charges 'are' Supply	Special Charges 'are not' Supply
Special charges are also supply being agreeing to an act or forbear an act or to tolerate an act (entry 5(e) of sch II) read with sec 2(31)	There is no 'supply' in the case of interest, late fee or penalty as these special charges are a consequence of a departure from the agreed terms of contract and not in fulfilment thereof
Interest, late fee or penalty are illustrations only and such special charges by any other name would also be liable to GST but on receipt-basis	By accepting such an expansive interpretation, damages awarded by a Court, LD imposed in a contract, forfeiture of a EMD, etc. can become liable to GST as these are all in some way 'in the course or furtherance of business'
Special charges paid is liable to GST whether agreed before or agreed subsequently as satisfaction of the limited non-performance	Other than the three special charges listed, any other charges arising from a transaction is not liable to GST as it is not contemplated in the arrangement of supply all though not imposed in all cases
Delay in payment is a primary deviation that gives rise to special charges but even	Only 'delay in payment' gives rise to GST incidence on the special charges. Any other

deviation in time or quantity of supply can entail some other form of special charges, GST on those cannot be avoided as the these listed are only illustrative	deviation would be a variation of contract to be independently examined if it satisfies definition of 'supply'
Special charges are 'linked' to an underlying supply (original supply) and therefore all forms of special charges would also be liable to GST	Special charges are 'linked' to an original supply as such GST cannot be imposed on special charges without an original supply

From the above discussion, several necessary conclusions need to be reached, namely:

(i) whether the three listed charges are exhaustive or only illustrative?

(ii) whether delay in payment is the only occasion when this provision is attracted or special charges imposed for any other default linked to the original supply will also attract this provision?

(iii) whether special charges imposed for any other default (not delay in payment) is liable to GST but not on receipt basis but accrual basis or are special charges for these cases not at all liable to GST?

It appears that the three listed cases are exhaustive not by the three cases listed but the circumstance for their imposition – delay in payment of consideration. So, any form of special charges imposed is liable to GST on receipt basis but only if it is due to delay in payment of consideration. Special charges imposed due to any other default by the recipient is then to be examined if it is linked to an 'original supply' or is it by itself a supply? If linked to an original supply, it is also liable to tax but not during enjoying flexibility to pay tax on receipt basis and tax being payable based on the date of debit note. If not linked to an original supply, GST would not be applicable if it does not satisfy the requirements of levy.

The issues raised in respect of special charges may be considered as matter of discussion and does not carry a procurement of an opinion on view. Readers are free to connect or these discussions and evaluate each such situation after giving it adequate consideration or thought.

S. No.	Concept illustrations Section 13(2)	Invoice date	Invoice due date	Payment entry in supplier's books	Credit in bank account	Time of supply
1	Invoice raised before completion of service	10-Oct-17	20-Oct-17	26-Oct-17	30-Oct-17	10-Oct-17
2	Advance received	30-Oct-17	20-Oct-17	10-Oct-17	30-Oct-17	10-Oct-17
	Based on due date for invoicing Section 13(2) r/w Section 31(2) r/w Invoice Rule - 2	Invoice date	Commencement of service	Completion of service	Receipt of payment	Time of supply

3	Delayed issue of invoice	26-Dec-17	20-Oct-17	16-Nov-17	28-Jan-18	16-Dec-17
4	Advance received, invoice for full amount issued on same day (40% advance, 60% post supply payment)	30-Oct-17	30-Oct-17	30-Dec-17	30-Oct-17	30-Oct-17
					04-Dec-17	30-Oct-17

	Continuous supply of services Section 13(2) r/w Section 31(5)	Invoice date	Date as per contract	Receipt of payment	Entry of provision of services in books	Time of supply
5	Section 31(5)(a) Contract provides for payments monthly on the 10th of succeeding month	02-Nov-17	10-Nov-17	15-Nov-17	31-Oct-17	02-Nov-17
		17-Dec-17	10-Dec-17	15-Dec-17	30-Nov-17	10-Dec-17
		10-Jan-18	10-Jan-18	06-Jan-18	31-Dec-17	06-Jan-18
6	Section 31(5)(c) Contract provides for payments on completion of event. Recipient to pay within 1 month from date of completion	12-Nov-17	10-Nov-17	25-Nov-17	12-Nov-17	10-Nov-17
		24-Apr-18	24-Apr-18	20-Apr-18	24-Apr-18	20-Apr-18

	Reverse charge Section 13(3)	Date of invoice issued by supplier	Date of completion of service	Payment by recipient	Entry of receipt of services in recipient's books	Time of supply
7	General	31-Oct-17	31-Oct-17	20-Nov-17	30-Nov-17	20-Nov-17
8	Advance paid	31-Oct-17	31-Oct-17	05-Nov-17	31-Oct-17	05-Nov-17
9	Delay in payment (Max. 60 days from date of invoice)	31-Oct-17	31-Oct-17	10-Jan-18	31-Oct-17	31-Dec-17
10	Service received from associated enterprise located	31-Oct-17	30-Nov-17	05-Apr-18	31-Mar-18	31-Mar-18

	outside India (No time extension allowed)					
11	Service by unregistered person, no payment made	-	30-Nov-17	-	05-Dec-17	05-Dec-17

	Issue of vouchers Section 13(4) [or Section 12(4)]	First service/ delivery of goods	Issue of voucher	Redemption of voucher	Last date for acceptance of voucher	Time of supply
12	Voucher issued to a recipient after supply of a service [or specific goods], for the same service - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	01-Nov-17
13	Voucher issued to a recipient of machinery along at the time of delivery, for availing repair services [or specific goods] worth Rs. 5,000 - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	01-Nov-17
14	Voucher issued to a recipient after supply of a service, for any other services or goods across India, - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	14-Dec-17
15	Gift voucher for Rs. 1,500 for services [or goods]- valid for 6 months	-	01-Nov-17	25-Dec-17	31-Mar-18	01-Nov-17

Statutory Provision

14. Change in rate of tax in respect of supply of goods or services

Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely: —

(*a*) in case the goods or services or both have been supplied before the change in rate of tax, —

(*i*) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or

(*ii*) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or

(*iii*) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;

(*b*) in case the goods or services or both have been supplied after the change in rate of tax, —

(*i*) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or

(*ii*) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or

(*iii*) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation. —For the purposes of this section, "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

14.1 Analysis

Payment of tax requires the presence of all the following events:

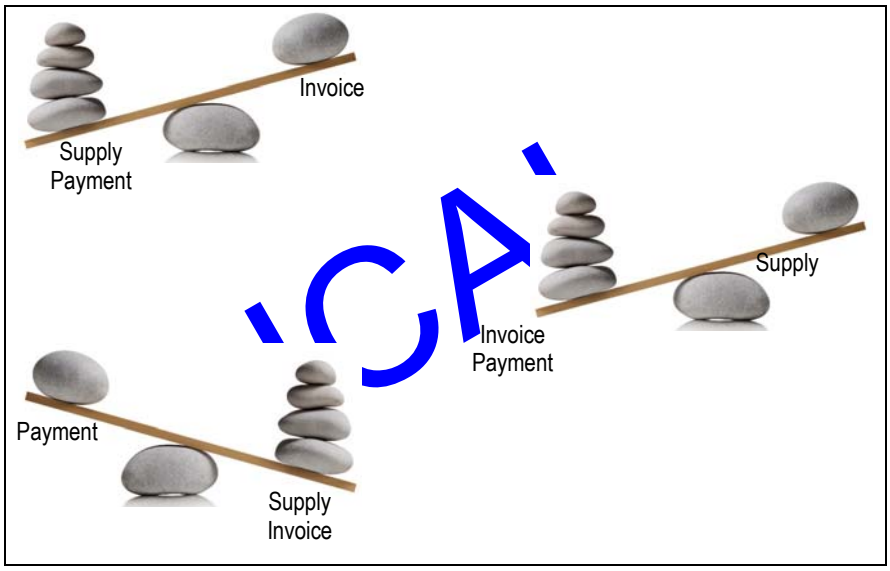
(i) supply of goods or services

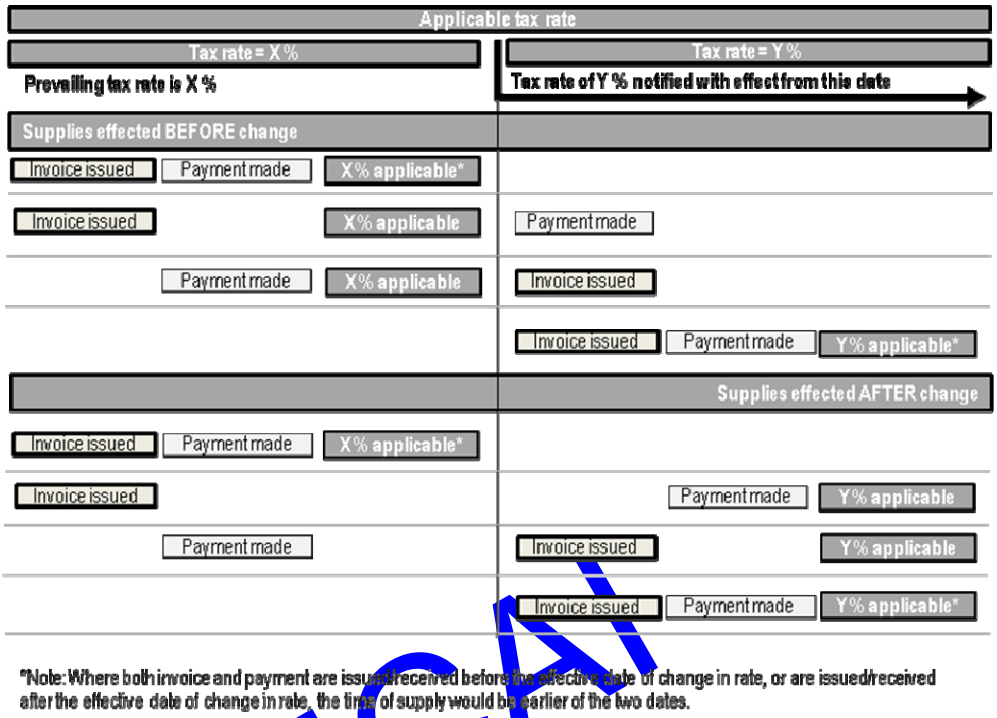
(ii) issue of invoice

(iii) payment for the supply

When there is a change in the rate of tax during the occurrence of these three events, there may be some concern about the applicability of the correct rate of tax. Section 14 addresses this aspect clearly.

Where the supply takes place after the change in the rate of tax, the time of supply may be as follows:





*Note: Where both invoice and payment are issued/received before the effective date of change in rate, or are issued/received after the effective date of change in rate, the time of supply would be earlier of the two dates.

Sl. No.	Case	Date of supply of goods/ services	Invoice date	Payment by recipient	Time of supply	Applicable tax rate
1	Case I	10-Jul-18	20-Jul-18	10-Aug-18	20-Jul-18	18%
2	Case II	10-Jul-18	05-Sep-18	25-Jul-18	25-Jul-18	18%
3	Case III	10-Jul-18	05-Aug-18	10-Aug-18	05-Aug-18	12%
4	Case IV	10-Aug-18	25-Jul-18	05-Aug-18	05-Aug-18	12%
5	Case V	10-Aug-18	05-Sep-18	25-Jul-18	05-Sep-18	12%
3	Case VI	10-Aug-18	20-Jul-18	25-Aug-18	20-Jul-18	18%

Although supply has not yet taken place, the time of supply determined as above is valid and not in violation of the levy of GST for the following reasons:

(i) Supply is defined in section 7(1)(a) as '……made or agreed to be made…..'

(ii) Levy of GST in section 9 is on such supply, that is, 'made or agreed to be made'

Prescribing the time of supply anterior to the time of actual supply is well accommodated in the language of the Act.

Statutory Provision

15. Value of taxable supply

(1) The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

(*2*) The value of supply shall include—–

(*a*) any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;

(*b*) any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;

(*c*) incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

(*d*) interest or late fee or penalty for delayed payment of any consideration for any supply; and

(*e*) subsidies directly linked to the price excluding subsidies Provided by the Central Government and State Governments.

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.

(*3*) The value of the supply shall not include any discount which is given—–

(*a*) before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and

(*b*) after the supply has been effected, if—

(*i*) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and

(*ii*) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

(*4*) Where the value of the supply of goods or services or both cannot be determined under sub-section (*1*), the same shall be determined in such manner as may be prescribed.

(*5*) Notwithstanding anything contained in sub-section (*1*) or sub-section (*4*), the value of

such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this Act,—

(*a*) persons shall be deemed to be "related persons" if—

(*i*) such persons are officers or directors of one another's businesses;

(*ii*) such persons are legally recognised partners in business;

(*iii*) such persons are employer and employee;

(*iv*) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;

(*v*) one of them directly or indirectly controls the other;

(*vi*) both of them are directly or indirectly controlled by a third person;

(*vii*) together they directly or indirectly control a third person; or

(*viii*) they are members of the same family;

(*b*) the term "person" also includes legal persons;

(*c*) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

15.1. Introduction

Consideration is *quid pro quo* in a contract and price is the consideration expressed in money terms. Value is the price prevalent when a transaction takes place under controlled conditions. Valuation is the study of all those circumstances and assessment of steps to reverse or rectify the effect of contractual or other arrangements that may suppress or understate the value of the transaction.

15.2. Analysis

"transaction value" which is the price actually paid or payable for the said supply of goods and/or services where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

This section applies to both goods and services supplied for purposes of valuation of the taxable supply.

Although contained in the CGST Act, the valuation method Provided in this section applies to UTGST, SGST, CGST and IGST. Valuation must be as Provided exclusively in this section.

'Transaction value' has not been defined but is Provided in the section itself as the 'price'. Price is consideration in money terms. Value, as stated earlier, is price that would be prevalent under controlled conditions. These conditions being:

- Transaction having a price
- Between persons not related
- And that price being the sole consideration

In other words, the exercise of valuation is aimed to recreate the above conditions and take any given transaction through to see the result – price – that would emerge. In addition to this price, certain express inclusions are Provided:

- Taxes levied under any other law(s)- this clause provides for exclusion of GST from the value and therefore all other taxes charged must be included in the value before quantifying GST. Taxes other than GST will cause cascading and this is deliberate;
- Any amounts paid by recipient that are obligation of supplier to pay- this clause removes any doubt about the inclusion of costs paid by the recipient to a third party in the value of supply by the supplier. The prescription in this clause is to identify any occasion where costs – in respect of which the supplier is the principal creditor / obligor – are diverted away from the principal such that the recipient directly makes the payment resulting in lowering the rightful value of supply. At the same time, this clause does not authorize every payment where the recipient is the principal creditor / obligor and require these also to be included in the value of supply. This point may be illustrated by an example of – payment of commission to agent for facilitating the supply. If the payment is 'buying commission' which is paid by the recipient, then the obligation to pay the agent is always of the recipient and does not require to be included in the value of supply. But if the payment is 'selling commission' which happens to be paid by the recipient, then the obligation to pay the agent being that of the supplier is required to be included in the value of supply. In this case (of selling commission), the underlying obligation is that of the supplier because it is the supplier who engages the agent to identify customers to make a supply. And if, somehow, the supplier manages to pass this obligation to pay the agent (the amount towards selling commission) to the recipient, then the price paid to supplier is not the true value of supply. Had the recipient refused to pay this selling commission to the agent, then the supplier would have paid the agent and made a corresponding increase in the price of the supply. It is this objective that is being achieved by this clause. There are several other examples that can be considered, please also refer to the discussion on value of supply for further illustration on this point.

(a) "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

- Incidental expenses charged by the supplier- this clause addresses a completely different aspect compared to the previous clause. Here, costs that the supplier incurs 'at' or 'before' supply is liable to be included in the value of supply. For example, cost of packing and transportation has been debated under the VAT laws whether they are incurred before or after the 'transfer of property'. In GST, the point when title passes is irrelevant. To address the issues that had been so vigorously debated under VAT laws, this clause lays down that any cost that the supplier incurs including commission and packing which is charged to the recipient will be included in the value of supply. With this clause there is no opportunity the claim that certain charges recovered by the supplier 'after supply' are not to be included in the value of supply. If it is a charge recovered from the recipient, then the same is includible in the value of supply provided it is not incurred 'after' the completion of supply. An example of cost incurred after date of supply yet not liable to be included in the value of supply could be amount of input tax credit, considered as eligible in pricing of supply, but denied to the supplier by (say) section 16(4). And an example of a cost incurred by the supplier after the date of time and includible could be cost of in-warranty parts (actual or scientifically estimated provision) supplied after the date of supply is not to be excluded from the value of supply.
- Interest, late fee or penalty for delayed payment- – this would also have been a charge recovered by the supplier 'after' the supply that would not be includible in the value of supply but due to the express words of this clause will be included. Please refer detailed discussion regarding this clause under time of supply as 'special charges'
- Subsidy realized by supplier on the supply- this clause expressly provides for the limited exclusion of subsidy from value of supply, that is, subsidy given by the Government alone is excluded from value of supply. This clause makes an interesting requirement that any transaction where there is any form of price-intervention that behaves like a 'subsidy' is liable to be included in the value of supply. In today's economy, there are many transactions that 'behave like subsidy'. For example, contribution of consideration by third party to contract, incentive to supplier given by brand holder linked to each supply, etc. Please note, extended credit terms to one customer and upfront payment terms to another customer cannot be interfered with by relying on this cause. There appears to be no room to accommodate include 'notional additions' by this clause because unlike Central Excise which relies upon 'assessable value' for quantifying the duty, GST relies upon 'transaction value' for quantification. Also, please note 'no cost EMI' and 'cash back' are a form of price-intervention by third party but not included in this clause because these forms of price-intervention is reaching the recipient of supply and not the supplier.

The value of supply will not include discount Provided:

- It is allowed before supply
- It is allowed after supply Provided that it is established in agreement linked to specific supplies and corresponding credit is reversed by recipient

If and only if the transaction value cannot be determined as above is reference to Valuation Rules permitted. Hence, recourse to the Valuation Rules is permitted only in the following circumstances:

- Supplies not covered by section 7(1)(a)
- Supplies covered by section 7(1)(a) but between related persons
- Supplies covered by section 7(1)(a) and not adjusted for aspects Provided by sub-section 2

Government is free to notify tariff values in specific cases to determine the tax payable on such cases. This would prevail over the valuation Provided for in sub-section 1.

(a) Consideration not wholly in money

It is important to consider the difference between 'free' and 'no consideration'. It is probably common to consider that these two are synonymous. At the outset, there can be no contract without consideration. Experts in Contract Law will see the gross illegality if one were to say that there is a contract but has no consideration in it. If the contract is valid, then there is non-monetary consideration which is erroneously stated as having 'no consideration'. It is impermissible that a contract subsists but lacks consideration. It is just impossible. Now, if there is a contract with non-monetary consideration, Rule 1 of the Valuation Rules comes into operation. Although this rule states that it applies when 'consideration is not wholly in money', it applies when the consideration is partly in money or wholly in non-monetary form. This rule provides that the value of supply "shall be" and not be "based on" or "guided by", so that mandatory nature of the prescription of this rule can be appreciated. The value of supply shall therefore be:

(i) Open market value (OMV)– which is the 'full value in money payable by an unrelated person as its sole consideration at the same time as the supply under inquiry. OMV is a new phrase but not too far from its scope and covered from its explanation. Transaction value is price of the supply under inquiry and open market value is the price of the same supply but without the circumstances that impairs the use of transaction value for quantification of tax. OMV is not comparable price to unrelated customer. The definition of OMV does not allow comparison of supplies in comparable circumstances. It only requires supply 'at the same time'. So, OMV is not price in another 'comparable' supply at a close proximity in time. This provision does not provide the manner of adjustments to be made to overcome the effect of those disqualifying circumstances present but simply states that OMV 'shall be' the value of the supply. As such, this clause is not of much avail in addressing the deficiency which was the reason for arriving at the Rules as no resolution was possible in the section itself.

(ii) Sum total of monetary consideration and 'money-equivalent' to consideration not in money – here two aspects are involved – one, to establish that OMV is not available (a task that will be discussed shortly) and two, to arrive at the money value of the non-monetary consideration. Having identified that OMV is not very specific to be able to clearly be determined, it becomes more acute to establish that OMV is not available before proceeding to clause (ii). Onus lies on the one who asserts – the taxable person would have admitted that the circumstances of section 15(1) are not fulfilled and warrants recourse to the Rules but having arrived at the rules, the onus remains with the taxable person to establish that OMV is not available. OMV is not comparable alternate price. Supplies to unrelated persons are always taking place although in different 'commercial circumstances' which is not Provided in the definition of OMV. As such, overcoming the first aspect – OMV not available – is a challenge which tax administration can be stubborn about. Then, arriving at money value of non-monetary consideration is not guided by requirement to use standards of Cost Accounting, etc. Rule of reasonableness is the only guide for arriving at the value which can be shot down by tactic of arbitrariness of the tax administration. Suitable guidance is much needed in this entire exercise

(iii) Value of supply of 'like kind and quality' – here again two aspects are involved – one, to establish that clause (a) and (b) are not determinable and two, to identify 'likeness' of kind and quality. This is a salutary method where there is much experience in Customs Valuation in successfully arriving at the comparable value. Subjectivity must be overcome which is possible by applying data that is reliably substantiated rather than arbitrary factors. The definition provides guidance on the manner of finding this 'likeness' for identifying whether the comparable are really comparable without being subject to any arbitrariness in tax compliance or tax administration

> *(b) "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or*

(iv) Sum total of monetary consideration and value determined by rule 4 or rule 5 in respect of consideration not in money – similar to the previous clause, the first of the two aspects – value is not determinable as above – is the one that presents the greatest difficulty. Expect that it is crude to import values from rule 4 or 5, the rest of this clause is simple in its application. Please note that rule 4 must be applied first and then rule 5, more on that in the discussion of those rules. Some illustrations are Provided in rule 1 that may be referred for understanding its application

Now, reverting to the discussion on a valid contract but having non-monetary consideration, it is important to understand some of the common instances when the supply is claimed of this nature, namely:

- Warranty supply of parts to end customer through a dealership – the parts are supplied

'free' to the end customer. At first, it is important to determine whether the parts replaced are actually covered by warranty in the supply contract or whether there is any replacement request entertained for out-of-warranty equipment for brand building exercise. Then, the warranty obligation lies only with the original equipment manufacturer (OEM) but the actual replacement is carried out at the dealership. When a warranty claim is made with the dealership by the end customer, the dealer seeks approval from OEM. Only after 'in-warranty approval' is received from OEM does the dealer replace the part. Now, the warranty replacement between OEM to end customer is not liable to GST not because it is free but because the price for the replacement is built into the price of the equipment originally supplied and therefore tax has already been paid by OEM. However, the dealer who replaces the part does not carry any role in the warranty fulfilment. In fact, the dealer 'delivers' the part to customer but 'supplies' it to OEM. Hence, there is another supply embedded here between dealer to OEM because dealer uses a tax-paid part from his inventory to replace it for the end customer. Alternatively, the OEM issues credit note to dealer for the part used in the warranty replacement. Reference may be had to Mohd. Ekram Khan's decision of SC in 144 STC 542. As such, warranty involves two supplies and neither of which are free. One is tax pre-paid and another is currently taxed not involving end customer

- Physician's sample of drugs Provided through sales representatives – these drugs are distributed by the physician during clinical consultation with patients. As such, the fee paid by patient to physician is one supply (whether taxable or exempt in GST) but the supply by pharmaceutical company to physician is another supply. If the company includes the cost of such samples in the price of units sold, then there may be no requirement to again impose GST based on OMV on the samples. If it is established that there is a non-monetary consideration flowing to the supplier then, samples will be liable to GST as determined by rule 1. This would be true not only of drugs but samples of any kind that are permanently given away. As regards physician's samples, there is raging debate that Courts are currently engaged in addressing due to the far reaching implications and no final outcome has yet been reached in this regard
- Defaced samples of garments given to supplier by brand-holder – in comparison with physician's samples, defaced samples are those which are 'not suited' for resale or end-use. Such kinds of samples are given in B2B transactions for helping suppliers to study the expected final product to prepare quotation for further orders. As these samples have been deliberately defaced and rendered unsuited for resale or end-use, there can be no argument that consideration flows from recipient of defaced samples back to brand-holder
- Impairment of assets accounted in books – as per AS 28 (Ind AS 36) where impairment provision is to be made or reversed every time the assessment is done, the implication in GST needs to be kept in mind as to whether there is a supply and whether there is any corresponding impact of credit denial u/s 17(5)(h) in respect of these assets. No view on the liability of impairment is stated in this background material. Readers may cautiously consider this issue.

- Leased car Provided by employer disclosed in Form 12BA as perquisite – the reporting of perquisites admits a personal element involved in the enjoyment of the company car and the supply that is excluded in sch III is the service 'by' employee 'to' employer. But the present case is of supply of leased car 'by' employer 'to' employee which is not covered by sch III. By this admission in Form 12BA, GST becomes applicable but the valuation will not be as adopted in Rule 3 of Income-tax Rules but by GST Valuation Rules
- Free-issue-material Provided by client to contractor – is admittedly not a supply in itself, but the question that arises is whether there is any consideration flowing from the client to the contractor vis-à-vis the free-issue-material (FIM). Care should be taken in the drafting of the contract whether the work was awarded for a full rate and then deductions are made towards FIM by reducing the running-account-bill of the contractor or whether the contract itself was awarded for the reduced rate. Reference may be had to NM Goel's decision 1989 AIR 285 (SC) in relation to sales tax and Bhayana Builders decision 2013 (9) TMI 294 (CESTAT) in the context of service tax. Please note that FIM is not a open-shut case of having no GST impact due to the changes made in the Act compared to the Model Law published earlier but needs to be carefully considered to ensure that this is not regarded as extraneous consideration to be included in valuation

These illustrations do not cover all possible scenarios but lay down some pointers that need to be considered while determining the valuation and GST impact of various transactions.

(b) Supply between related persons (Rule 2)

A supply between related persons or between distinct persons (with same PAN) is *prima facie* not fulfilling the requirements of section 15 to admit the transaction value for quantification of GST. In such cases, the value of supply will be:

(i) Open market value – please refer to previous discussion

(ii) Value of supply of 'like kind and quality' – please refer to previous discussion

(iii) Value determined by rule 4 or rule 5 – please refer to subsequent discussion

The proviso to this rule is of significance where it is the recipient, who are entitled to credit, the value declared in the invoice is deemed to be OMV. In other words, in a case of supply eligible by this rule – related parties or distinct persons – the supplier is entitled to unquestioned admittance of 'any price' that may be charged. This provision appears to accommodate internal preferences of the parties where the tax paid is revenue neutral. However, caution is advised in taking recourse of this proviso and charging a price lower than cost.

In the case of inter-branch supply of services, valuation of these supplies will involve additional tax due to costs such as salary, amortization, etc which do not involve any input tax credit. For example, if a Head Office incurs certain entity-level expenses that are common to all registered taxable persons in other States, it is not permissible for the HO to retain the whole of these common credits due to the limitation in the language of section 16(1) – used by

him in his business – although a portion of this credit may still be available. Currently, such HOs are registered as ISD under service tax but this may not be the case in GST. Please refer to discussion in section 19 for some analysis of these issues. Now, surely the HO is not 'merely an office receiving invoice for services' but is actually the 'seat of management and control' performing very significant services that are supplied to all branches. HOs ought not to continue as ISD but recognize the nature of the supply of services to all branches. And on this basis, apply these Rules for quantifying tax to be discharged. The proviso in this rule does not authorize payment of tax on cost because the value to be determined under this rule is OMV or else like-kind-and-quality or else rule 4 / 5 value. Hence, HO may be required to invoice for its services appropriately and not distribute credit as ISD.

(c) Supply through agent (Rule 3)

Every supply involving an agent is not a taxable supply. As discussed in chapter III, supply by principal and agent *inter se* all though merely a channel to supply to the end customer is treated as a supply in sch I where the goods are handled by the agent or principal. Please note that this rule is applicable only in case of 'supply of goods' and not 'supply of services' or 'supply involving goods treated as supply of services'. When this rule is applicable, the value of supply will be:

(i) open market value or 'at the option' of supplier 90% of the price charged for goods of 'like kind and quality' by the agent– this rule provides for an ad hoc reduction of 10% from the price otherwise charged to accommodate the incentive or margin left for the agent in pricing. Where margins are lower than 10%, this rule can cause great anguish. But, discarding the use of this clause is not permitted freely.

(ii) value determined by rule 4 or rule 5 – please refer to subsequent discussion

Transactions treated as supply by Schedule I of the CGST Act, which need to be subjected to tax requires a valuation mechanism. Principal and agent do not *ipso facto* become related persons for rule 2 to be applicable to them.

Please note that agency cannot be inferred but must be express or implied. Agency may be understood as 'delegated authority' and 'detached consequences'. Within the scope of agency, the Principal will be obligated to third parties without any limit by actions of the Agent. As such, the authority to of the Agent to act is delegated by the Principal and the Agent is not obliged to the consequences arising from his actions, provided they are within the scope of the agency. Undisclosed Principal still obligates the Principal because the lack of disclosure is to the third party and not that the Principal is unaware of the possible obligations accruing.

(d) Cost based value (Rule 4)

Where cost is used as a base for determining the value of supply and when any of the more specific methods prescribed are unavailable for specific reasons, this rule may be applied. It provides that the value will be 'cost plus 10%'. Please note that this rule applies to both goods and services supplied.

Every supply claimed to be free but involving non-monetary consideration faces the threat of tax being determined on this method. Cost Accounting Standards may be relied upon to determine cost for purposes this rule. Please refer to the few illustrations discussed in previous sections such as warranty replacement, physician's samples, etc., tax administration

may be kept at bay if valuation is not lower than 'cost plus 10%'. Although this method appears simple, it is important to note that only when it is established that the other more specific rule and the specific methods under those rules are unable to yield an acceptable value for the supply under inquiry.

In respect of supply of services (also transactions involving goods treated as supply of services), the supplier is permitted to apply rule 5 instead of rule 4, if that were more favourable.

(e) Residual valuation (Rule 5)

Where value cannot be determined by any other method, this rule authorizes the use of 'reasonable means to arrive at the value. It is important to consider that these reasonable means must be commensurate with the principles of section 15.

Supplies which are currently under some form of abatement of value are found in this rule Where cost is used as a base for determining the value of supply and when any of the more specific methods prescribed are unavailable for specific reasons, this rule may be applied. It provides that the value will be 'cost plus 10%'. Please note that this rule applies to both goods and services supplied.

(f) Specific supplies (Rule 6)

Supplies which are currently under some form of abatement of value are found in this rule, namely:

(i) supply of services involving sale/purchase of foreign currency, the value of supply will be:

  (a) option a – difference between buying-selling rate and the reference rate published by RBI. Where reference rate is not available, 1% of gross Indian Rupee value of the transaction. And where the conversion is not into Indian Rupees, then 1% of the lesser of the Indian Rupee equivalent of each currency exchanged

  (b) option b – 1% of gross amount upto Rs.1 lac, 1/2% after Rs.1 lac upto Rs.10 lacs and 1/10% after Rs.10 lacs. This option (b) once exercised cannot be withdrawn during the financial year

(ii) supply of services by travel agent of booking of tickets for air-travel, the value of supply will be 5% of basic domestic fare or 10% of basic international fare. Please note that commission to the travel agent may flow from passenger or airline or any other person and the value determined here will be the tax for all the sources of commission

(iii) supply of services in relation to life insurance, the value of supply will be gross premium reduced by investment allocation, in the case of single premium policy will be 10% of premium and in all other cases will be 5% of first year's premium and 12.5% for other year's premia. This rule will not apply to premium related to coverage for risk-of-life

(iv) supply of services of person dealing in second-hand goods, the value of supply will be difference between purchase price and selling price. Please note 'second-hand goods'

refers to goods used or otherwise employed in some process without causing any change in their nature. Used goods and not the same as pre-owned goods which need not have been put to use. For example, a motor car where mark of registration has been assigned by RTO, even if left unused for long time will not be able to satisfy that is has not been used. And similarly, the odometer reading showing '0 kms' but duly registered by RTO will not override the conclusion that it is used. Please note that most appropriate tests for identifying whether the goods have been used or not may be examined. Also, this rule does not apply only to 'supply of second-hand goods' but to supply of services of person dealing in second-hand goods. In other words, disposal of leased car will also come within the operation of this rule

(v) supply of voucher, the value will be the redemption value of the voucher. Please note voucher includes coupon, stamp, token, etc. Please refer to the discussion on vouchers under section 13 for the various forms that voucher can take including digital vouchers to which this rule will apply

(vi) supply of services between distinct persons, that are notified by Government and where no input tax credit is availed will be NIL. Please note that the implications of denial of credit u/s 17(2) in case of supply being exempt will be attracted in these cases

(g) Service of pure agent (Rule 7)

Agency supplies are different from 'pure agent' in relation to valuation. This rule applies only to supply of services. It provides for the exclusion from valuation of any supply of certain costs and expenses if and only if the following tests are satisfied:

(i) contract of supply (actual or implied) subsists between a third party and beneficiary of supply

(ii) actual recipient uses the supply for the purposes of the beneficiary

(iii) beneficiary of supply liable to pay third party (due to contract)

(iv) beneficiary authorizes (actual or implied) payment to third party by actual recipient

(v) beneficiary aware that supply is by such third party and not by actual recipient claiming reimbursement

(vi) invoice of actual recipient indicates separately the reimbursement claim

(vii) actual recipient claims actuals only from beneficiary

(viii) actual recipient supplies (goods or services or both) independent of the reimbursement-supplies

Please note that these eight clauses appear to overlap each other in some way but the following key as aspects may be considered:

- there is a payment made to third party by a payer
- payer is a supplier of goods or services or both to a beneficiary (client)
- underlying obligation to pay third party is of the beneficiary (client)

- payment by payer is to discharge beneficiary's obligation toward third party
- third party enjoys recourse to beneficiary in case of non-payment by payer

For example, income-tax liability of a client is paid by the CA, the above test is satisfied as follows:

• there is a payment made to third party by a payer	CA pays the income-tax amount to the tax department
• payer is a supplier of goods or services or both to a beneficiary (client)	CA is otherwise providing tax consultancy services to the client (tax assessee)
• underlying obligation to pay third party is of the beneficiary (client)	Obligation to pay the income-tax amount is always of the client (tax assessee)
• payment by payer is to discharge beneficiary's obligation toward third party	Payment of income-tax amount to tax department is deposited against PAN of client (tax assessee) even though the amount may be transferred from CA's bank account
• third party enjoys recourse to beneficiary in case of non-payment by payer	In case CA defaults in the payment to tax department, recovery action will lie only against the client (tax assessee) and never against the CA however much the CA may have contractual accepted with the client to pay tax promptly

Now, the above example may be re-examined against the clauses referred to in this rule:

(i) contract of supply (actual or implied) subsists between a third party and beneficiary of supply	Only an obligation exists between client (beneficiary) and Government (third party)
(ii) actual recipient uses the supply for the purposes of the beneficiary	CA (recipient) uses the discharge of tax for benefit of client (beneficiary)
(iii) beneficiary of supply liable to pay third party (due to contract)	Client (beneficiary) liable to pay Government (third party)
(iv) beneficiary authorizes (actual or implied) payment to third party by actual recipient	Client (beneficiary) authorizes payment to Government (third party) by CA (recipient)
(v) beneficiary aware that supply is by such third party and not by actual recipient claiming reimbursement	Client (beneficiary) aware that tax belongs to Government (third party) and not CA (recipient)
(vi) invoice of actual recipient indicates separately the reimbursement claim	CA (recipient) issues invoice for tax consultancy PLUS taxes paid
(vii) actual recipient claims actuals only from beneficiary	CA (recipient) issues invoice for taxes paid at actuals from client (beneficiary)
(viii) actual recipient supplies (goods or services or both) independent of the reimbursement-supplies	CA (recipient) supplies tax consultancy independent of reimbursement of tax claimed

Due to the overlap of the eight clauses in this rule, there appears to be some concern but the result will not vary however it is applied. Now, take another example of travel expense claimed by CA from a client where the travel is incurred exclusively for the benefit of the client

• there is a payment made to third party by a payer	CA pays the travel agent for tickets of audit-team staff who travelled to client's factory
• payer is a supplier of goods or services or both to a beneficiary (client)	CA is otherwise providing audit services to the client
• underlying obligation to pay third party is of the beneficiary (client)	Obligation to pay travel agent is of the CA and not of the client
• payment by payer is to discharge beneficiary's obligation toward third party	Payment to travel agent is to discharge the bills issued to CA
• third party enjoys recourse to beneficiary in case of non-payment by payer	Travel agent cannot claim payment from client in case of delay / default by CA

As such, travel cost incurred by CA even though claimed as actuals will not be excluded from valuation as a pure agent. Now in the same example, if the travel agent is identified by the client with instructions to CA to send travel details for making necessary bookings, the above tests may be applied and since the bill for the tickets will be issued in the name of the client by the travel agent, there is no question of CA claiming any travel cost and this application of this rule does not arise.

(h) Exchange rate to be used (Rule 8)

Transactions undertaken in foreign currency must be translated into Indian Rupees. Due to the availability of multiple exchange rates such as RBI rate, SBI rate, FIDAI rate, Customs rate, etc. this rule prescribes that rate of exchange will be 'RBI rate' and the date of the rate of exchange will be the time of supply under section 12 and 13, respectively.

Transaction value: Recourse to Rules

A. Where value cannot be determined u/s 15(1), i.e., when:

1. Price is not the sole consideration
2. Supplier-recipient are related persons: Recourse to Rules even if the Supplier-Recipient relationship:
   - Did not influence the price;
   - Precedes agreement to the supply;
   - Has no bearing on pricing;
   - Has no bearing on Agreement to the Supply;
   - Has no relevance to the Supply;
   - Was to meet with different criteria or purpose;

(Rules will apply both ways – supplier to recipient and recipient to supplier)

B. In case of notified supplies

15.3. Comparative Review

Valuation Rules in Customs, Central Excise and Service Tax have been tested for applicability in various circumstances. All that experience and judicial interpretation may be brought to provide a good understanding of the words used in these Rules and the purpose for such usage. They are:

— Customs Valuation (Determination of Price of Imported Goods) Rules, 2007

— Customs Valuation (Determination of Price of Export Goods) Rules, 2007

— Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000

— Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008

— Service Tax (Determination of Value) Rules, 2006

Illustrations on Section 15 read with valuation rules:

Q1. Mrs. Jaya purchases a Samsung television set costing Rs. 85,000 from Giriyas, in exchange of her existing TV set. After an hour of bargaining, the shop manager agrees to accept Rs.78,000 instead of his quote of Rs.81,000, as he would still be in a profitable position (the old TV can be sold for Rs.8,000).

Ans. Where the price is not the sole consideration for the supply, the 'open market value' would be the value of the supply. Therefore, Rs. 85,000 would be the value of the supply. The supplier Giriyas would also be liable for paying tax on receipt of the old TV from Mrs. Jaya, as it would amount to an inward supply from an unregistered person. Thus, he would be liable to pay tax on the open market value applicable on such TV i.e., on Rs. 8,000.

[Section 15(4) r/w Rule 1(a) of Valuation Rules]

Q2. Mr. Mohan located in Manipal purchases 10,000 Hero ink pens worth Rs.4,00,000 from Lekhana Wholesalers located in Bhopal. Mr. Mohan's wife is an employee in Lekhana Wholesalers. The price of each Hero pen in the open market is Rs.52. The supplier additionally charges Rs.5,000 for delivering the goods to the recipient's place of business.

Ans. Mr. Mohan and Lekhana Wholesalers would not be treated as related persons merely because the spouse of the recipient is an employee of the supplier, although such spouse and the supplier would be treated as related persons. Therefore, the transaction value will be accepted as the value of the supply. The transaction value includes incidental expenses incurred by the supplier in respect of the supply up to the time of delivery of goods to the recipient. This means, the transaction value will be: Rs.4,05,000 (i.e., 4,000,000 + 5,000).

[Section 15(1) r/w Section 15(2)]

Q3. Sriram Textiles is a registered person in Hyderabad. A particular variety of clothing has been categorised as non-moving stock, costing Rs.5,00,000. None of the customers

were willing to buy these clothes in spite of giving big discounts on them, for the reason that the design was too experimental. After months, Sriram Textiles was able to sell this stock on an online website to another retailer located in Meghalaya for Rs.2,50,000, on the condition that the retailer would put up a poster of Sriram Textiles in all their retail outlets in the State.

Ans. The supplier and recipient are not related persons. Although a condition is imposed on the recipient on effecting the sale, such a condition has no bearing on the contract price. This is a case of distress sale, and in such a case, it cannot be said that the supply in lacking 'sole consideration'. Therefore, the price of Rs.2,50,000 will be accepted as value of supply.

[Section 15(4) r/w Rule 1(d) r/w Rule 5 of Valuation Rules]

Q4. Rajguru Industries stock transfers 1,00,000 units (costing Rs.10,00,000) requiring further processing before sale, from Bijapur in Karnataka to its Nagpur branch in Maharashtra. The Nagpur branch, apart from processing units of its own, engages in processing of similar units by other persons who supply the same variety of goods, and thereafter sells these processed goods to wholesalers. There are no other factories in the neighbouring area which are engaged in the same business as that of its Nagpur unit. Goods of the same kind and quality are supplied in lots of 1,00,000 units each time, by another manufacturer located in Nagpur. The price of such goods is Rs.9,70,000.

Ans.: In case of transfer of goods between two registered units of the same person (having the same PAN), the transaction will be treated as a supply even if the transfer is made without consideration, as such persons will be treated as 'distinct persons' under the GST law. The value of the supply would be the open market value of such supply. If this value cannot be determined, the value shall be the value of supply of goods of like kind and quality. In this case, although goods of like kind and quality are available, the same may not be accepted as the 'like goods' in this case would be less expensive given that the transportation costs would be lower. Therefore, the value of the supply would be taken at 110% of the cost, i.e., Rs. 11,00,000 (i.e., 110% * 10,00,000).

[Section 15(4) r/w Rule 2(b) & (c) r/w Rule 4 of Valuation Rules]

Q5. M/s. Monalisa Painters owned by Vasudev is popularly known for painting the interiors of banquet halls. M/s. Starry Night Painters (also owned by Vasudev) is engaged in painting machinery equipment. A factory contracts M/s. Monalisa Painters for painting its machinery to keep it from corrosion, for a fee of Rs.1,50,000. M/s. Monalisa Painters sub-contracts the work to M/s. Starry Night Painters for Rs.1,00,000, and ensures supervision of the work performed by them. Generally, M/s/ Starry Night Painters charges a fixed sum of Rs.1,000 per hour to its clients; it spends 120 hours on this project.

Ans.: Since M/s. Monalisa Painters and M/s. Starry Night Painters are controlled by Mr.

Vasudev, the two businesses will be treated as related persons. Therefore, Rs.1,00,000 being the sub-contract price will not be accepted as transaction value. The value of the service would be the open market value being Rs. 1,20,000 (i.e., Rs. 1,000 per hour * 120 hours) *.

Note: This view is based on the grounds that there are no comparables to this supply.

[Section 15(4) r/w Rule 2(a) of Valuation Rules]

Q6. Prestige Appliances Ltd. (Bangalore) has 10 agents located across the State of Karnataka (except Bangalore). The stock of chimneys is dispatched on Just-In-Time basis from Prestige Appliances Ltd. to the locations of the agents, based on receipt of orders from various dealers, on a weekly basis. Prestige Appliances Ltd. is also engaged in the wholesale supply of chimneys in Bangalore. An agent places an order for dispatch of 30 chimneys on 22-Sep-2017. Prestige had sold 30 chimneys to a retailer in Bangalore on 18-Sep-2017 for Rs. 2,80,000. The agent effects the sale of the 30 units to a dealer who would effect the sales on MRP basis (i.e., @ Rs.10,000/unit).

Ans.: The law deems these supplies between the principal and agent to be supplies for the purpose of GST. Therefore, the transfer of goods by the principal (Prestige) to its agent for him to effect sales on behalf of the principal would be deemed to be a supply although made without consideration. The value would be either the open market value, or 90% of the price charged by the recipient of the intended supply to its customers, at the option of the supplier. Thus, the value of the supply by Prestige to its agent would be either Rs. 2,80,000, or 2,70,000 (i.e., 90%*10,000 * 30), based on the option chosen by Prestige.

[Section 15(5) r/w Rule 3(a) of Valuation Rules]

Q7. Mr. & Ms. Mehta purchase 10 gift vouchers for Rs. 500 each from Crossword, and 5 vouchers from Four Fountains Spa costing Rs. 1,000 each, and gives them as return gifts to children and their parents for their son's birthday party. The vouchers from Four Fountains Spa had a special offer for couples – services for both persons at the price chargeable to one.

Ans. The value of the supply would be the money value of the goods redeemable against the voucher. Thus, in case of vouchers from Crossword, the value would be Rs. 5,000 (i.e., Rs.500 * 10) and the value of vouchers in case of Four Fountains Spa would be Rs. 10,000 (i.e., Rs. 1,000 * 2 * 5).

[Section 15(5) r/w Rule 6(6) of Valuation Rules]

Chapter-V
Input Tax Credit

Statutory Provision

16. Eligibility and conditions for taking input tax credit

(1) Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person

(2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, -

(a) he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;

(b) he has received the goods or services or both

Explanation- For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(c) subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and

(d) he has furnished the return under section 39:

PROVIDED that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

(3) Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income Tax Act, 1961, the input tax credit on the said tax component shall not be allowed.

(4) A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

16.1 Introduction

Chapter V of CGST Act deals with input tax credit. This chapter is divided into following sections:

(i) Section 16: Eligibility and conditions for taking input tax credit.

(ii) Section 17: Apportionment of credit and blocked credits

(iii) Section 18: Availability of credit in special circumstances

(iv) Section 19: Taking input tax credit in respect of inputs and capital goods sent for job work

(v) Section 20: Manner of distribution of credit by Input Service Distributor

(vi) Section 21: Manner of recovery of credit distributed in excess.

Input Tax Credit is the backbone of the GST regime. GST is nothing but a value-added tax on goods & services combined. It is these provisions of Input Tax Credit that make GST a value-added tax i.e., collection of tax at all points in the supply chain after allowing credit for the inputs/input services and capital goods. The invoice method of value added taxation will be followed in the GST too, viz., the tax paid at the time of receipt of goods or services or both will be eligible for set-off against the tax payable on supply of goods or services or both, based on the invoices with a special emphasis on actual payment of tax by the supplier. The procedures and restrictions laid down in these provisions are important to make sure that there is seamless flow of credit in the whole scheme of taxation without any misuse.

16.2 Analysis

(i) Relevant definitions:

(a) Taxable person: Means a person who is registered or liable to be registered under section 22 or section 24.

(b) Input tax credit: means the credit of "input tax" in terms of section 2(63).

(c) Input tax: "Input tax" in terms of section 2(62) in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes

— integrated goods and service tax charged on import of goods

— tax payable on reverse charge basis under IGST Act/SGST Act/CGST Act/UTGST Act.

— but excludes tax paid under composition levy.

Section 9(3) and 9(4) of CGST Act levies tax on goods or services or both on reverse charge. Therefore, 'input tax credit' is the tax paid by a registered person under the Act whether on forward charge or reverse charge for the use of such goods or services or both in the course or furtherance of his business.

(d) Electronic credit ledger: The input tax credit as self-assessed in return of registered person shall be credited to electronic credit ledger in accordance with section 41, to be maintained in the manner as may be prescribed. [Section 2(46) read with Section 49(2)].

(e) "Capital goods" means. -

goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business [Section 2(19)].

(f) Input: "Input" in terms of section 2(59) means

— any goods,

— other than capital goods,

— used or intended to be used by a supplier

— in the course or furtherance of business

(g) Input service: "Input service" in terms of section 2(60) means

— any service

— used or intended to be used by a supplier

— in the course or furtherance of business.

(ii) Section 16

(a) Registered person to take credit: Every registered person subject to Section 49, shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. The input tax credit is credited to the electronic credit ledger. Rule 1 of the ITC Rules provides that input tax credit can be taken on the basis of any of the following documents:

(i) Invoice issued under section 31

(ii) Debit note issued under section 34

(iii) Bill of entry

(iv) Invoice prepared in respect of reverse charge basis u/s 9(3) and 9(4)

(v) Document issued by ISD u/r 7(1) for distribution of credit referred u/r 4(1)(g)

It is important to observe the words 'used by him' and 'in his business' appearing in

section 16(1). These words refer to the registered taxable person in question and not the legal entity as a whole. So, input tax credit paid in a State must not be in relation to the business of a taxable person in another State albeit belonging to the same taxable person. For example, A Company has Branch-A which is a registered taxable person in Andhra Pradesh conducts conference in a hotel in Lonavla (Maharashtra) where CGST-SGST is charged by the hotel. This Company also has Branch-M which is a registered taxable person in Mumbai, Now the provisions of section 16(1) operate as follows:

- CGST-SGST charged by the hotel in Lonavla (Maharashtra) is 'used in the business of Branch-A' in Andhra Pradesh and not in the business of Branch-M in Mumbai.
- Hotel would not be aware about the above fact and would not resist to issue the bill in the name of Branch-M because both are branches of the same Company
- Since, CGST-SGST has been charged by the hotel, input tax credit would not be available to Branch-A as tax paid in Maharashtra is not a creditable tax in Andhra Pradesh
- Branch-M may be compelled to forego the tax paid to the hotel. However, there may be a tendency to save this loss by informing the hotel about the GSTIN of Branch-M. In fact, the Company need to obtain ISD registration in Maharashtra and distribute this credit entirely to Andhra Pradesh.
- But, Branch-M in Mumbai cannot justify this input tax credit as it is not 'used by him' in 'his business' but it is 'used by another' in 'that others business'
- Care should to taken to verify 'whose' business each input tax credit relates to;
- If nexus is established between the services of the hotel and the 'business' of Branch-M, input tax credit may be availed by Branch-M. Nexus emerges if inter-branch supply of services occurs between Branch-M and Branch-A

(b) Conditions for availment of credit by registered person: Subject to section 41, input tax credit is available only if –

(i) The said goods or services or both are used or intended to be used in the course or in the furtherance of his business;

(ii) He is in possession of tax invoice/ debit note / tax-paying document issued by a supplier registered under this Act (listed above);

(iii) He has received the said goods or services or both subject to job-work facilities and restrictions relating to input tax credit in Section 19;

(iv) The supplier has uploaded the relevant invoice on the GSTN;

(v) The supplier has paid the said amount of tax (as charged in the invoice) to appropriate Government in cash or by way of utilization of input tax credit, as admissible;

(vi) He – claimant of input tax credit – has furnished return under section 39 in FORM-GSTR 2;

(a) Goods received in instalments: If goods are received in instalments against a single invoice, credit can be taken upon receipt of last instalment of goods.

(b) Failure to pay to supplier of goods or service or both, the value of supply and tax thereon: If recipient of goods or service or both has not paid the supplier within 180 days from date of invoice, the amount equal to input tax credit availed along with the interest will be added to output liability of the recipient. Such non-payment of the value of invoice must be admitted in the return filed in FORM-GSTR 2 (Rule 2) for the month immediately following the period of 180 days from the date of issue of invoice. The said input tax credit can be re-availed on payment of value of supply and tax payable thereon.

(c) Please note that this condition does not apply for supplies which are payable under reverse charge basis. This exception has been expressly created in second proviso to section 16(2) of the Act.

(d) Capital goods on which depreciation is claimed: Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income Tax Act, 1961, the input tax credit shall not be allowed on the said tax component.

(e) Time limit to avail the input tax credit: A registered person is not entitled to take input tax credit on invoice/ debit notes after due date of furnishing of the return under section 39 for the month of September of the subsequent financial year or furnishing of the relevant annual return, whichever is earlier.

Therefore, input tax credit shall be available to a registered person only if invoice/challan is in his possession for the goods or services or both are received and the payment of such tax has been made by the supplier and a return u/s 39 has been filed. Receipt of goods shall include delivery to any other person as directed by the registered person.

Note: Goods are deemed to be received by a registered person when the supplier delivers the goods to the recipient/ any other person, on the direction Provided by the registered person to the supplier. Credit would be available in case goods are directly sent to the job worker subject to provisions under section 19

In summary among others the following facts are crucial for availment of Input tax credit:

(a) The goods and or services must be used “by him” in the course or furtherance “of his” business.

(b) Possession of Output Invoice/Supplementary Invoice/ Debit or Credit note/ ISD invoice/ Bill of Entry and other related documents is a must.

(c) The said document must contain all the prescribed particulars specified in the Invoice Rules. It may be noted that Invoice or such other document can contain additional details other than those prescribed but NO LESS.

(d) Supplier of goods and/ or services must upload the details of such documents in the common portal i.e. GSTN.

(e) Vesting condition for claiming input tax credit is the return u/s 39 and not the supply *per se*.

(f) Input tax credit in case of supplies in instalment would be receipt of last instalment of goods.

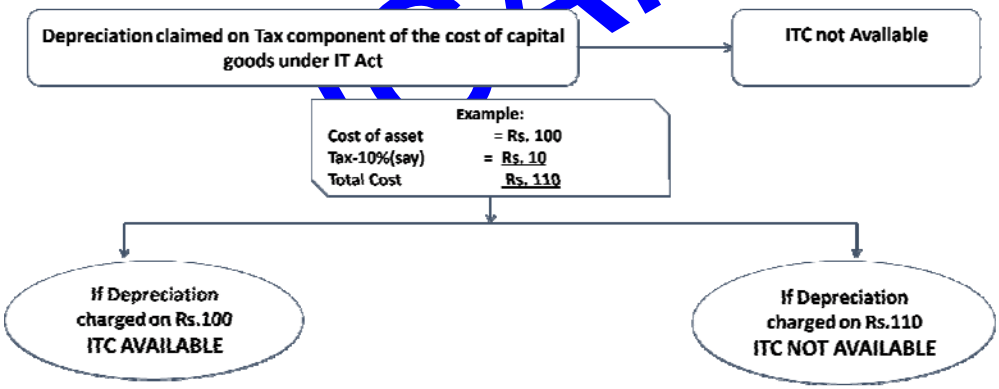
(g) The law casts an obligation on the receiptent of goods and/or services who avails the credit to effect payment to the supplier within a period of 180 days from the date of invoice. If such payment is not effected by the recipient to the supplier Rule 2 obligates removal of input tax credit so availed leading to consequential levy of tax, interest and penalty.

(h) Claim of depreciation on tax component disqualifies a recipient of Capital goods from availment of input tax credit.

(i) ITC cannot be availed after the due date of filing the return for September month of the next Financial year or on furnishing the Annual Return whichever is earlier.

(j) No registered person is permitted to avail any input tax credit pursuant to an order of demand on account of fraud, willful misstatement, or suppression of fact.

ITC in case of Capital Goods



16.3 Comparative review:

Aspect	Credit under present system	Input tax credit under GST
Definition of "capital goods"	Defined in Cenvat Credit Rules	Comparatively wider definition.
Definition of "input"	Defined in Cenvat credit Rules which has inclusion and exclusion limb.	Exhaustive definition and does not contain inclusion or exclusion limb.
Definition of "input services"	Defined in Cenvat credit Rules which has inclusion and	Exhaustive definition and does not contain inclusion or

	exclusion limb.	exclusion limb.
Electronic credit ledger	No such concept	Electronic credit ledger required to be maintained for crediting and utilising input tax credit

Statutory Provision

Section 17: Apportionment of credit and blocked credit

(1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

(2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act, and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

(3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge basis , transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

(4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year.

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number

(5) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1) of section 18, input tax credit shall not be available in respect of the following namely:

(a) motor vehicles and other conveyances except when they are used-

(i) for making the following taxable supplies, namely: -

(A) further supply of such vehicles or conveyances; or

(B) transportation of passengers; or

(C) imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) for transportation of goods.

(b) the following supply of goods or services or both, -

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;

(ii) membership of a club, health and fitness centre,

(iii) rent-a-cab, life insurance, health insurance except where

1. the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or

2. such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(iv) travel benefits extended to employees on vacation such as leave or home travel concession.

(c) works contract services when supplied for construction of immovable property, (other than plant and machinery), except where it is an input service for further supply of works contract service;

(d) goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account, including when such goods or services or both are used in the course or furtherance of business;

Explanation. - For the purpose of clause (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

(e) goods or services or both on which tax has been paid under section 10;

(f) goods or services or both received by a non-resident taxable person except on goods imported by him;

(g) goods or services or both used for personal consumption;

(h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(i) any tax paid in accordance with the provisions of sections 74, 129 and 130.

(6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.

Explanation. - For the purposes of this Chapter and Chapter VI, the expression 'plant and machinery' means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes

(i)	land, building or any other civil structures,
(ii)	telecommunication towers; and
(iii)	pipelines laid outside the factory premises

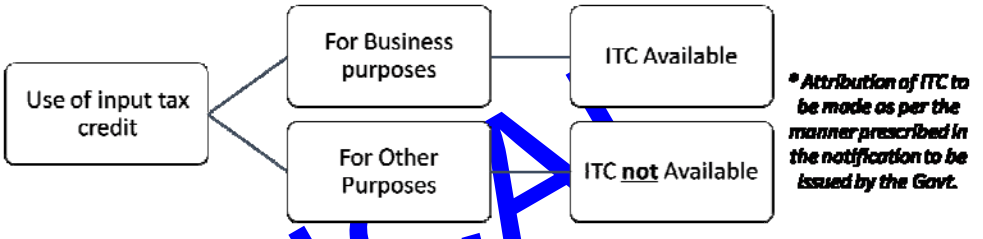
17.1 Introduction

The input tax credit eligibility is based on whether the same is used for taxable supplies or zero rated supplies. Where the goods or service is used for both taxable and exempted supplies, only proportionate credit is eligible for registered person, Further, a list of ineligible input tax credit is also Provided.

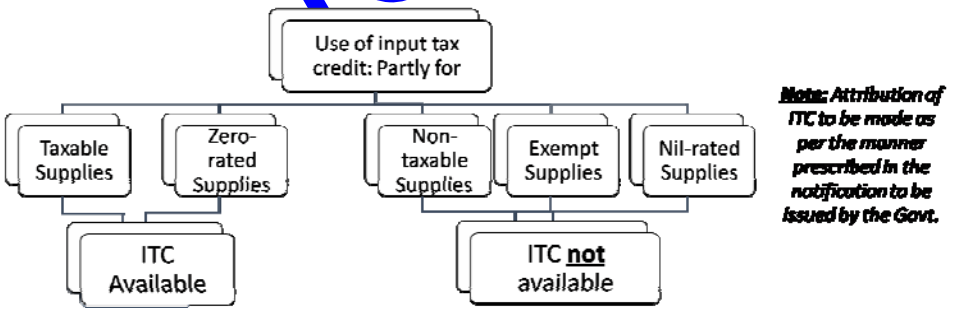
17.2 Analysis

(a) Proportionate credit:

ITC based ON usage in business



ITC based ON use of Inputs



The value of exempt supplies shall include supply on which tax is paid under Reverse Charge, transaction in securities, sale of land and sale of building subject to clause (b) of Paragraph 5 of Schedule II. Please note that supplies in respect of which the outward supplier is not liable to pay tax but the recipient is made liable to pay the tax, then due to section 17(3), for the limited purpose of restricting input tax credit to the supplier (who is not made responsible to pay tax due to RCM provisions) the value of these supplies will be regarded as 'exempt supplies' while arriving at the net available input tax credit. Doubts have been raised whether such supplies should be included as exempt supplies by the recipient who pays the tax (on RCM basis). This is not the case, as the recipient has not made such supply.

In case, goods or services or both are partly used in taxable supplies and partly in non-taxable supplies, then amount of credit shall be restricted to the taxable supplies. Taxable supplies include zero rated supplies and exempt supplies shall include non-taxable supplies.

Provisions in respect of SEZ developers/units in GST contrasts with the current VAT laws where certain States allow input tax credit to SEZ developers / units, only if such goods or services or both qualify as inputs or input services (used or intended to be used in the course or furtherance of business). And in certain other States, SEZ developers and units are allowed credit (refund) without examining the end use of the goods purchased.

(b) Banking Company or financial institution including NBFC engaged in accepting deposits, extending loans or advances: There is an option allowed as detailed in Rule 3 as follows:

(i) Refrain from availing input tax credit relatable to 'non-business purposes' and not avail any credit restricted u/s 17(5) (discussed in detail below) and make this election known in FORM-GSTR 2 or

(ii) Avail full extent of credit on inter-branch supply of services of the banking or NBFC company and also avail 50% of 'all other' input tax credits. 'All other' credits refer to input tax credit that would have been available u/s 16 before administering the restriction in this section.

6. Ineligible input tax credit: Input tax credit shall not be available in respect of the following

(i) Motor vehicle and other conveyance except when they are used for making the following taxable supplies, namely-

(a) Further supply of such vehicles or conveyances or

(b) Transportation of passenger or

(c) Imparting training on driving, flying, navigating such vehicles or conveyances;

(ii) Motor vehicle and other conveyance except used for transportation of goods

(iii) Supply of goods and/or services such as –

(a) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where such supply of goods or services of each category is used for making an outward taxable supply of the particular category of goods or services or both or as an element of a taxable composite or mixed supply

(b) membership of a club, health and fitness centre

(c) rent-a-cab, life insurance, health insurance except where it is notified by the Government as obligatory for an employer to provide to its employees under any law for the time being in force; or such inward supply of goods or services or both of a particular category is used by a registered person for making an outward

taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and

(d) travel benefits to employees on vacation i.e. leave or home travel concession.

(iv) Works contract services when supplied for construction of immovable property, other than plant and machinery, except where it is for further supply of works contract service;

It is important to note that credit of GST paid on works contract services will be allowed only if the output is also works contract services.

(v) Goods or services received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, even though it is used in course or furtherance of business;

"Construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property. Please note that 'alterations' and 'repairs' are also included in this definition.

(vi) Goods or services or both on which the tax paid under composition scheme

(vii) goods or services or both received by a non-resident taxable person except on goods imported by him

(viii) Goods or services or both used for personal consumption

(ix) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

(x) Tax paid in terms of sections 74, 129 and 130

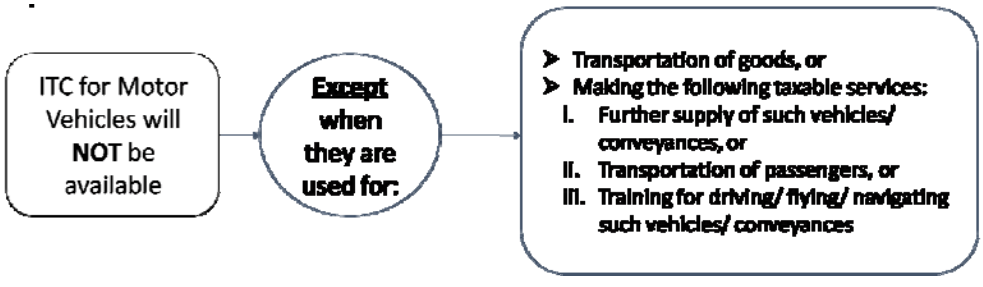
7. Plant and machinery: means apparatus, equipment, machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes land, building or any other civil structures, telecommunication towers; and pipelines laid outside the factory premises.

The analysis of above provision in a pictorial form is summarised as follows:

Restrictions on ITC: Sec 17(5)

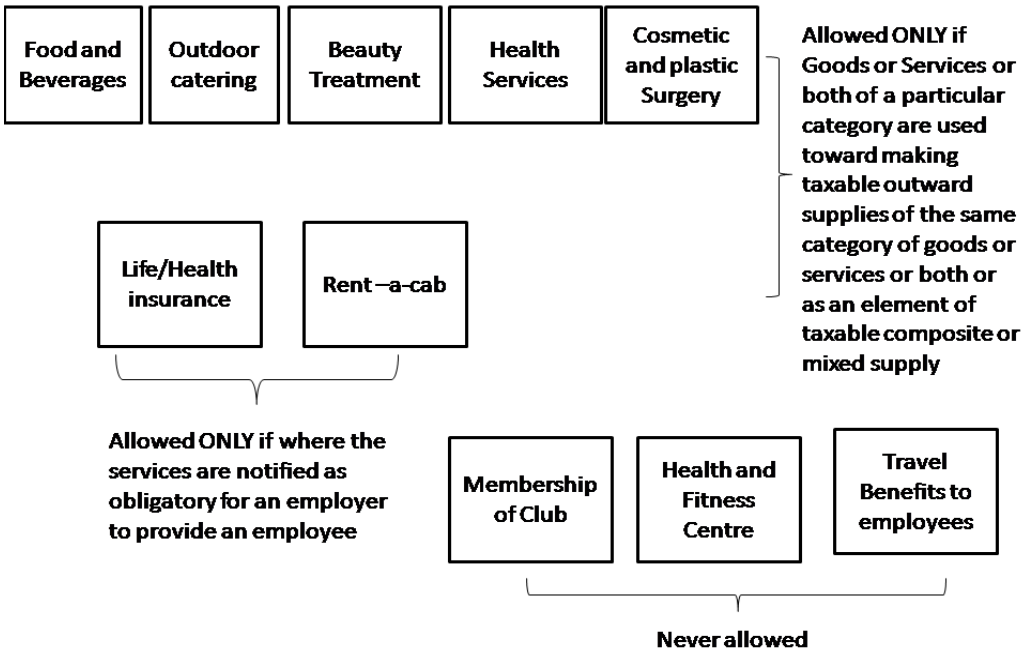
Blocked credits

(a) Motor Vehicles

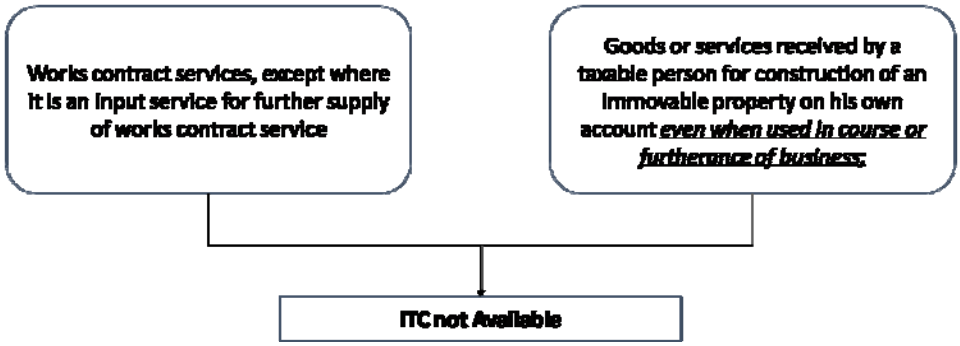


Note: Where any amount has been paid on goods or services or both, in lieu of tax, under composition scheme, no credit on such amount would be allowed.

(b) Supply of goods and services being:



(c) Construction of Immovable Property (other than plant & machinery)



17.3 Comparative review:

Aspect	Credit under present system	Input tax credit under GST
Proportionate credit	No explicit distinction made between goods or services used for business and non-	Specific distinction made between goods or services used for business and non-

	business	business
Works contract credit	Restriction to inputs only	Credit Allowed when used for further supply of works contract
Credit on inputs used for construction of immovable property	Input or Input Service used for civil construction not eligible.	Restriction to both inputs and input services.
Credit related to works contract and construction w.r.t plant and machinery	Plant and machinery not excluded from restriction of credit	Plant and machinery is excluded from restriction of credit

17.4 FAQ

Q1. Where goods or services or both is received, which is used for both taxable and non-taxable supplies, what would be the input tax credit entitlement for the registered person?

Ans. The input tax credit of goods or service or both used in taxable supplies can only be taken by registered person.

17.5 MCQ

Q1. Which of the following is included for computation of taxable supplies for the purpose of availing credit:?

(a) Zero-rated supplies

(b) Exempt supplies

(c) Both

Ans. (a) Zero Rated supplies

Statutory Provision

Section 18: Availability of credit in special circumstances

(1) Subject to such conditions and restrictions as may be prescribed-

(a) A person who has applied for registration under the Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.

(b) A person, who takes registration under sub-section (3) of section 25 shall, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-

finished or finished goods held in stock on the day immediately preceding the date of grant of registration.

(c) Where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9

PROVIDED that the credit on capital goods shall be reduced by such percentage points as may be prescribed

(d) Where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:

PROVIDED that the credit on capital goods shall be reduced by such percentage points as may be prescribed

(2) A registered person shall not be entitled to take input tax credit under sub-section (1), in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(3) Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provision for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.

(4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day \immediately preceding the date of exercising such option or, as the case may be, the date of such exemption:

Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

(5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed

(6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or

plant and machinery determined under section 15, whichever is higher:

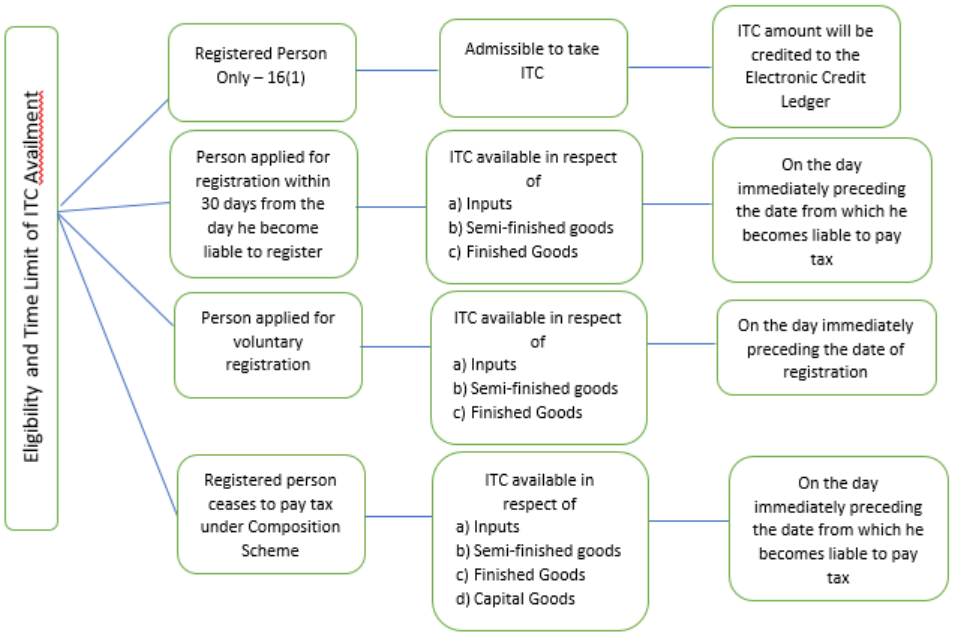
Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

18.1 Introduction

Input tax credit is available to a registered person on inputs held in stock, inputs contained in semi-finished and finished goods and on capital goods in some cases which are discussed below.

18.2 Analysis

(e) **Eligibility of input tax credit on inputs held in stock and contained in semi-finished and finished goods held in stock:** The credit on inputs held in stock and inputs contained in semi-finished goods and finished goods held in stock is available in the following manner:



- Declaration in FORM GST ITC 1 must be filed within thirty (30) days from the date of becoming eligible to input tax credit. Rule 5 requires a declaration to be filed containing details of stocks and capital goods along with a certificate from a Chartered Accountant or Cost Accountant where the credit so claimed exceeds Rs.2 lakhs.
- The supplier will not be entitled to credit of goods and or services or both after expiry of 1 year from date of tax invoice.

- The credit on capital goods shall be reduced by five (5) percentage per quarter or part thereof from the date of invoice.
- Such credits are subject to verification of details furnished by the supplier in GSTR - 1 or GSTR – 4 on the common portal.

To summarize, the credit of input tax can be taken as and when the person applies for the registration but the entitlement of credit of inputs would be from the day liability to tax arises.

Examples:

(i) A person becomes liable to pay tax on 1st August 2017 and has obtained registration on 15th August 2017. Such person is eligible for input tax credit on inputs held in stock as on 31st July 2017.

(ii) Mr. A applies for voluntary registration on 5th June 2017 and obtained registration on 22th June 2017. Mr. A is eligible for input tax credit on inputs in stock as on 21st June 2017.

(iii) Mr. B, registered person was paying tax under composition rate upto 30th July 2017. However, w.e.f 31st July 2017. Mr. B becomes liable to pay tax under regular scheme. Mr. B is eligible for input tax credit on inputs held in stock as on closure of business hours as on 30th July 2017.

Illustration (Rule 5):

Akshat Steels Limited is a manufacturer of iron & steel. It procures raw materials and inputs such as iron ore, chemicals, gases, etc. and capital goods including plant & machinery, for the manufacture of such iron & steel. In this example, it has been assumed that iron & steel (which is the outward supply of Akshay Steels Ltd) is exempt from payment of taxes until 31-Mar-2020. Iron & steel become taxable with effect from 01-Apr-2020. The method of availment of input tax credits on inputs contained in stock and capital goods as on 31-Mar-2020 is covered by this illustration

Particulars	Amount
Value of inputs in stock on 31-Mar-2020	1,00,000
IGST @18%	18,000
All inputs were procured after 01-Jul-2019	
Value of inputs contained in semi-finished goods held in stock on 31-Mar-2020	4,00,000
CGST @ 6%	24,000
SGST @ 6%	24,000
All inputs contained in semi-finished goods were procured after 01-May-2019	
Value of inputs contained in finished goods held in stock on 31-Mar-2020	50,000
CGST @ 6%	3,000
SGST @ 6%	3,000

Only inputs worth Rs.40,000 in finished goods were procured after 01-Apr-2019	
Credit available in respect of inputs:	
CGST *(Note 1)*	26,400
SGST *(Note 2)*	26,400
IGST *(Note 3)*	18,000
Total credit available on inputs	70,800
Value of capital goods used exclusively in relation to exempted goods held on 31-Mar-2020	20,00,000
IGST @ 18%	3,60,000
Credit available in respect of capital goods:	
Date of invoice of capital goods	22-Jan-2018
Date from which the exempt goods become taxable	01-Apr-2020
No. of quarters from date of invoice	9
Percentage points to be reduced (5% per quarter) (Note 4)	45%
IGST paid on the capital goods used exclusively in relation to goods exempted up to 31-Mar-2020	3,60,000
ITC to be reduced by 45%	(1,62,000)
Credit (IGST) available on capital goods	1,98,000

Working notes:

Note 1: CGST credits on inputs in stock held on 31-Mar-2020:

a	ITC on the value of inputs		
b	ITC on the value of inputs contained in semi-finished goods: All inputs were acquired within 1 year prior to the effective date on which the goods become taxable. Hence, entire ITC would be allowed.	24,000	
c	ITC on the value of inputs contained in finished goods: Out of the total stock of Rs. 50,000/-, inputs totalling to Rs. 10,000/- are older than 1 year from the effective date on which the goods become taxable. Therefore, ITC to this extent stands disallowed. ITC on inputs contained in stock of Rs. 40,000 would be eligible. [Eligible credit = 40,000 * 6%]	2,400	
	CGST credit available on inputs		26,400

Note 2: SGST credits on inputs in stock held on 31-Mar-2020:

a	ITC on the value of inputs		
b	ITC on the value of inputs contained in semi-finished goods: *Refer Note 1*	24,000	
c	ITC on the value of inputs contained in finished goods: *Refer Note 1*	2,400	
	SGST credit available on inputs		26,400

Note 3: IGST credits on inputs on stock held on 31-Mar-2020:

a	ITC on the value of inputs: All inputs were acquired within 1 year prior to the effective date on which the goods become taxable. Hence, entire ITC would be allowed.	18,000	
b	Input tax credit on the value of inputs contained in semi-finished goods	-	
c	Input tax credit on the value of inputs contained in finished goods	-	
	IGST credit available on inputs		18,000

Note 5: Rule 5(1)(a) of the Input Tax Credit Rules provides that input tax credit on capital goods can be claimed after reducing 5% per quarter of a year or part thereof (every year), from the date of invoice in respect of which capital goods are received. Therefore, the number of quarters is 9 commencing from the first quarter of the year 2018 till the first quarter of the year 2020.The reversal of credit would therefore be, to the extent of 5% * 9 quarters, i.e., 45% of the IGST credit of Rs.3,60,000, i.e., IGST credit on capital goods would stand reduced to the extent of Rs.1,62,000.

Illustration (Rule 7):

Rule 7 of the Input Tax Credit Rules, 2017

Sl. No	Particulars	Reference	CGST	SGST/ UTGST	IGST
1	Total input tax on inputs and input services for the tax period May 2018	T	1,00,000	1,00,000	50,000
	Out of the total input tax (T):				
2	Input tax used exclusively for non-business purposes (Note 1)	T1	10,000	10,000	5,000
3	Input tax used exclusively for effecting exempt supplies (Note 1)	T2	10,000	10,000	5,000

4	Input tax ineligible under Section 17(5) (Note 1)	T3	5,000	5,000	2,500
	Total		25,000	25,000	12,500
	ITC credited to Electronic Credit Ledger (Note 1)	C1 = T -(T1 + T2 +T3)	75,000	75,000	37,500
	Input tax credit used exclusively for taxable supplies (including zero-rated supplies)	T4	50,000	50,000	25,000
	Note 1: T1, T2, T3 and T4 shall be determined as above and declared in Form GSTR-2				
	Common credit	C2 = C1 - T4	25,000	25,000	12,500
	Aggregate value of exempt supplies for the tax period May 2018 (Note 2 & 3)	E	25,00,000	25,00,000	25,00,000
	Total Turnover of the registered person for the tax period May 2018 (Note 2)	F	1,00,00,000	1,00,00,000	1,00,00,000
	Credit attributable to exempt supplies	D1 = (E/F) * C2	6,250	6,250	3,125
	Credit attributable to non-business purposes	D2 = C2 * 5%	1,250	1,250	625
	Net eligible common credit	C3 = C2 - (D1 + D2)	17,500	17,500	8,750
	Total credit eligible (Exclusive + Common)	G = T4 + C3	67,500	67,500	33,750

Note 1: T1, T2, T3 and T4 shall be DETERMINED AS ABOVE and declared in Form GSTR-2

Note 2: If the registered person does not have any turnover for May 2018, then the value of E and F shall be considered for the last tax period for which such details are available

Note 3: Aggregate value excludes taxes

Note 4: The registered person is expected to make such computation for each tax period and

for the whole year as well. In case the resultant computation results in short credit availed, then such credit can be claimed in the electronic credit ledger. Further, if on computation for the whole year, the registered person has claimed excess credit on a month on month basis, then such excess credit claimed for the year shall be added back to the output liability and will be liable for payment with interest.

Illustration (Rule 8):

Sl. No	Particulars	Reference	IGST
1	ITC on capital goods used exclusively for non-business purposes (Note 1)	T1	10,000
2	ITC on capital goods used exclusively for effecting exempt supplies (Note 1)	T2	10,000
	Total		20,000
3	ITC on capital goods used exclusively for taxable supplies (including zero-rated supplies) (Note 1)	T3	50,000
4	ITC on capital goods (other than T1, T2 and T3) (Annexure A)	A= b+f	3,90,000
5	ITC on capital goods whose residual life remain in beginning of tax period (Annexure A)	Tr	6,500
7	Aggregate value of exempt supplies for the tax period May 2018 (Note 2 & 3)	E	25,00,000
8	Total Turnover of the registered person for the tax period May 2018 (Note 2)	F	1,00,00,000
10	Credit attributable to exempt supplies	Te = (E/F) * Tr	1,625

Note 1: T1, T2 and T3 should be declared in Form GSTR-2. T3 alone will be credited to the electronic credit ledger

Note 2: If the registered person does not have any turnover for May 2018, then the value of E and F shall be considered for the last tax period for which such details are available

Note 3: Aggregate value excludes taxes

Annexure A - ITC on capital goods whose residual life remain

Sl. No	Particulars	Reference	Amount
For May 2018			
1	Inward supply value of Machinery X	a	12,50,000
	IGST @ 12%	b	1,50,000
	Invoice Value		14,00,000
	Date of inward supply		12 April 2018
	Life of the capital goods (in months) - for GST purpose is 5 years	c	60
	ITC attributable for 1 month	Tm1 =b/c	2500
2	Inward supply value of Machinery Y	e	20,00,000
	IGST @ 12%	f	2,40,000
	Invoice Value		22,40,000
	Date of inward supply		21 May 2018
	Life of the capital goods (in months) - for GST purpose is 5 years	g	60
	ITC attributable for May 2018 (1 month)	Tm2 = f/g	4000
	Aggregate of ITC on common credits	Tr = Tm1 + Tm2	6500

Rule 9 of the Input Tax Credit Rules, 2017

Illustration 1: Where input tax credit lapses

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		1,12,000
2	Date of shift to composition scheme		01 April 2019 (Can be opted in Financial year beginning)
3	Date of inward supply and use of capital goods		01 September 2017
4	Period of use (days)		577
	Period of use (months)		19
5	Residual life in months	B	41
	(Considering full life as 5 years)		
6	ITC attributable to residual life	C = (A*B/60)	8,200
	(To be added to the output tax liability of the registered person)		
5	Balance of ITC as on 31.03.2019		10,000
6	ITC utilized for capital goods for residual life		8,200
7	Balance ITC - will lapse		1,400

Illustration 2: Where input tax credit becomes payable

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		1,12,000
2	Date of shift to composition scheme		1st April 2019
3	Date of inward supply and use of capital goods		01 September 2017
4	Period of use (days)		577
	Period of use (months)		19
5	Residual life in months	B	41
	(Considering full life as 5 years)		
6	ITC attributable to residual life	C = (A*B/60)	8,200
	(To be added to the output tax liability of the registered person)		
5	Balance of ITC as on 31.03.2019		1,500
6	ITC utilized for capital goods for residual life		8,200
7	Balance tax payable		6,700

Illustration 3: Where no payment is required

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		1,12,000
2	Date of shift to composition scheme		1st April, 2023
3	Date of inward supply and use of capital goods		01 September 2017
4	Period of use (months)		67
	Period of use (years)		5 years 7 months
5	Residual life in months	B	-
	(Considering full life as 5 years)		
6	ITC attributable to residual life	C = (A*B/60)	0
	(No payment required)		

(f) Input tax credit and change in constitution of registered person: The change in constitution of registered person due to sale merger, demerger, amalgamation, lease or transfer of business with provision for transfer of liabilities envisages that:

(i) The registered person is allowed to transfer the input tax credit remaining unutilized in the electronic credit ledger .to such sold, merged, demerged, amalgamated, leased or transferred business.

(ii) Rule 6 prescribes such credit transfer be made on the Common Portal in FORM GST ITC 2 and in case of demerger, credit to be transferred must be apportioned to the value of assets transferred in the arrangement to each such unit.

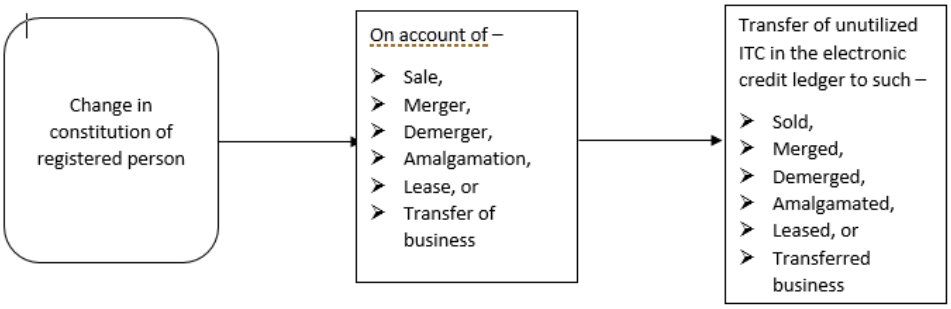
(iii) Chartered Accountant or Cost Accountant to certify that the arrangement contains a specific provision for the transfer of liabilities.

(iv) Form GST ITC 2 filed by the transferor will have to be accepted by the transferee on the Common Portal. Please refer to discussion on Registrations in case of such arrangements to examine the timing of seeking registration by transferee.

(v) Transferee to duly account for the stocks capital goods received in books of accounts.

The analysis of above provision in a pictorial form is summarised as follows:

ITC: Change in Constitution of registered Person

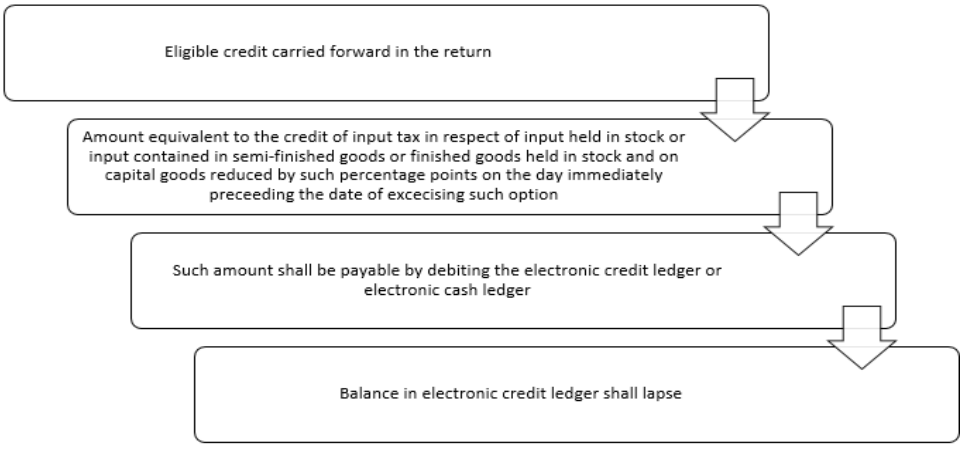


(g) When registered person switches over from regular scheme to composition scheme:

- Pay an amount by debiting electronic cash ledger / credit ledger, equivalent to input tax credit of -
  - Inputs held in stock
  - Inputs contained in semi-finished or finished goods held in stock and
  - Capital goods
- On the day immediately preceding the date of such switch over.
- Balance of input tax credit lying in the electronic credit ledger, after payment of the above said amount, shall lapse.
- Such amount is calculated in manner to be prescribed

The above provision is also applicable where goods or services supplied by registered person is absolutely exempt.

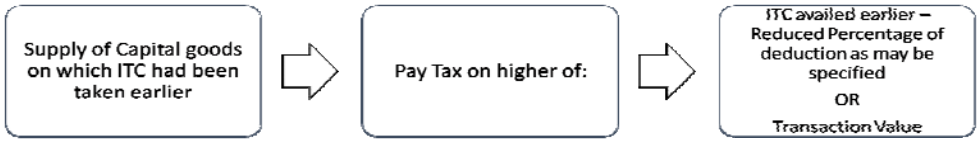
Switching from regular to composition- Pay and Exit



(h) Supply of capital goods on which input tax credit is taken: The registered person shall:

- Pay an amount equal to input tax credit taken on such capital goods
- Reduced by percentage points as prescribed or
- Tax on the transaction value of such capital goods, whichever is higher.

Supply of Capital goods on which ITC already taken



Please note that there is no saving clause in the event the taxable person entertained a *bona fide* view as to the non-taxability of certain supplies or availability of an exemption which is later overturned by a superior Court and demand crystallizes. In this scenario, limitation of availment of input tax credit lands a double blow to this taxable person. That is, not only would GST have been paid on inputs, input services and capital goods on which no credit would have been availed (due to this *bona fide* view having been entertained) but also, the full extent of the output tax becomes payable (without any relief towards credit that would otherwise have been available) due to the decision of the superior Court. Please exercise great caution while entertaining view about non-taxability or exemption. At the same time, please note it is not permitted to take a hyper-conservative view – where even with the availability of a clear and absolute exemption, the taxable person chooses to pay GST in order to protect credit from the limitation – cannot be taken in view of the mandatory nature of such exemptions as clearly stated in explanation to section 11(3). Also, please note the difference between 'taxable person' and 'registered person' – are two deliberately dissimilar phrases used in the law – and credit is allowed u/s 16(1) only to a 'registered person' where as u/s 9(1) tax levied is payable by every 'taxable person' implying that the liability subsists even if not registered but credit avails, only if registered.

(i) Refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap: Taxable person may pay tax on transaction value under section 15.

18.3 Comparative review:

Aspect	Credit under present system	Input tax credit under GST
Credit on stock-in-hand	Rule 3(2) of CCR Rules, 2004	Specified persons in specified situations are eligible for input tax credit on stock
Credit on sale merger or transfer of business	Rule 10 of CCR Rules, 2004	Specific section covering the sale, merger etc
Reversal on goods becoming exempt	Rule 11(3) of CCR, 2004	To be reversed as per section 18(4)

Statutory Provision

19. Taking input tax credit in respect of inputs and capital goods sent for job work

(1) The "principal" shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job-worker for job-work.

(2) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the "principal" shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job-work without being first brought to his place of business.

(3) Where the inputs sent for job-work are not received back by the "principal" after completion of job-work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out:

Provided that where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.

(4) The "principal" shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job-worker for job-work.

(5) Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the "principal" shall be entitled to take credit of input tax on capital goods even if the capital goods are directly sent to a job worker for job-work without being first brought to his place of business.

(6) Where the capital goods sent for job-work are not received back by the "principal" within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

(7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job-worker for job-work.

Explanation. —For the purpose of this section, "principal" means the person referred to in section 143

19.1 Introduction

This provision relates to availment of credit of input tax on goods sent for job work.

19.2 Analysis

(i) Relevant Definitions:

- Job work: Any treatment or process undertaken by a person on goods belonging to another registered person (section 2(68).

- Reference may also be made to entry 3 of the Schedule II where treatment or process applied to another person's goods is a supply of services.
- Job worker: A person who undertakes any treatment or process on goods belonging to another registered person.
- Principal: A person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

(ii) Entitlement of credit on inputs: The principal can take credit of input tax on inputs sent to job-worker subject to fulfilment of the following conditions:

- Rule 10 of ITC Rules provides the following:
  - To issue a challan for transfer of inputs to the job-worker including where they are sent directly (to maintain paper trail of transaction)
  - Challan is to contain all details as required in respect of an invoice in Rule 8 (of Invoice Rules). Reference may be made to Chapter VII relating to Tax Invoice, credit & debit notes for the particulars to be included in the document & for detailed description.
  - All challans issued in respect of inputs sent to job-worker and those received back are to be reported in GSTR-1
  - In case of non-receipt of the inputs within the time prescribed, the challan issued will be deemed to be invoice for the implied supply of inputs
- The inputs, after completion of job-work, are received back by the principal within 1 year of their being sent out.
- In case of direct supply , the period of 1 year shall be reckoned from the date the job worker receives such inputs.
- The credit of inputs can be taken even if inputs are sent directly to job-worker's premises without bringing it to principal's place of business.
- If the inputs are not received back within 1 year, it shall be deemed that such inputs had been supplied by principal to the job worker on the day when the said inputs were sent out.

(iii) Entitlement to credit on capital goods: The principal can take credit of input tax on capital goods sent to job-worker subject to the fulfilment of the following conditions:

- The capital goods, after completion of job-work, are received back by him within 3 years of their being sent out.
- The principal can take credit of capital goods even if such capital goods are sent directly to job-worker's place without bringing to principal's place of business.
- If the capital goods are not received back within 3 years, it shall be deemed that such capital goods had been supplied by principal to the job worker on the day when the said capital goods were sent out.

- Procedures listed in respect of inputs under Rule 10 of the Input Tax Credit Rules will apply to capital goods also (refer above).

Please note that job-working must not be confused with repair or maintenance. Job-working creates the functionality of an article but repair or maintenance restores or improves the functionality already created and possessed by that article or thing.

19.3 Comparative review

Aspect	Credit under present system	Input tax credit under CGST
Definition of "job work"	Defined in Cenvat Credit Rules to mean processing of material supplied to job worker to complete whole or part of manufacturing process	Defined to mean undertaking any treatment or process by a person on goods belonging to another registered person
Eligibility of Cenvat credit to principal manufacturer	Principal is eligible for Cenvat credit	Similar in CGST. Principal is eligible for Cenvat credit
Conditions for return of inputs and capital goods	For inputs – 180 days For capital goods – 2 years	For inputs – 1 year For capital goods – 3 years
Reversal of credit if inputs/capital goods not returned within specified time	Credit to be reversed	To be treated as deemed supply on the day when such inputs/capital goods are sent out
Re-credit if goods returned after specified time	Re-credit allowed	Not applicable

19.4 Related provisions

Section	Description
143	Special procedure for removal of goods for certain purposes

19.5 FAQs

Q1. Whether the principal is eligible to avail input tax credit of inputs sent to job worker for job work?

Ans. Yes. The principal is eligible to avail the input tax credit on inputs sent to job worker for job work.

19.6 MCQs

Q1. The inputs sent to job work has to be received back within:

(a) 1 year

(b) 2 years

(c) 180 days

Ans. (a) 1 year.

Q2. The principal is entitled to avail the credit on capital goods sent to job worker directly:

(a) Yes

(b) No

(c) May be

Ans. (a) Yes.

Q3. If the capital goods sent to job workerhas not been received within 3 years from the date of being sent:

(a) Principal has to pay amount equal to credit taken on such capital goods

(b) No need to pay amount equal to credit taken on such capital goods

(c) It shall be treated as deemed supply of capital goods to the job worker

(d) None of the above

Ans. (c) It shall be treated as deemed supply of capital goods to the job worker

Statutory provision

20. Manner of Distribution of Credit by Input Service Distributor (ISD)

(1) The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central, by way of issue of a document containing, the amount of input tax credit being distributed in such manner as may be prescribed

(2) The Input Service Distributor may distribute the credit subject to the following conditions, namely:

(a) the credit can be distributed to recipients of credit against a document containing such details as may be prescribed;

(b) the amount of the credit distributed shall not exceed the amount of credit available for distribution;

(c) the credit of tax paid on input services attributable to recipient of credit shall be distributed only to that recipient;

(d) the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipient(s) to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union Territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period.

(e) the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union Territory of such recipient, during the

relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.

Explanation –For the purposes of this section,

(a) the "relevant period" shall be-

(i) if the recipients of credit have turnover in their States or Union Territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(ii) if some or all recipients of the credit do not have any turnover in their States or Union Territories in the financial year preceding the year during which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed.

(b) the expression of 'recipient of credit' means the supplier of goods or services or both having the same Permanent Account Number as that of Input Service Distributor.

(c) the term 'turnover' in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule

20.1 Introduction

This Section sets forth the way input tax credit (of services) is distributed to supplier of goods or services or both of same entity having same PAN. Procedure for distribution is given in Rule 4 of Input Tax Credit Rules.

Analysis

(i) An ISD shall distribute the eligible ITC in accordance with Rule 4 elucidated in the following paras.

(ii) Input Service Distributor (ISD) is an office of the supplier of goods or services or both where a document (like invoice) of services attributable to other locations are received (since they might be registered separately). Since the services relate to other locations the corresponding credit should be transferred to such locations (having separate registrations) as services are supplied from there. Care should be taken to ensure that an inter-branch supply of services should not be misinterpreted as a distribution by ISD. Please recollect that ISD cannot be an office that does any supply of its own but must be one that merely collects invoice for services and issues prescribed document for its distribution.

Examples hereunder are as per rules.

Illustration: Corporate office of XYZ company Ltd., is at New Delhi, having its business locations of selling and servicing of goods at New Delhi, Chennai, Mumbai and Kolkata. For

example, if the software license and maintenance is used at all the locations, invoice indicating CGST and SGST is received at Corporate Office. Since the software is used at all the four locations, the input tax credit of entire services cannot be claimed at New Delhi. The same has to be distributed to all four locations. For that reason, the Delhi Corporate office has to act as ISD to distribute the credit.

Illustration (Rule 4):

Rule 4: Input Tax Credit Rules, 2017

The example Provided below illustrates the application of Rule 4 of the Input Tax Credit Rules for distribution of credits by an Input Service Distributor (ISD) in terms of Section 20.

Yoko Infotech Ltd. has its head office in Mumbai, for which it additionally has an ISD registration. The company has 12 units across India including its head office. It receives the following invoices in the name of the ISD at Mumbai, for the month of January 2018:

Invoice A: Rs. 100,000 @ IGST 18,000 issued by Peace Link Technologies (registered in Uttar Pradesh) for repairs executed in 2 units – Bangalore, Kolkata, Gurgaon (Note: Gurgaon location is not registered as it is engaged in making only exempt supplies);

Invoice B: Rs. 300,000 @ CGST 27,000, SGST 27,000 issued by M/s. Tec Force (registered in Pune) for repairs executed in 3 units – Mumbai, Bangalore, Kolkata;

Invoice C: Rs. 500,000 @ IGST 90,000 issued by M/s.Georgia Marketing (registered in Bangalore) for marketing services for the company as a whole;

Invoice D: Rs. 10,000 @ CGST 900 & SGST Rs.900 issued by M/s.Gopal Coffee works (registered in Mumbai) for supply of beverages during the month to its Mumbai unit.

All taxes have been considered at 18% (CGST and SGST at 9% each).

The turnover of each of the units during the year 2016-17 is: Mumbai: 1 crore; Bangalore 2 crore; Kolkata 1 crore; Gurgaon 2 crore; each of the other 8 units: 50 lakhs, resulting in the aggregate turnover of the company in the previous financial year, of 10 crores.

Distribution of credits by the ISD:

Particulars	Invoice	Bangalore	Kolkata	Mumbai	Gurgaon	8 units	Total
Invoice A							
T/o in State	*Note 1*	2 crore	1 crore	-	2 crore	-	5 crore
Pro-rata ratio		40%	20%	-	40%	-	100%
Credit	18,000	7,200	3,600	-	7,200	-	18,000
Type	IGST	IGST	IGST	-	IGST	-	
Invoice B							
T/o in State	*Note 2*	2 crore	1 crore	1 crore	-	-	4 crore

Pro-rata ratio		50%	25%	25%	-	-	100%
CGST Credit	27,000						
• Distribution		13,500	6,750	6,750	-	-	27,000
Type	CGST	IGST	IGST	CGST	-	-	
SGST Credit	27,000						
• Distribution		13,500	6,750	6,750	-	-	27,000
Type	SGST	IGST	IGST	SGST	-	-	
Invoice C							
T/o in State	*Note 3*	2 crore	1 crore	1 crore	2 crore	0.5 * 8 crore	10 crore
Pro-rata ratio		20%	10%	10%	20%	5% * 8 units	100%
Credit	90,000	18,000	9,000	9,000	18,000	4,500 * 8 units	90,000
Type	IGST	IGST	IGST	IGST	IGST	IGST	
Invoice D							
Attributable to	*Note 4*	-	-	*Yes*	-	-	-
Credit (ineligible)	*900*	-		*900*	-	-	*900*
Type	*CGST*	-	-	*CGST*	-	-	
Credit (ineligible)	*900*	-	-	*900*	-	-	*900*
Type	*SGST*	-	-	*SGST*	-	-	

Credit of CGST, SGST and IGST on invoice		Total eligible credits distributed as CGST, SGST and IGST as applicable (Refer Note below)					
CGST	27,000	-	-	6,750	-	-	6,750
SGST	27,000	-	-	6,750	-	-	6,750
IGST	108,000	52,200	26,100	9,000	25,200	4,500 each (viz. total of 36,000)	148,500
TOTAL	162,000	52,200	26,100	22,500	25,200	36,000	162,000

It can be seen from the illustration that credit of CGST of Rs. 27,000 is distributed as CGST credit only to the extent of Rs. 6,750; likewise, credit of SGST of Rs. 27,000 is distributed as SGST credit only to the extent of Rs. 6,750. This is because, the intra-State service billed to the ISD is attributable to 1 unit in the same State as the ISD and 2 other units located in different State. Thus, the balance of CGST credit and SGST credit is distributed as IGST to such units. This is the reason why the credit of IGST lying with the ISD prior to distribution is only Rs. 108,000 while the credit of IGST that is distributed aggregates to Rs. 148,500.

Note 1: The credit of IGST should always be distributed as IGST credit to all the units to which the service is attributable, regardless of where they are located.

- The credits should be distributed only to those units to which the service is attributable. Given that the service mentioned in the case of Invoice A is attributable only to Bangalore, Kolkata and Gurgaon, the entire input tax credit applicable to the case should be distributed to the said 3 units, on a pro rata basis in the ratio of their respective 'Turnover in State' to the aggregate of the 3 'Turnover in State' (i.e., 2 Cr + 1Cr + 2 Cr). Further, no differentiation is made to whether the unit is registered or not, and therefore, credit attributable to the Gurgaon unit is distributed to that unit although it is not registered, which implies, it is a loss of credit.
- The 'turnover in State' is arrived at a value for the 'relevant period'. Since all 12 units were operational during the preceding financial year, the relevant period would be the preceding financial year.

Note 2: The credit of CGST and SGST should be distributed as IGST credit to all the units located outside the State in which the ISD is located, and as CGST and SGST respectively, in case of distribution of credit to a unit located in the same State as the ISD. Thus, the CGST and SGST credits are distributed as IGST credits to Bangalore and Kolkata, and as CGST & SGST respectively, to Mumbai.

- Given that the service supplied in terms of Invoice B is attributable only to Bangalore, Kolkata and Mumbai, the entire input tax credit applicable to the case should be distributed to the said 3 units, on a pro rata basis in the ratio of their respective 'Turnover in State' to the aggregate of the 3 'Turnover in State' (i.e., 2 Cr + 1Cr + 1 Cr).

Note 3: The credit of IGST is distributed as IGST credit to all the units to which the service is attributable.

- Invoice C relates to a supply of service that is attributable to all the units, and hence, the credits would be distributed on a pro-rata basis of the 'Turnover in State' of each of the units, to the aggregate of 'Turnover in State' of all the 12 units, i.e., Rs.10 Cr.;
- For convenience of presentation, only one column is shown to reflect the distribution to each of the 8 units, having the same 'turnover in State', and to which the same invoice is attributable.

Note 4: Given that the services for receipt of food and beverages would not be eligible input services, the taxes relating to Invoice D should be distributed as ineligible input tax (900 + 900), and the distribution must be done separately.

Since the service is wholly attributable to the Mumbai unit, the distribution is done only to such unit.

(iii) Distribution of credit where ISD and recipient are located in different States under CGST Act: As per Rule 4(1) (e) of ITC Rules ISD shall distribute as prescribed, credit of CGST as CGST or IGST and credit of IGST as IGST by issuing prescribed document mentioning the amount of credit distributed to recipient of credit located in different States.

Illustration: In the above illustration, if the corporate office of XYZ Ltd being an ISD situated in Delhi receives invoices indicating ₹ 4 lakhs of CGST in one service and ₹ 7 lakhs as of IGST in another case. It shall distribute CGST of ₹ 4 Lakhs as CGST or as IGST and credit of IGST of ₹ 7 Lakhs also as IGST to its locations at Chennai, Mumbai and Kolkata under a prescribed document containing the amount of credit distributed.

(iv) Distribution of credit where ISD and recipient are located in different States under SGST Act: ISD could distribute as prescribed credit of SGST as IGST only (and not as SGST of other State) by issuing a prescribed document containing the amount of credit distributed.

Illustration: In the above illustration, corporate office of XYZ Ltd., also received SGST of ₹ 6 Lakhs along with ₹ 4 Lakhs of CGST. It can distribute SGST credit as IGST to its locations at Chennai, Mumbai and Kolkata under a prescribed document containing the amount of credit distributed.

(v) Distribution of credit where ISD and recipient are located within the State under CGST Act: In cases where an entity has different registration within the same State by an entity, it may have to distribute credit to such location also similar to locations with different registrations outside the State. In order to enable the same, it is Provided that ISD can distribute in the prescribed manner, credit of CGST as CGST and credit of IGST as IGST by issuing prescribed document mentioning the amount of credit distributed to recipient being a business vertical.

Illustration: ABC Ltd., having its office at Bangalore is having another business vertical in Mysore which is separately registered. In such a case out of input tax credit of ₹ 4 lakhs of CGST. The credit attributable to ABC Ltd, Bangalore, shall be distributed to Mysore location as CGST. Similarly out of input tax credit of Rs. 10 Lakh of IGST, the credit attributable to ABC Ltd, Banglore shall be distributed to Mysore location as IGST.

(vi) Distribution of credit where ISD and recipient are located within the State under SGST Act: Similar to the provisions of CGST as indicated supra under CGST Act, even under the SGST Act, it is Provided that an ISD can distribute in the prescribed manner, credit of SGST and IGST as SGST (of the same State and none other State) by issuing prescribed document mentioning the amount of credit distributed to recipient being a business vertical.

Illustration: In the same example of ABC Ltd., above the input tax credit say ₹ 6 lakhs of SGST shall be distributed as SGST.

(vii) Conditions to distribute credit by ISD: The conditions to distribute the credit by ISD are as follows:

(a) Credit to be distributed to recipient under prescribed documents containing prescribed details. Such document should be issued to each of the recipient of credit.

(b) Credit distributed should not exceed the credit available for distribution.

(c) Tax paid on input services used by a particular location (registered as supplier), is to be distributed only to that location.

(d) Credit of tax paid on input service used by more than one location who are operational is to be distributed to all of them based on the pro rata basis of turnover of each location in a State to aggregate turnover of all such locations who have used such services.

Note: The period to be considered for computation is the previous financial year of that location. If it does not have any turnover in the previous financial year, then previous quarter of the month to which the credit is being distributed.

(viii) For a detailed discussion on Tax invoice or Credit note to be issued by an ISD reference maybe made to Chapter VII. The said Chapter VII clearly indicates the particulars to be included in such a document.

Illustration 1: A Ltd as an ISD has input service credit of ₹ 35 lakhs used by more than one locations, to be distributed among recipients locations X, Y and Z. The turnover of X, Y, Z in preceding financial year, is ₹ 10 crores, ₹ 15 crores and ₹ 5 crores respectively. The credit of ₹ 5 lakhs pertains to input service received only by Z. The credit attributable to X, Y, Z are as follows:

Particulars	Amount (in ₹)
Total Credit to be distributed as ISD	35 Lakhs
Credit of service used only by Z location	5 Lakhs
Credit available for distribution for all units	30 Lakhs
Credit distributable to X 10 crores / 30 crores * 30 Lakhs	10 Lakhs
Credit distributable to Y 15 crores /30 crores * 30 Lakhs	15 Lakhs
Credit distributable to Z 5 crores / 30 crores * 30 Lakhs 5 Lakhs Credit directly attributable to Z 5 Lakhs	10 Lakhs

Illustration 2: Distribution of input tax credit by an ISD to its units is shown as under:

M/s XYZ Ltd, having its head Office at Delhi, is registered as ISD. It has three units in different State namely 'Delhi', 'Jaipur' and 'Gujarat' which are operational in the current year. M/s XYZ

Ltd furnishes the following information for the month of July 2018 & asks to distribute the credit to various units.

(i) CGST paid on services used only for Delhi Unit: ₹ 300000/-

(ii) IGST, CGST & SGST paid on services used for all units: ₹ 1200000/-

(iii) Total Turnover of the units for the Financial Year 2017-18 are as follows:-

Unit	Turnover (₹)
Delhi	5,00,00,000
Jaipur	3,00,00,000
Gujarat	2,00,00,000
Total	10,00,00,000

Solution: Computation of Input Tax Credit Distributed to various units: -

Particulars	Total Credit Available	Delhi	Jaipur	Gujarat
		Credit distributed to all Units		
CGST paid on services used only for Delhi Unit.	300000	300000	0	0
IGST, CGST & SGST paid on services used in all units- Distribution on pro rata basis to all the units which are operational in the current year (Refer Note1)	1200000	600000	360000	240000
Total	1500000	900000	360000	240000

Note 1: Credit distributed pro rata basis based on the turnover of all the units are as under: -

(a) Unit Delhi: (50000000/100000000)*1200000 = ₹ 600000

(b) Unit Jaipur: (30000000/100000000)*1200000 = ₹ 360000

(c) Unit Gujarat: (20000000/100000000)*1200000 = ₹ 240000

Relevant period for distribution of credit:

(a) If the recipient of credit has turnover in their State in preceding financial year of the year in which credit is distributed – Such financial year.

(b) If some or all recipients do not have any turnover in their State in preceding financial year of the year in which credit is distributed – Last quarter for which details of such

turnover of all the recipients are available, previous to the month during which credit is to be distributed.

The analysis of above provision in a pictorial form is summarised as follows:

Input Service Distributor – Sec. 20.

- ITC is distributed to supplier of goods or services or both of same entity having the same PAN
- Common Services used at for

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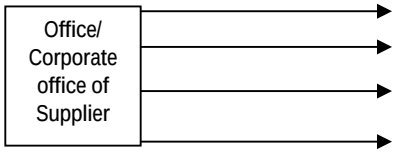


Distribution of Credit where ISD and recipient are located in different State under CGST ACT or SGST ACT

Distribution of Credit where ISD and recipient are located in within State under CGST ACT or SGST ACT

Input Service Distributor

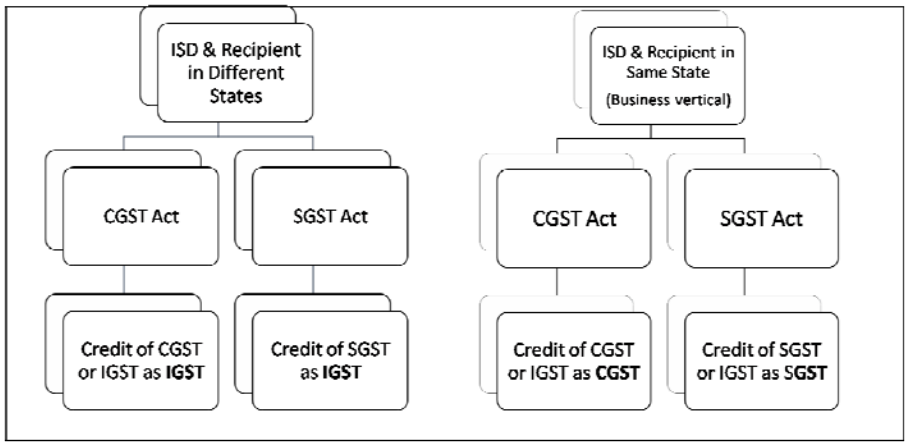


Illustration 3: Consider an example where a Company has a Branch-M in Mumbai and a Branch-D in Delhi. This Company is also incorporated in Delhi. Branch-M incurs various expenses that are supply of services in Delhi where CGST-SGST is liable to be charged in Delhi by that supplier. Obviously, credit of this tax cannot be availed by Branch-D because the underlying expense is not 'in relation to business' of Branch-D because it is exclusively in relation to business of Branch-M. When credit cannot be claimed by Branch-D and Branch-M does not want to forego this credit, the option available is for Branch-M to obtain ISD registration in Delhi. Now, in exactly, the same manner, if Branch-M incurs expenses in Maharashtra (say in Nasik), the implications would be that credit not allowable to Branch-M for these supplies and Branch-D is eligible to obtain ISD registration in Maharashtra, if credit is not to be foregone.

From this example, the following questions arise for careful consideration:

	Question	Response
(i)	Is ISD registration required in 'all but one' States for a registered taxable person? (All but one may all States/UT other than Home State)	Yes. If tax charged by the supplier is not IGST but CGST-SGST of the host-State where supplies are taking place, then a registered taxable person would require ISD registration in each those host-States except home-State
(ii)	Is ISD registration an entity-level office in a given State or is it a registered taxable persons-specific office in other States (outside the home State of that registered taxable person)?	Yes, ISD is an entity-level office because section 2(61) defines ISD as *"....means an office of the supplier ....which receives tax invoice....."* It does not say it is an "office of the registered taxable person which receives tax invoice…."
(iii)	Will ISD registration be required for each registered taxable person in 'all but one' States? (All but one may all States/UT other than Home State)	No. One entity-level ISD registration in all States will suffice for credit distribution requirement of all registered taxable persons having same PAN
(iv)	Can an ISD distribute credit of taxes paid in that State alone (whether IGST or CGST-SGST) to registered taxable persons in all other States or only to that State for whose benefit the ISD registration was obtained?	No, since ISD is an entity-level registration, one ISD in a State can distribute credit to all registered taxable persons in all other States having same PAN. Further, this ISD can also distribute credit to separately registered business verticals in that same State
(v)	When GSTIN registration is obtained in one State, is there any need to also obtain ISD in the same State or is GSTIN and ISD registrations mutually exclusive in a given State?	Yes, GSTIN registration does not permit distribution of credit. If taxes are paid that is not related to the business of that registered taxable person in that State, then for want of 'nexus', credit cannot be availed by him. And to save from loss of credit, ISD registration is the only option to distribute this credit whichever registered taxable person (called 'recipient of credit') satisfies this nexus test.
(vi)	Can a Company who has independent operations in all 29 States and 2 UTs and is therefore registered in all 31 locations also be required to have 31 ISD registrations?	Yes, absolutely. This is because each registered taxable person stated to be truly independent of other business (of registered taxable persons) and receives supplies in those host-States where CGST-SGST paid in those host-States is to be distributed to the relevant home-State
(vii)	Is it possible, when GSTIN registration	No, for the reasons stated in (vi) & (i) above,

	is already available in any given State, for the Company to completely avoid ISD registration?	it would not be possible to avoid ISD registration
(viii)	If a Company, in order to avoid ISD compliances, decides to avoid ISD registration in every State where it is already having GSTIN registration?	It is possible that a Company may consider the possibility doing so subject to legitimate credits which can be availed as an ISD
(ix)	If a Company were to instruct all registered taxable persons in a State who may have credit loss in other States misdirect the suppliers into issuing tax invoice with GSTIN of that State?	Yes, it is possible for a Company to misdirect a supplier. This supplier will only look for genuine GSTIN and similarity of name. It is not the supplier's responsibility to examine 'nexus' while issuing tax invoice
(x)	Is ISD registration, therefore, necessary in every State where this 'nexus' test cannot be fulfilled by each registered taxable person?	Yes, as explained in (vii) above, ISD registration is necessary in every State where 'nexus' test is not fulfilled
(xi)	Therefore, if multiple ISD registrations or GSTIN-plus-ISD registrations are unavoidable (as explained above), is there any solution to resolve this multiplicity of monthly and quarterly compliances?	Yes, only if 'nexus' is established between the 'no nexus' supplies in a State and the registered taxable person in that same State. If no such 'nexus' exists, credit claim by registered taxable person becomes improper. If nexus is established, please examine valuation of inter-branch supply of services is as per proviso to Rule 2 or as per Rule 4 of Valuation Rules

ISD is not merely a matter of compliance but involves great revenue implications to a registered taxable person. Compliance will also not be nominal. So, this is yet another indicator that the business model that has been in place until now has reached end-of-life and a new model needs to be examined. Please consider the following example of a CA in practice with branches in 3 States where the facts are as follows:

Common facts for consideration:	
Head office	Maharashtra
Branch offices	West Bengal and Delhi
Client base	All 3 States
Skills based	Distributed in all offices, based on the assignment, staff from all offices join to complete the assignment
Completion	Sign-off only by Partners who are in Maharashtra and West Bengal

Business models and their comparison are as follows:

Criteria	Under Current Law	Under GST Law – A	Under GST Law – B
ST (GST) registration	Centralized at Mumbai	All 3 branches	All 3 branches
Billing to clients	From all 3 offices	From Mumbai only	From all 3 offices
Internal billing	None	Branches issue tax invoice to HO at 'cost plus 10%' as per Rule 4 of Valuation Rules	Every branch including HO to bill each other for their respective contribution on 'revenue split' or 'proportion of contribution' method
ST credit of branches	Availed at Mumbai due to centralized registration (ISD registration not required)	Branches and HO avail input tax credit on tax invoices issued by respective suppliers	Branches and HO avail input tax credit on tax invoices issued by respective suppliers including internal bills
ST credit at HO	Mumbai credits, entity-level credits and branch-specific credits	HO retains credit of all entity-level credits and also avails credit of tax invoices issued by branches	HO retains credit of all entity-level credits
Loss, cost or risk	None	IGST outflow on non-credit costs included in valuation and 10% mark-up. Non-credit costs of branches are salaries, depreciation, etc.	Nexus risk on credits: • entity-level costs like audit fee • central vendor bills like data-telecom, travel, etc. Administrative challenge in assignment-level billing allocation
Mitigation	NA	Branch to invoice HO on 30th in respect of client-level billings due on 1st of next month so that the incremental IGST outflow from HO to branches is recovered quickly	GST does not impose any 'one-to-one' correlation of credits. Entity-level credit can be contended to be allowed in HO. Assignment-level billing allocation left to each branch to self-regulate

There is no doubt that the above are not recommendations but case for comparative illustration regarding application of the law to a business and to highlight that it is impossible to continue the current business model in GST, at least in many sectors.

The illustrations considered in this section are matters to be considered for discussion/ deliberations only and are not views envisaged. The reader may or may not agree with the views in the discussion in this Chapter/section.

20.2 Comparative review

These provisions are similar to the provisions contained in the Rule 7 of CENVAT credit rules for distribution of credit of input service by an ISD.

It appears that the distribution of credit among the recipients prescribed in CENVAT credit Rules has been continued in proposed GST law. The conditions for distribution of credit for each recipient also appear to be continued as before.

20.3 Related provisions

Section	Description
Section 2(61)	Definition of Input Service Distributor
Explanation to Section 20(2)	Definition of relevant period.

20.4 FAQ

Q1. Whether CGST and IGST credit can be distributed by ISD as IGST credit to units located in different States?

Ans. Yes. CGST credit can be distributed as IGST and IGST credit can be distributed as IGST by an ISD for the units located in different States.

Q2. Whether SGST credit can be distributed as IGST credit by an ISD to units located in different States?

Ans. Yes. ISD can distribute SGST credit as IGST for the units located in different States.

Q3. Whether the ISD can distribute the CGST and IGST Credit as CGST credit?

Ans. Yes. CGST and IGST credit can be distributed as CGST credit by an ISD.

Q4. Whether the SGST and IGST Credit can be distributed as SGST credit?

Ans. Yes. ISD can distribute SGST and IGST credit as SGST.

Q5. What are the conditions to be fulfilled by ISD to distribute the credit?

Ans. The conditions to be fulfilled by ISD to distribute credit are:

(a) Credit distributed to recipient under prescribed documents, which is issued to each of the recipient of credit.

(b) Credit distributed should not exceed the credit available for distribution.

(c) Tax paid on input services used by a particular location (registered as supplier), to be distributed only to that location.

(d) Credit of tax paid on input service used by more than one location who are

operational is to be distributed to all of them based on the pro rata basis of turnover of each locations in a State to aggregate turnover of all such locations who have used such services.

Q6. What are the documents through which the credit can be distributed by ISD?

Ans. The document under which the credit can be distributed is yet to be prescribed. The act provides that the credit can be distributed only through prescribed document.

Q7. How to distribute common credit among all the units of a ISD?

Ans. The common credit used by all the units can be distributed by ISD on pro rata basis i.e. based on the turnover of each unit to the aggregate turnover of all the units to which credit is distributed.

20.5 MCQ

Q1. The ISD may distribute the CGST and IGST credit to recipient outside the State as_____

(a) IGST
(b) CGST
(c) SGST

Ans. (a) IGST

Q2. The ISD may distribute the CGST credit within the State as____

(a) IGST
(b) CGST
(c) SGST
(d) Any of the above.

Ans. (b) CGST

Q3. According to the condition laid down for distribution of credit, ISD can distribute_____

(a) Credit in excess of credit available
(b) Only certain percentage of total credit available
(c) Credit equal to the total credit available for distribution.
(d) All of the above.

Ans. (c) Credit equal to the total credit available for distribution.

Q4. The credit of tax paid on input service used by more than one supplier is _____

(a) Distributed among the suppliers who used such input service on pro rata basis of turnover in such State.
(b) Distributed equally among all the suppliers
(c) Distributed only to one supplier.
(d) Cannot be distributed.

Ans. (a) Distributed among the suppliers who used such input service on pro rata basis of turnover in such State.

Statutory provision

21. Manner of recovery of credit distributed in excess

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipient(s) along with interest, and the provisions of section 73 or 74, as the case may be, shall apply mutatis mutandis for determination of amount to be recovered

21.1 Introduction

The CGST Act clearly lays down that credit distribution is not 'to self', that is, a registered taxable person cannot distribute credit to himself. Each registered person being a distinct person u/s 25, must distribute to another registered taxable person but having the same PAN to whom the credit is most accurately attributable. And the consequence of incorrect distribution, due to inadvertence or misapplication of the provisions, are discussed here.

21.2 Analysis

(i) Excess Credit distributed in contravention of provision:

Excess credit distributed to one or more recipient of credit in contravention of ISD provision under Section 20 is recoverable from the recipient of such credit along with Interest. The recovery will be under the provisions of Section 73 or 74.

Example-1 Total Credit Available to ISD is 15,00,000/- & the credit distributed to all the units is ₹ 16,50,000/- (i.e. Delhi 10,00,000, unit Jaipur ₹ 4,00,000 & unit Gujarat ₹ 2,50,000). What will be the consequences?

Solution: The excess credit of 1,50,000 (₹ 16,50,000- ₹ 15,00,000) distributed will be recovered from the recipient along with interest and the provisions of section 73 or 74 shall apply mutatis mutandis for effecting such recovery.

Example-2 Total Credit Available to ISD is ₹ 15,00,000/- & the credit should have been distributed equal to all the units as all units had equal turnover, however credit distributed in violation of Section 21, as under:

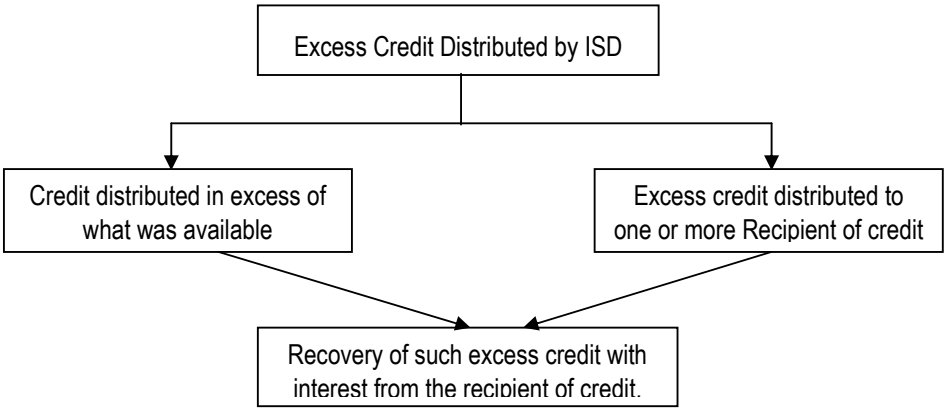
Delhi ₹ 7,00,000, Jaipur ₹ 6,00,000, Gujarat ₹ 2,00,000.

What will be the consequences?

Solution: The excess credit of ₹ 2,00,000 (₹ 7,00,000- ₹ 5,00,000) shall be recovered from Delhi and ₹ 1,00,000 (₹ 600,000 – ₹ 5,00,000) shall be recovered from Jaipur along with interest and the provisions of section 73 or 74 shall apply mutatis mutandis for effecting such recovery.

The analysis of above provision in a pictorial form is summarised as follows:

Excess Credit distributed by Input Service Distributor



21.3 Comparative review

Currently recovery provision is specified in Rule 14 of CENVAT Credit Rules. The CENVAT credit taken or utilized wrongly or has been erroneously refunded, is recovered along with interest under the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act.

Currently, there is no specific provision for excess distribution of credit by ISD. Now specific provision is Provided in the proposed GST law providing for recovery of amount along with interest. Further, the relevant period for recovery of excess amount distributed is also Provided in GST law.

21.4 Related provisions

Section	Description
Section 20	Manner of distribution of credit by Input service distributor
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts.
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized due to fraud or any wilful-misstatement or suppression of facts.

21.5 FAQ

Q1. Whether the excess credit distributed could be recovered by the department?

Ans. Yes. Excess credit distributed could be recovered along with interest from recipient by the department.

Q2. What are the consequences of credit distributed in contravention of the provision of the Act?

Ans. The credit distributed in contravention of the provision of the Act is to be recovered from the unit to which it is distributed along with interest.

Chapter–VI
Registration

Statutory provision

22. Persons liable for registration

(1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

(2) Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an existing law, shall be liable to be registered under this Act with effect from the appointed day.

(3) Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.

(4) Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.

Explanation. For the purposes of this section,—

(i) the expression "aggregate turnover" shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;

(ii) the supply of goods, after completion of jobwork, by a registered job worker shall be treated as the supply of goods by the principal referred to in section143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;

(iii) the expression "special category States" shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution.

22.1 Introduction

Section 22 provides for registration of every supplier effecting the taxable supplies. Registration of a business with the tax authorities implies obtaining a unique identification code from the concerned tax authorities so that all the operations of, and data relating to the business can be agglomerated and correlated. In any tax system, this is the most fundamental requirement for identification of the business for tax purposes and for having any compliance verification mechanism. A registration from the concerned tax authorities will confer among others the following advantages to the registrant.

— Legally recognised as a supplier of Goods and/or Services;

— Proper accounting of taxes paid on the input goods and / or services;

— Utilisation of input taxes for payment of GST due on supply of goods and / or services or both;

— Pass on the credit of the taxes paid on the goods and / or services supplied to purchasers or recipients.

22.2 Analysis

— Every supplier shall be liable to be registered under the Act in the State from which he makes a taxable supply of Goods or Services or both. Registration is required if his aggregate turnover in a financial year exceeds Rupees Twenty Lakhs. This threshold limit will be Rupees Ten Lakhs if a taxable person conducts his business in any of the special category states as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution i.e. Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand.

— It means that for each State, the supplier liable for registration will have to take a separate registration even though such supplier may be supplying goods or services or both from more than one State as a single entity. The application for registration shall be made within 30 days from the date when he becomes liable for registration.

— It is necessary to admit the distinction between 'person and taxable person'. Person is defined in the most familiar manner in section 2(84) and a taxable person is defined in section 2(107). A proper reading of section 22 helps us understand that a State is the smallest registrable unit in GST – except where multiple business verticals are registered separately under section 25. A taxable person is therefore the presence of the person in a State from where taxable supplies are made in the name of such person. When a person becomes liable to be registered in a State at any place from where taxable supplies are made therein such person shall be a taxable person.

— Casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

— A person having multiple business verticals [as defined in Section 2(18)] in one State may obtain separate registrations for each of the business vertical, subject to prescribed conditions.

— A supplier shall not be liable for registration:

  (a) if his aggregate turnover consists of only such Goods and/or Service which are not liable to Tax or wholly exempt from tax under this Act.

  (b) an agriculturist, to the extent of supply of produce out of cultivation of land

— For calculating the Threshold limit, the turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals. Further, supply of goods by a registered Job-worker, after completion of job work, shall be treated as the supply of goods by the "principal" referred to in section 143 (i.e. Job work procedure) of this Act. The value of such goods shall not be included in the aggregate turnover of the registered job worker.

— Every person who, on the day immediately preceding the appointed day, is registered or holds a license under an earlier law, shall be liable to be registered under this Act with effect from the appointed day.

— Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer can proceed to register such person in the manner as may be prescribed.

Categories of persons who shall be required to be registered under this Act irrespective of the threshold

Notwithstanding anything discussed in the paragraph above, the following categories of persons shall get registered compulsorily under this Act:

— persons making any inter-State taxable supply;

— casual taxable persons making taxable supply;

— persons who are required to pay tax under reverse charge;

— persons who are required to pay tax under sub-section (5) of section 9 (electronic commerce operator)

— non-resident taxable persons making taxable supply;

— persons who are required to deduct tax under section 51 (Tax Deduction at Source);

— persons who supply goods or services or both on behalf of other registered taxable persons whether as an agent or otherwise;

— input service distributor;

— persons who supply goods and/or services, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52,

— every electronic commerce operator;

— every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered taxable person; and

— such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the Council.

Registration on own Volition

A person, though not liable to be registered under Section 22, may get himself registered voluntarily, and once registered all provisions of this Act, shall apply to such person.

Transfer of Business and Registration

If registered taxable person transfers business on account of succession or otherwise, to another person as a going concern, the transferee, or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession. This means that the Registration Certificate issued under Section 22 of the Act is not transferable to any other person. In a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.

Statutory provision

23. Persons not liable for registration

(1) The following persons shall not be liable to registration, namely: —

(a) any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;

(b) an agriculturist, to the extent of supply of produce out of cultivation of land.

(2) The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

23.1 Analysis

The main criterion to remain out of the purview of registration is to exclusively engage in the supply of exempted goods or services or both. The term exclusive indicates engaging in only those supplies which are exempted. If a supplier is supplying both exempted and non-exempted goods and/or services, then this provision is not applicable and he is required to take registration under Section 22.

As per Section 1 (7) agriculturist means an individual or HUF who undertakes cultivation of land:

(a) By own labour or

(b) By the labour of family, or

(c) By servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family

Thus, an agriculturist is not liable for registration only to the extent of supply of produce out of cultivation of land. If an agriculturist undertakes supplies which are not linked to the cultivation of land, he will fall within the provisions of Section 22 and may have to take registration in respect of such supplies.

Statutory Provision

24. Compulsory registration in certain cases

(1) Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act, —

(i) persons making any inter-State taxable supply;

(ii) casual taxable persons making taxable supply;

(iii) persons who are required to pay tax under reverse charge;

(iv) person who are required to pay tax under sub-section (5) of section 9;

(v) non-resident taxable persons making taxable supply;

(vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;

(vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

(viii) Input Service Distributor, whether or not separately registered under this Act;

(ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;

(x) every electronic commerce operator;

(xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and

(xii) such other person or class of persons as may be notified by the Government on the recommendations of the Council.

24.1 Analysis

As per Section 22 there are certain conditions subject to fulfilment of which registration must be taken. However, Section 24 enlists 10 types of persons who shall compulsorily obtain the registration even though these persons do not trigger the provisions prescribed under Section 22. Thus Section 24 is an overriding section that makes it mandatory to obtain registration by certain prescribed persons even though the conditions prescribed under section 22 are not met.

Further, the Government on the recommendations of the council may notify such other person or class of persons who are required to compulsorily obtain the registration.

Statutory Provision

25. Procedure for registration

(1) Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

Explanation. —Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

(2) A person seeking registration under this Act shall be granted a single registration in a State or Union territory:

Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.

(3) A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.

(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(5) Where a person who has obtained, or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

(6) Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 in order to be eligible for grant of registration:

Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

(7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.

(8) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.

(9) Notwithstanding anything contained in sub-section (1), ––

(a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and

(b) any other person or class of persons, as may be notified by the Commissioner, shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.

(10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.

(11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.

(12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period.

25.1 Analysis

Section 25 read with draft registration rules provides a detailed road map on the procedural aspects of the registration. The time limit for application is within 30 days (for persons other than casual taxable person or a non-resident taxable person) and casual taxable person or a non-resident taxable person shall have to obtain the registration at least 5 days prior to the commencement.

Single registration will be granted from one state or union territory and in case of persons having business across different states, then multiple registrations are granted. Even in a single state, multiple registrations are possible wherever a person has multiple business verticals.

As per rule 1 of the draft Registration rules a Special Economic Zone unit or Special Economic Zone developer shall make a separate application for registration as a business vertical distinct from its other units located outside the Special Economic Zone.

The Registration rules prescribe 29 different forms in respect of registration matters. The application for registration should be disposed off in a time bound manner and detailed time limits have been prescribed under the rules for various purposes.

Requirement of a Permanent Account Number or Tax Deduction and Collection Account Number

Every person who is liable to take a registration or wants to obtain voluntary Registration shall have a Permanent Account Number (PAN).

Every person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number (TAN)

A non-resident taxable person can obtain registration on the basis of any other document as may be prescribed.

Registration for United Nations or Consulate or Embassy:

Any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act,1947 (46 of 1947), Consulate or Embassy of foreign countries and any other person or class of persons as may be notified by the Commissioner, shall obtain a Unique Identity Number. The registration shall be for the purpose(s) notified, including seeking to claim refund of taxes paid by them, on the notified supplies of goods and/or services received by them. The supplier supplying to these organization is expected to mention the UID on the invoices and treat such supplies as business to business (B2B) supplies.

Issuance of Registration by Proper Authority:

The registration or Unique Identity Number, (UID) is granted / issued with effective dates. The registration or UID is granted or rejected after due verification and within the time prescribed. A certificate of registration shall also be issued in prescribed form with effective date as may be prescribed.

A registration or a UID shall be deemed to have been granted after the period prescribed (under sub-section (10) of Section 25 of the Act) if no deficiency has been communicated to the applicant within that period. Also, the grant of registration or the Unique Identity Number under the CGST Act / SGST Act shall be deemed to be a grant of registration or the Unique Identity Number under the SGST/CGST Act Provided that the application for registration or the UID has not been rejected//no deficiency has been communicated to applicant by the proper officer under SGST/CGST Act within the time specified.

Rejection of Application for Registration:

The proper officer shall not reject the application for registration or the Unique Identification Number (UID) without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

This implies that the decision to reject an application under this section shall be only after following the principles of Natural justice and after a due process of law by issuance of an order. It should also be noted that any rejection of application for registration or the Unique Identity Number under the CGST Act / SGST Act shall be deemed to be a rejection of application for registration under the SGST Act / CGST Act respectively as the case may be.

Statutory Provisions

26. Deemed registration.

(1) The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.

(2) Notwithstanding anything contained in sub-section (10) of section 25, any rejection of application for registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act.

26.1 Analysis

These are the linking provisions between the Central Goods and Services Tax and State/Union Territory Goods and Services Tax Act. By enabling these provisions, the burden of taking registrations under various Acts has been removed. Thus, if a supplier takes a registration under one act it shall be deemed that the registration has also been obtained under the other Act and vice-versa. Even otherwise the registration must be taken on the common portal and is based on the PAN hence the registration will remain common across various Acts.

However, if the registration is rejected under the Central Goods and Services Tax, then such rejection will be treated as if the registration has not been obtained under the Central Goods and Services Tax even though it has been obtained in State/Union Territory Goods and Services Tax Act.

If an application for registration has been rejected under State/Union Territory Goods and Services Tax Act then it shall be deemed that the same has been rejected under the Central Goods and Services Tax

Statutory Provision

27. Special provisions relating to casual taxable person and Non- resident taxable person

(1) The certificate of registration issued to a casual taxable person or a non-resident taxable person shall be valid for a period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier and such person shall make taxable supplies only after the issuance of the certificate of registration:

PROVIDED that the proper officer may, on sufficient cause being shown by the said taxable person, extend the said period of ninety days by a further period not exceeding ninety days.

(2) A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 25, make an advance deposit of

tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought:

PROVIDED that where any extension of time is sought under sub-section (1), such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.

(3) The amount deposited under sub-section (2) shall be credited to the electronic cash ledger of such person and shall be utilized in the manner Provided under section 49.

27.1 Analysis

The certificate of registration issued to a "casual taxable person" or a "non-resident taxable person" shall be valid for a period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier, extendable by proper officer for further period of maximum 90 days at the request of taxable person.

A casual taxable person or a non-resident taxable person while seeking registration shall make an advance deposit of tax in an amount equivalent to the estimated tax liability. Where any extension of time is sought, such taxable person shall deposit an additional amount of tax equal to the estimated tax liability for the period for which the extension is sought.

Such deposit shall be credited to the electronic cash ledger of and utilized in the manner Provided under section 44 (Payment of Tax, interest, penalty and other amounts) of the Act.

Since the nature of the activity carried out by a casual taxable person and non-resident person are temporary as compared to a regular taxable person, additional safeguards have been placed to ensure that the registration is granted for a limited period and the tax liability is recovered in advance.

Statutory Provision

28. Amendment of Registration

(1) Every registered taxable person and a person to whom a unique identity number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration, or subsequent thereto, in such form and manner and within such period as may be prescribed.

(2) The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in such manner and within such period as may be prescribed:

Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed.

Provided further that the proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.

(3) Any rejection or approval of amendments under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a rejection or approval under this Act.

28.1 Analysis

There are various situations in which the Registration issued by the competent authority requires amendment in line with real time situations. Under these circumstances, every registered taxable person shall inform any changes in the information furnished at the time of registration.

The proper officer shall not reject the request for amendment without affording a reasonable opportunity of being heard by following the principles of natural justice. Any rejection or, approval of amendments under the State Goods and Services Tax Act or Union Territory Goods and Services Act shall be deemed to be a rejection or approval of amendments under the Central Goods and Services Tax Act.

Statutory Provision

29. Cancellation of registration

(1) The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where, —

(a) the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

(b) there is any change in the constitution of the business; or

(c) the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under Section 22 or Section 24.

(2) The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, —

(a) a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or

(b) a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or

(c) any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or

(d) any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or

(e) registration has been obtained by means of fraud, wilful misstatement or suppression of facts:

Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.

(3) The cancellation of registration under this section shall not affect the liability of the

person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.

(4) The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.

(5) Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:

PROVIDED that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.

(6) The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.

29.1 Analysis

Any Registration granted under this Act may be cancelled by the Proper Officer; the various circumstances and the provisions of the law on this subject have been outlined under this section.

A registration granted can be cancelled when –

— the business is discontinued, transferred fully for any reason including death of proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or

— there is any change in the constitution of the business; or

— the taxable person is no longer liable to be registered under Section 22.

This is possible after the person is afforded an opportunity of being heard (except no such opportunity need to Be Provided in case the application is filed by the registered taxable person or his legal heirs, in the case of death of such person, for cancellation of registration) when –

— the registered taxable person has contravened such provisions of the Act or the rules made there under as may be prescribed; or

— a person paying tax under Composition Scheme has not furnished returns for three consecutive tax periods; or

— any taxable person who has not furnished returns for a continuous period of six months; or

— any person who has taken voluntary registration and has not commenced business within six months from the date of registration; or

— Where registration has been obtained by means of fraud, wilful misstatement or suppression of facts.

As such, cancellation of registration, shall not affect the liability of the taxable person to pay tax and other dues under the Act for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation. The cancellation of registration under State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a cancellation of registration under the Central Goods and Service Tax Act.

Where the registration is cancelled, the registered taxable person shall pay an amount equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher. The payment can be made by way of debit in the electronic credit or electronic cash ledger.

In case of capital goods, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods reduced by the prescribed percentage points or the tax on the transaction value of such capital goods [under sub-section (1) of section 15 (Value of Taxable supply) of Act], whichever is higher. The amount payable under these provisions shall be calculated in accordance with generally accepted accounting principles.

Statutory Provision

30. Revocation of cancellation of registration

(1) Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.

(2) The proper officer may, in the manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:

Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.

(3) The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.

30.1 Analysis

Any registered taxable person, whose registration is cancelled, subject to prescribed conditions and circumstances, may apply to proper officer for revocation of cancellation of the registration within thirty days from the date of service of the cancellation order. The proper officer may in prescribed manner and within prescribed period, by an order, either revoke

cancellation of the registration, or reject the application for revocation for good and sufficient reasons.

The proper officer shall not reject the application for revocation of cancellation of registration without giving a show cause notice and without giving the person a reasonable opportunity of being heard.

Revocation of cancellation of registration under State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a revocation of cancellation of registration under the Central Goods and Service Tax Act

30.2 Comparative Review

At present, the threshold limit for registration under Central Excise is INR 150 lacs (this is optional), under service tax is INR 10 lacs and under many State VAT laws between INR 5 – 10 lacs

Section in CGST Act	Title	Corresponding Section in Central Excise Act, 1944	Corresponding Section in Finance Act, 1994	VAT/New Provision
22	Registrations	Section-6 of CEA 1944 read with Rule 9 of Central Excise Rules 2002	Section 69 of the Finance Act 1994 read with Rule 4 of Service Tax Rules 1994	Different states have different provisions under their ACT.

30.3 FAQ's

Q1. Who is the person liable to take a Registration under the GST Law?

Ans. In terms of Sub-Section (1) of Section 22 of the CGST Act, every supplier making taxable supplies is liable for registration if his aggregate turnover in a financial year exceeds twenty lakh rupees.

Q2. What is the time limit for taking a Registration under GST Law ?

Ans. Every person should take a Registration, within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed. Provided casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

Q3. If a person is operating in different states, with the same PAN number, whether he operate with a single Registration?

Ans. Every person who is liable to take a Registration will have to get registered separately for each of the States where he has a business operation and is liable to pay GST in terms of Sub-section (1) of Section 25 of GST Law.

Q4. Whether a person having multiple business verticals in a State can obtain different registrations?

Ans. In terms of Sub-Section (2) of Section 25, a person having multiple business verticals in

a State may obtain a separate registration for each business vertical, subject to such conditions as may be prescribed.

Q5. Is there a provision for a person to get himself registered voluntarily though he may not be liable to pay GST?

Ans. In terms of Sub-section (3) of Section 25 a person, though not liable to be registered under Section 22, may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.

Q6. Is possession of a Permanent Account Number (PAN) mandatory for obtaining a registration?

Ans. Every person shall have a Permanent Account Number issued under the Income Tax. Act, 1961 (43 of 1961) in order to be eligible for grant of registration under Section 22 of the Act.

Q7. Whether the department through the proper officer, *Suo-motto* proceed with registration of a Person under this Act?

Ans. In terms of Sub-Section 8 of Section 25, Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action that is, or may be taken under this Act, or under any other law for the time being in force, proceed to register such person in the manner as may be prescribed *Suo-motto*.

Q8. When the proper Officer can grant a Certificate for Registration?

Ans. In terms of Sub-Section 10 of Section 25, the registration or the Unique Identity Number, shall be granted or rejected after due verification in the manner and within such period as may be prescribed.

Q9. Whether the Registration granted to any person is permanent?

Ans. Yes, the registration Certificate once granted is permanent unless surrendered, cancelled, or revoked.

Q10. What is the validity period of the Registration certificate issued to Casual Taxable Person and non-Resident Taxable person?

Ans. The certificate of registration issued to a “casual taxable person” or a “non-resident taxable person” shall be valid for a period of ninety days from the effective date of registration. A proviso has been made available in this statute by enshrining a discretionary authority for the proper officer, who may at the request of the said taxable person, extend the validity of the aforesaid period of ninety days by a further period not exceeding ninety days.

Q.11. Is there any Advance tax to be paid by Casual Taxable Person and non-Resident Taxable person at the time of obtaining Registration under this Special Category?

Ans. Yes, it has been made mandatory in the ACT, that a casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration

under sub-section (2) of section 27, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought. This provision of depositing advance additional amount of tax equivalent to the estimated tax liability of such person is applicable for the period for which the extension beyond ninety days is being sought.

Q12. Whether amendments to the Registration Certificates issued by the Proper officer is permissible?

Ans. In terms of Section 28, the proper officer may, on the basis of such information furnished either by the Registrant or as ascertained by him, approve or reject amendments in the registration particulars in the manner and within such period as may be prescribed:

Q13. Whether Cancellation of Registration Certificate is permissible?

Ans. Any Registration granted under this Act may be cancelled by the Proper Officer, on various circumstances and the provisions of the law on this subject have been outlined under Section 29 of the ACT. The proper officer may, either on his own motion or on an application filed, in the prescribed manner, by the registered taxable person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed.

Q14. Whether cancellation of Registration under CGST ACT means cancellation under SGST ACT also?

Ans. The cancellation of registration under the CGST Act /S GST Act shall be deemed to be a cancellation of registration under the SGST Act / CGST Act mutually.

Q.15. Can the proper Officer Cancel the Registration on his own Suo-motto?

Ans. Yes, The Proper Officer can cancel the Registration once issued on his own Volition However, such officer must follow the principles of natural justice by issuing a Notice and pass an appealable order.

Chapter VII
Tax Invoice, Credit and Debit Notes

Statutory provision

31. Tax invoice

(1) A registered person supplying taxable goods shall, before or at the time of,

(a) removal of goods for supply to the recipient, where the supply involves movement of goods; or

(b) delivery of goods or making available thereof to the recipient, in any other case,

issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:

PROVIDED that the Government may, on the recommendation of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.

(2) A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, the tax charged thereon and such other particulars as may be prescribed:

PROVIDED that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which –

(a) any other document issued in relation to the supply shall be deemed to be a tax invoice; or

(b) tax invoice may not be issued

(3) Notwithstanding anything contained in sub-sections (1) and (2):

(a) a registered taxable person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;

(b) a registered person may not issue a tax invoice if the value of goods or services or both supplies is less than two hundred rupees' subject to such conditions and in such manner as may be prescribed;

(c) A registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed:

PROVIDED that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed ;

(d) a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both,, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;

(e) where on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who made the payment, refund voucher against such payment;

(f) a registered person who is liable to pay tax under sub-section (3) or sub section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both ;

(g) a registered person who is liable to pay tax under sub section 3 or sub section 4 of section 9 shall issue a payment voucher at the time of making payment to the supplier.

(4) In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

(5) Subject to the provisions of clause (d) of sub section 3, in case of continuous supply of services,

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;

(c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

(6) In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such invoice shall be issued to the extent of the supply made before such cessation.

(7) Notwithstanding anything contained in sub-section (1), where the goods (being sent or taken on approval for sale or return) are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.

Explanation. - The expression “tax invoice” shall include any revised invoice issued by the supplier in respect of a supply made earlier.

31.1 Introduction

Invoice is a document which records the terms of an underlying arrangement between parties. An invoice does not bring into existence an agreement but merely records the terms of a pre-existing agreement. GST requires that an invoice – tax invoice or bill of supply – to be issued on the occurrence of certain event or within a prescribed time. Therefore, an invoice, among others is required to be issued for every other form of supply such as sale, transfer, barter, exchange, license, rental, lease or disposal. The section uses the phrase registered person as a person who is required to issue an invoice whereas a taxable person is one who alone is entitled to input tax credit.

31.2 Analysis

A. Supplier of taxable goods is required to issue a tax invoice:

- Before or at the time of removal of the goods where the supply involves movement of goods; or
- Before or at the time of delivery of the goods to the recipient where the supply does not involve movement of goods.

So, in order to determine when the tax invoice is to be issued, the supply must be classified into one of these two cases, that is, whether it is case of supply that involves movement or one that does not involve movement of the goods. Please refer to chapter regarding time of supply for detailed discussion about removal and movement of goods, mode & time of delivery of goods and the role of supplier or recipient in determining these questions.

B. Supplier of services is required to issue a tax invoice:

- Before provision of the services or
- After provision of the services but within a specified time.

C. In terms of the relevant Rule 1, a tax invoice referred to in this section shall be issued by the registered person containing the following: -

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN or UIN, if registered, of the recipient;

(e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more;

(f) HSN code of goods or Accounting Code of services;

(g) description of goods or services;

(h) quantity in case of goods and unit or Unique Quantity Code thereof;

(i) total value of supply of goods or services or both;

(j) taxable value of supply of goods or services or both considering discount or abatement, if any;

(k) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

(l) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

(m) place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;

(n) address of delivery where the same is different from the place of supply;

(o) whether the tax is payable on reverse charge basis; and

(p) signature or digital signature of the supplier or his authorized representative:

In respect of the particulars relating to HSN code cited in point (f) supra on the recommendations of the Council the Commissioner may, by notification for a specified period and class of registered persons who will be required to specify the number of digits of HSN code for goods or the Accounting Codes for services; The Commissioner is also empowered to specify by way of notification (on the recommendations of the Council the class of registered persons that would not be required to mention the HSN code for goods or the Accounting Codes for services, for such period as may be specified in the said notification:

D. Tax Invoices in cases of special services

Sl. No.	Class of supplier of taxable services	Nature of document	Optional	Mandatory
1	Insurer, Banking Company, Financial Institution and NBFC	Tax Invoice or any other similar document	a. Serial no. b. Address of the recipient of services	All other particulars cited in clause C supra
2	Goods transport agency transporting goods by road	Tax Invoice or any other similar document	None	a. All other particulars cited in clause C supra b. Gross weight of consignment c. Consignor and

				Consignee name d. Regn. No. of Vehicle e. Details of goods transported f. Origin and destination details g. GSTIN of person liable to pay tax whether as consignor / consignee or as GTA
3	Passenger transport agency	Tax invoice or ticket	a. Serial no. b. Address of the recipient of services	All other particulars cited in clause C supra

E. In case of exports of goods or services, the invoice shall carry an endorsement

"SUPPLY MEANT FOR EXPORT ON PAYMENT OF IGST" or "SUPPLY MEANT FOR EXPORT UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF IGST", as the case may be, and shall, in lieu of the details specified in clause (c) cited supra, contain the following details:

(i) name and address of the recipient;

(ii) address of delivery;

(iii) name of the country of destination; and

(iv) number and date of application for removal of goods for export:

F. Supplies not exceeding Rs.200/-

A registered person is not required to issue a tax invoice in accordance with the provisions of clause (b) of sub-section (3) of section 31 i.e. in respect of supply of goods or services or both where the value therein does not exceed a sum of Rs.200/- subject to the following conditions, namely: -

(a) the recipient is not a registered person; and

(b) the recipient does not require such invoice,

However, in respect of such supplies the supplier shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.

G. Commissioner's powers

The Commissioner, on the recommendations of the Council, is empowered to specify the class of persons rendering services who can issue any other document which could be construed to be a tax invoice or circumstances when a tax invoice need not be issued.

H. Revised Tax Invoice

Within one month from the date of registration, the taxable person may issue a revised tax invoice for supplies from the effective date of registration till the date of issuance of registration certificate. Such person may also issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered.

In a transaction of inter-state supply where the value of supply does not exceed Rs.2.50 lakhs a consolidated revised tax invoice is to be issued separately for each of the recipients in a particular State who are not registered.

I. A registered person who has opted for composition of tax under section 10 of the Act or one who is supplying exempted goods or services or both is required to issue a bill of supply and not a tax invoice.

J. Bill of supply

A bill of supply referred to in clause (c) of sub-section (3) of section 31 shall be issued by the supplier containing the following details: -

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN or UIN, if registered, of the recipient;

(e) HSN Code of goods or Accounting Code for services;

(f) description of goods or services or both;

(g) value of supply of goods or services or both taking into account discount or abatement, if any; and

(h) signature or digital signature of the supplier or his authorized representative:

K. Supplies not exceeding Rs.200/-

A registered person is not required to issue a bill of supply in accordance with the provisions of clause (c) of sub-section (3) of section 31 i.e. in respect of supply of goods or services or both where the value therein does not exceed a sum of Rs.200/- subject to the following conditions, namely:-

(a) the recipient is not a registered person; and

(b) the recipient does not require such invoice,

However, in respect of such supplies the supplier shall issue a consolidated bill of supply for such supplies at the close of each day in respect of all such supplies.

L. Receipt Voucher

Receipt of advance will require that a 'receipt voucher' be issued and not an invoice (of

either kind). A receipt voucher referred to in clause (d) of sub-section (3) of section 31 shall contain the following :

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year

(c) date of its issue;

(d) name, address and GSTIN or UIN, if registered, of the recipient;

(e) description of goods or services;

(f) amount of advance taken;

(g) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

(h) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

(i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;

(j) whether the tax is payable on reverse charge basis; and

(k) signature or digital signature of the supplier or his authorized representative.

Whenever a transaction envisages issue of Receipt Voucher, but thereafter does not translate into a transaction of supply will require issue of a refund voucher containing similar particulars cited supra.

2(32) "continuous supply of goods" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may subject to such conditions, as it may, by notification, specify;

2(33) "continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;

M. Tax payable on reverse charge and supplies received from unregistered persons

Where tax is payable on reverse charge basis or on receipt of supplies from unregistered persons - the recipient is required to prepare an invoice – tax invoice or bill of supply – to record and confirm facts relating to supplies received from such persons. Such transactions would also require a payment voucher to be issued (on similar basis as a receipt voucher) at the time of making payment.

N. Tax Invoice for an Input Service Distributor (ISD)

An ISD Invoice or debit or credit note issued by an Input Service Distributor shall contain the following particulars in terms of Rule 7.

(a) name, address and GSTIN of the Input Service Distributor;

(b) a consecutive serial number containing alphabets or numerals or special characters' hyphen or dash and slash symbolised as, "-", "/", respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN of the recipient to whom the credit is distributed;

(e) amount of the credit distributed; and

(f) signature or digital signature of the Input Service Distributor or his authorized representative:

If the Input Service Distributor is an office of a banking company or a financial institution, including a non-banking financial company, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as prescribed above.

O. Continuous supply of goods

Continuous supply of goods, the invoice – tax invoice or bill of supply – is required to be issued:

— when the statement or a running-claim is issued; or

— when payment is received, whichever is earlier

P. Continuous supply of services

For continuous supply of services, a tax invoice is required to be issued:

— when payment date is ascertainable as per the contract on or before the due date for payment; or

— when payment date is not ascertainable from the contract on or before the time when the supplier of services receives the payment; or

— when payment is linked to completion of an event on or before the date of completion of the event.

Q. Cessation of services

On cessation of a contract for supply of services, the invoice is required to be issued to the extent supply is complete prior to cessation.

R. Goods sent on approval

Invoice in respect of goods sent 'on approval' is required to be issued at the earlier of the end of 6 months from their removal or approval to accept supply is indicated to supplier.

31.3 Comparative review

Under the current indirect tax laws, depending upon the taxable event, as to whether it is manufacture or sale or service, excise invoices or tax invoices are raised.

In the present scenario, under service tax regime, a time limit to issue a tax invoice is prescribed having regard to date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier. The GST law provides for such time limit to be prescribed.

The provision to issue revised invoice (from the effective date of registration to the date of issuance of certificate) is not available at present. This document would be useful for claiming tax credit for supply of goods/services during this period.

At present, invoices or bills of sale etc. can be issued inclusive of tax in certain cases whereas it is mandatory to indicate the amount of tax charged on every transaction in the GST regime

31.4 FAQs

Q1. Is tax invoice required for advance payments received for goods or services?

Ans. No, tax invoice is not required to be raised for advance payments received for goods or services. The recipient of payment would be required to issue a receipt voucher for receipt of payment.

Q2. Is it mandatory to mention the details of tax amount charged in the invoice?

Ans. Yes, the tax invoice should mandatorily mention the details of tax amount change in the invoice.

Q3. Is it possible to take input tax credit based on the 'bill of supply'?

Ans. No, it is not possible to take input tax credit based on bill of supply.

Q4. Can a revised invoice be issued for taxable supplies?

Ans. Yes, the registered taxable person can issue revised invoice. Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue revised tax invoices in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration.

Provided that the registered person may issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered under the Act during such period

Statutory Provisions

32. Prohibition of unauthorized collection of tax

(1) A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.

(2) No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.

32.1 Analysis

Collection of tax is not a statutory right but a contractual right. The person collecting taxes is in a sense an agent of the Government. As such, no recipient is obliged to reimburse the supplier taxes due on the supply. At the same time, every taxable person (in case of forward charge) remains liable to deposit applicable tax to the Government. It is the wisdom of the supplier to include 'tax extra' in the offer to enable recourse to recoup tax. Eligibility to claim credit also does not impose any implicit duty to reimburse the tax if the terms of offer are silent about tax.

This provision casts an obligation of each – unregistered person and registered taxable person with regard to collection of tax on supply:

— unregistered person is not to collect tax or any sum 'by way of' tax; and

— registered taxable person is to collect tax only in the manner prescribed

It is important to differentiate between the restriction placed by this provision and the contractual route necessary to recoup tax by the supplier. Only tax that is collected as 'CGST-SGST' or 'IGST' or UTGST is to be paid to the Government. Any other loss recoupment of input tax credit foregone or forfeited does not come within this restriction.

Statutory Provisions

33. Amount of tax to be indicated in tax invoice and other documents

Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

33.1 Analysis

With the non-obstante clause, this provision secures preference over any other provision to the contrary whether in this Act or elsewhere. And it states that all documents need to carry the tax that forms part of the price of supply.

This provision therefore holds that the price charged to be the 'cum tax' price of the supply. Tax included in the price is that actually assessed on the supply.

It means that if the supply price is Rs.1000/- which is inclusive of tax then every document must state that "the price of Rs.1000 includes – say IGST of Rs.180/- or alternatively say supply price is Rs.820 and IGST Rs.180 total Rs.1000.

Statutory Provisions

34. Credit and debit notes

(1) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value

or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.

(2) Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

(3) Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed.

(4) Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted such manner as may be prescribed.

Explanation. – For the purposes of this Act, the expression ''debit note'' shall include a supplementary invoice.

34.1 Analysis

(a) Credit note and debit note cause some hardship to quickly understand – who owes whom. Credit note is issued when 'I OWE' money to someone, that is, it is issued by the person who owes money. Debit note is issued when 'THEY OWE' money to me, that is, it is again issued by the person who is the receive money. When a cash discount is allowed at the time of collecting payment from a customer, then the issuer of the relevant note is the supplier (not customer) who agrees to reduce the amount due from the customer. So, to the extent of such cash discount, the supplier declares 'I OWE' money and when 'I OWE' money, the relevant note is a 'credit note'. And here the supplier issues the credit note to the customer to the extent of the cash discount. Then, the original amount due MINUS the credit note is the revised amount that the customer pays the supplier. Now, if the supplier charges a penalty for delayed payment to the same customer and is accepted, then again, the supplier (not customer) is issues the relevant note for the accepted amount of delay penalty. So, to the extent of such delay penalty, the supplier declares that 'THEY OWE' money and when 'THEY OWE' money, the relevant note is a 'debit note'. And here the supplier issues the debit note to the customer to the extent of the delay penalty. Then, the original amount due PLUS the debit note is the revised amount that the customer pays the supplier.

(b) Now, this provision considers four situations where supplier says, 'I OWE' and issues credit note:

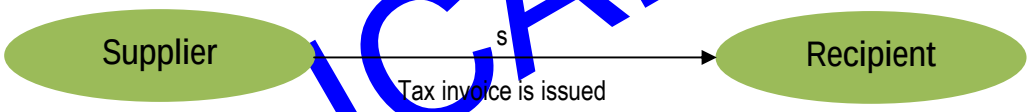
- value of supply is lower than that stated in the tax invoice issued previously
- Tax charged in that invoice is higher than that correctly applicable on the supply
- goods supplied are returned by the recipient
- goods or services supplied are deficient

(c) And it considers two situations where the supplier says, 'THEY OWE' and issues debit note:

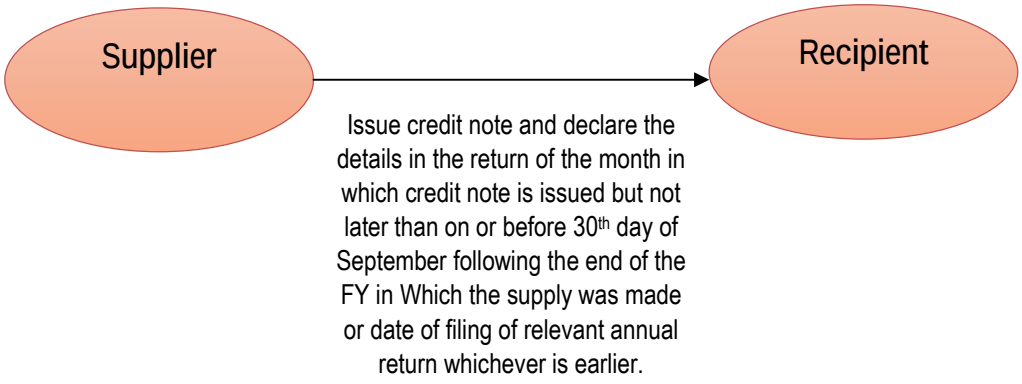
- value of supply is higher than that stated in the tax invoice issued previously
- Tax charged in that invoice is lower than that correctly applicable on the supply

(d) Credit note and debit note must be considered in the return for the month when it is issued. But, a credit note is required to be issued not later than September of next year as it involves reducing the tax liability. And where these is such reduction in tax liability by a credit note, the same is permitted with a corresponding responsibility to ensure that the recipient of supply has made a corresponding downward revision in the claim of tax credit.

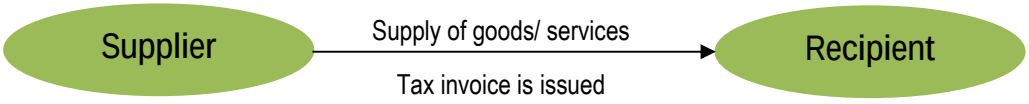
(e) Scenario-1 Credit note issue



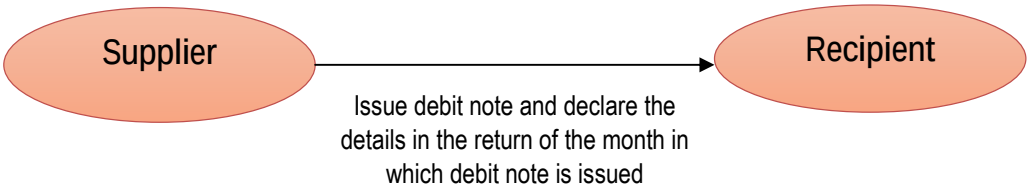
Scenario 1: Tax Charged/ Taxable Value/ Goods returned/ Deficient Services > Tax Charged/ Taxable Value (w.r.t. that supply), then



(f) Scenario-2 Debit note issue (include Supplementary invoice)



Scenario 2: Tax Charged/ Taxable Value < Tax Charged/ Taxable Value (w.r.t. that supply), then



(g) Supplementary tax invoice and credit or debit notes

A revised tax invoice referred to in section 31 and credit or debit note referred to in section 34 shall contain the following particulars -

(a) The word "Revised Invoice", wherever applicable, indicated prominently;

(b) name, address and GSTIN of the supplier;

(c) nature of the document;

(d) a consecutive serial number containing alphabets or numerals or special characters - hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(e) date of issue of the document;

(f) name, address and GSTIN or UIN, if registered, of the recipient;

(g) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;

(h) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;

(i) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and

(j) signature or digital signature of the supplier or his authorized representative:

(3) Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130 shall prominently contain the words "Input tax credit not admissible".

(h) Manner of issue of invoices

Sl. No	Description	Original to	Duplicate to	Triplicate to
1	Invoice to be issued in respect of goods	Recipient	Transporter	Supplier
2	Invoice to be issued in respect of services within 30 days from date of supply of services	Recipient	Supplier	Not required
a. If the supplier of services is an insurer, banking company, financial institution or a NBFC invoice is to be issued within 45 days from the date of supply of service. b. If the supplier of services is an insurer, banking company, financial institution or a NBFC or a telecom operator or a notified class of supplier of services between distinct persons as per section 25 of the CGST Act (refer entry 2 of schedule I) then an invoice, is to be issued before or at the time the supplier records in his books of account or before expiry of the quarter during which supply is rendered.				

(i) Transportation of goods without issue of invoices – exceptional circumstances

The Rules prescribed lists out certain special circumstances for transportation of goods when tax invoice cannot be issued. In such situations, the Rules also specifies the nature of other documents to be carried along with the goods under transportation. Please note that this list is illustrative and not exhaustive.

Nature of supply	Mandatory documents	Particulars to be contained in the document
(1) Supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known (2) Transportation of goods for job work (3) Transportation of goods for reasons other than by way of supply, or (4) Such other supplies notified by the Board	1. The consignor to issue a delivery challan 2. Serially numbered Delivery challan to be issued in lieu of invoice at the time of removal of goods for transportation	(i) Date and number of the delivery challan, (ii) Name, address and GSTIN of the consigner, if registered, (iii) Name, address and GSTIN or UIN of the consignee, if registered, (iv) HSN code and description of goods, (v) Quantity (provisional, where the exact quantity being supplied is not known), (vi) Taxable value, (vii) Tax rate and tax amount – central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee, (viii) Place of supply, in case of inter-State movement, and (ix) Signature.

Note:

1. The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner: –
   (a) ORIGINAL FOR CONSIGNEE;
   (b) DUPLICATE FOR TRANSPORTER; and
   (c) TRIPLICATE FOR CONSIGNOR.
2. Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared in FORM [WAYBILL].

(j) Where the goods are being transported in a semi knocked down or completely knocked down condition

1. The supplier to issue the complete invoice before dispatch of the first consignment;
2. The supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
3. Each consignment to be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
4. The original copy of the invoice shall be sent along with the last consignment.

(k) Credit/Debit Notes

(i) No credit note shall be issued if the incidence of tax and interest on such supply has been passed by him to any other person.

(ii) The details of credit notes/debit notes should be declared (i) in the return for the month during which they are issued or received; or (ii) in the return for any subsequent month. However, such declaration cannot be later than (i) September following the end of the financial year in which the supply was made or (ii) date of filing of the relevant annual return, whichever is earlier.

(iii) If the details are not shown as above, the credit / debits notes may not be considered for adjustment of tax liability.

34.2 Comparative review

(i) Rule 9 of CENVAT Credit Rules, 2004 gives details of the documents and accounts which need to be mandatorily adhered to in ordered to avail the benefit of CENVAT Credit.

(ii) As per the Rule, CENVAT Credit can be availed based on: -
   (a) An invoice
   (b) Supplementary invoice

(iii) In the context of excise laws, though credit notes may be issued in situations where taxable value is reduced, typically, no adjustment is made for excise valuation purpose (except when the assessment is provisional). Instead of debit notes for increase in taxable value/tax, supplementary invoices are issued (this is a valid document for taking CENVAT credit). There is no time limit for issuance of credit/debit notes (supplementary invoice).

(iv) In the context of service tax laws, notes credit notes may be issued in situations where taxable value is reduced. Adjustment of excess tax paid is permissible in specified situations. Instead of debit notes for increase in taxable value/tax, supplementary invoices are issued (this is a valid document for taking CENVAT credit). There is no time limit for issuance of credit/debit notes (supplementary invoice).

However, credit availed on tax paid on supplementary invoices could be disputed in circumstances where additional tax was payable by reason of fraud, collusion, wilful mis-statement, suppression of facts, contravention of any of the provisions with intent to evade duty/taxes.

(v) Most State VAT laws have provisions relating to issue of Credit or Debit notes for difference in value of supply and tax. Time period (usually 6 months from the date of sale) is prescribed for issuance of credit/debit notes for adjustment against taxable value. Some States provide that if the credit has already passed on in the original invoice, the tax component shall not be adjusted by issuance of credit note (this is because the buyer would have taken credit in such cases and the credit is left undisturbed).

34.3 FAQ's

Q1. Can credit notes/debit notes be raised without raising an appropriate tax invoice?

Ans. No, credit notes/debit notes have to be raised with reference to specific invoice and not otherwise to get the benefit of tax adjustment.

Q2. Is it mandatory to show the details of credit/debit notes in the periodic returns?

Ans. Yes, the details of debit note and credit note is required to be mentioned in periodic returns. If not shown, it is not considered for adjustment of tax liability.

Q3. Are there any situations where credit note cannot be issued?

Ans. Credit note cannot be issued if the incidence of tax and interest on such supply has been passed by tax payer to any other person.

34.4 MCQ

Q1. What is the last date by which you need to issue debit/credit note?

(a) On or before Sept 30, following the end of financial year

(b) The date of filing of the relevant annual return

(c) Earlier of the two dates mentioned in (a) and (b) above

(d) None of the above

Ans. (c) Earlier of the two dates mentioned in (a) and (b) above

Chapter– VIII
Accounts and Records

Statutory Provisions

35. Accounts and other records

(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—

(a) production or manufacture of goods;

(b) inward and outward supply of goods or services or both;

(c) stock of goods;

(d) input tax credit availed;

(e) output tax payable and paid; and

(f) such other particulars as may be prescribed:

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

(2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

(3) The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.

(4) Where the Commissioner considers that any class of taxable person is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.

(5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant Accounts and other records and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.

(6) Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax

payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.

35.1 Introduction

1. This Section mandates the upkeep and maintenance of records, at the place(s) of business in electronic or other forms.
2. Power is vested with the Commissioner for relaxation as well as for prescribing additional records for certain classes of taxable persons.
3. Furnishing of an audited statement of accounts and reconciliation statement is also contemplated for persons having turnover exceeding prescribed limit.
4. Failure to maintain records or accounts may entail payment of tax as determined by a proper officer in respect of unaccounted transactions.
5. Every owner or operator, of a place of storage, or every transporter whether such owner or operator or transporter is registered or not, shall maintain records and other relevant details as may be prescribed.

Place of business - Section 2 (85) of The CGST Bill, 2017 defines "place of business" to include -

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called;

'Principal place of business' - Section 2(89) of defines to mean the place of business specified as the principal place of business in the certificate of registration.

35.2 Analysis

(i) Every registered person shall keep and maintain, at his principal place of business (as mentioned in the certificate of registration), a true and correct account of the following: -

- Production or manufacture of goods;
- Inward supply of goods or services or both;
- Outward supply of goods and/or services or both
- Stock of goods;
- Input tax credit availed;
- Output tax payable and paid; and
- Such other particulars as may be prescribed in this behalf.

(ii) In case of multiple places of business (as specified in the certificate of registration), the accounts relating to each place of business shall be kept at the respective places of business concerned. Hence, all records are to be maintained at each place of business.

(iii) Registered assesse may keep and maintain such accounts and other particulars in the electronic form in such manner as may be prescribed.

(iv) The Commissioner is vested with powers to notify a class of taxable persons to maintain additional accounts or documents for specified purpose.

(v) In case the Commissioner considers that any class of taxable persons are not in a position to keep and maintain accounts in accordance with this section, he can, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in any other manner.

(vi) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit to the proper officer a copy of the audited statement of accounts together with the electronic reconciliation statement u/s 44(2).

(vii) Specific provisions in case of requirement to reverse input tax credit availed, as Provided for under Section 17(5)(h) - Where goods are lost, stolen, destroyed, written off, or disposed of as gifts or free samples, proportionate input tax credit should be reversed. However, where the taxable persons do not account for such transactions, the amount payable would be determined based on the demand provisions (Section 73/74) as the case may be) as if such goods had been supplied.

(viii) Persons who own/ operate any warehouse, godown, etc. for storage of goods and every transporter should maintain the records of the consigner, consignee and other relevant details of the goods, even if such persons are not registered under the Act – i.e., both registered and unregistered persons shall be required to maintain such records/ details.

(ix) The law requires every registered person to maintain accounts and records along with relevant details at each place of business and for each place of storage failing which the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services had been supplied by such person. Further the provisions of section 73 or 74, as the case may be, shall apply, mutatis mutandis, for determination of such tax

(x) The provisions of Section 73 & 74 are in relation to demands and recovery of tax so determined by way of short payment or excess credit availed or utilised with or without wilful misstatement or fraudulent intention.

35.3 Comparative Review

Maintenance of records has been prescribed under the central excise, service tax and State VAT laws. The provisions are briefly discussed below:

Service tax records

- Rule 5(1) of Service Tax Rules, 1994 provides that the records including computerised

data as maintained by the assessee in accordance with the various laws in force from time to time shall be acceptable.

- Rule 5(2) provides that every assessee, at the time of filing of his first return shall furnish to the department, a list in duplicate of

(i) All the records maintained by the assessee for accounting of transactions in regard to: -

(a) Providing of any service;

(b) Receipt or procurement of input service and payment of such input service;

(c) Receipt, purchase, manufacture, storage, sale, or delivery, as the case may be in regard to input or capital goods; and

(d) Other activities such as manufacture and sale of goods if any.

(ii) All other financial records maintained by him in the normal course of business.

- Rules 5(4) and (5) provide for preservation of records in electronic form.

Central Excise Records

- Rule 10 of the Central Excise Rules, 2002 obligates the maintenance of maintenance of "Daily Stock Account' indicating the particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty paid.
- Chapter 6 of the Central Excise Manual obligates every assessee to furnish to the Range Officer, a list in duplicate, of all the records prepared or maintained by him for accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods

Cenvat Records

Rule 9 of Cenvat Credit Rules, 2004 provides for maintenance of various records for availment and utilization of CENVAT credit on inputs, input services and capital goods.

VAT Records

VAT laws of most States obligate every assessee to keep and maintain an up-to-date, true and correct account showing full and complete particulars of his business and such other records as may be prescribed. There is an option to maintain those records at other place or places as he may notify to the registering authority in advance.

Audit of Accounts and Reconciliation Statement

At present, under the Central excise and service tax laws, there is no requirement for audit of accounts and furnishing reconciliation statement by a Chartered Accountant and Cost accountant. Many State VAT laws stipulate audit of records by a Chartered Accountant and filing of VAT audit reports. Threshold limits are prescribed for such audits.

Reconciliations between the tax records and audited statement of accounts is generally sought for at the time of assessment, audit or investigation by the Revenue authorities. There

is no statutory requirement to furnish such reconciliation statements under the present laws although it is carried out during audit / Certification of records.

35.4 Related provisions

Section or Rule	Description
Section 2(107)	Taxable Person
Section 2(85)	Place of business
Section 2(89)	Principal place of business
Section 44(1)	Annual return

35.5 FAQ

Q1. Where should the books and other records u/s 35 be maintained?

Ans. Such records shall be maintained at his principal place of business, as mentioned in the certificate of registration. If more than one place of business is specified in the certificate, records relating to each place of business should be maintained at that place.

Q2. What are the records that are to be maintained u/s 35?

Ans. The following records are to be maintained u/s 35: -

(i) Production or manufacture of goods;

(ii) Inward or outward supply of goods or services or both;

(iii) Stock of goods;

(iv) Input tax credit availed;

(v) Output tax payable and paid; and

(vi) Such other particulars as may be prescribed.

Q3. In case, more than one place of business is specified in the certificate of registration, can the assessee choose to maintain records at a single place for all the places within that State?

Ans. No, in such cases, the accounts and records relating to each place of business shall be kept at such places of business concerned.

Q4. Whether the records are to be maintained physically or in electronic form?

Ans. The records need to be maintained physically. In case they are maintained in electronic form, then they must conform to such procedures as may be prescribed.

Q5. Apart from the records maintained above are there any additional document to be submitted/maintained?

Ans. Section 35(5) obligates an assessee who is required to get his accounts audited to file an electronic reconciliation statement and assessee is obliged to submit such a statement in addition to the audited statement of accounts and other documents and records prescribed.

35.6 MCQ

Q1. The books and other records u/s 35 53 are to be maintained at ___

(a) Place where the books of account are maintained.

(b) Principal place of business mentioned in the Registration Certificate.

(c) Place of address of the Proprietor/ Partner / Director / Principal Officer, etc.

(d) Any of the above.

Ans. (b) Principal place of business mentioned in the Registration Certificate

Q2. In case, more than one place of business situated within a State are specified in the Registration Certificate, books and other records shall be maintained at ___

Each place of business

(a) At the principal place of business covered mentioned in he Registration Certificate for all places of business in each State.

(b) Place where the books of account are maintained for all places situated within a State.

(c) Any place of business in a State pertaining to all places situated within that State.

Ans. (a) At the principal place of business covered mentioned in the Registration Certificate for all places of business in each State.

Q3. Which of the following is true?

(a) The assessee can maintain some records with prior permission of the Commissioner.

(b) The assessee is obligated to maintain such additional records as the Commissioner may notify.

(c) The assessee can maintain only records notified thereto by the Commissioner.

(d) The specified class of assessee are obligated to maintain such additional or other records as the Commissioner may notify.

Ans. (d) The specified class of assessee are obligated to maintain such additional or other records as the Commissioner may notify.

Statutory provision

36. Period of retention of accounts

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (*1*) of section 35 shall retain them until the expiry of seventy-two months from the due date of furnishing of annual return for the year pertaining to such accounts and records:

Provided that a registered person, who is a party to an appeal or revision or any other

proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

36.1. Introduction

This section provides for the period up to which records and accounts must be retained by the assessee.

36.2. Analysis

1. Every assessee shall retain the books of accounts and other records until the expiry of seventy-two months (6 years) from the due date for filing of Annual Return for the year pertaining to such accounts and records. If the annual returns for the FY 2017-18 are filed on say 30.11.2018, even then, the books of account and other records are to be maintained till 31.12.2024.

This time period is more than the time limit prescribed in section 62(1) for issuance of order of assessment i.e. 5 years from the due date for filing of annual return or date of erroneous refund (as applicable) in cases of fraud, wilful mis-statement, suppression of facts, etc.]

2. In case an appeal or revision or any other proceeding is pending before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, or in case the assessee is under investigation for an offence under Chapter XIX, the assessee shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceeding or investigation for a period of one year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1, whichever is later.

36.3. Comparative Review

- Rule 5(3) of Service Tax Rules, 1994 provides that all records shall be preserved for a period of five years immediately after the financial year to which such records pertain.
- Chapter 6 of the CBEC's Central Excise Manual obligates every assessee to maintain the records for a period of five years immediately after the financial year to which such records pertain.
- Different State VAT laws prescribe different time periods for maintenance of records. However, many States prescribed a period of five years.
- Where the proceedings are pending in appeal, revision etc., the records are generally maintained till the proceedings are finally concluded, though this is not specifically stipulated in the present laws. In fact, the books and records are required to be maintained till the time frame for revision proceedings stand open and are not barred by limitation of period.

36.4. Related provisions

Section or Rule	Description
Section 2(107)	Taxable Person
Section 35	Books of account
Section 44(1)	Annual return

36.5. FAQ

Q1. Is there any time limit for the retention of the books of account or other records u/s 36?

Ans. Yes, such records shall be normally retained until the expiry of seventy-two months from the due date for filing of Annual Return for the year pertaining to such accounts and records.

Q2. Is a separate time limit for maintenance of records specified where an assessee is involved in any litigation?

Ans. In case an assessee is a party to an appeal or revision or any other proceeding before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, (as an appellant or a respondent), or where he is under investigation for an offence under Chapter XIX, then he shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceeding or investigation for a period of one year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1), whichever is later.

36.6. MCQ

Q1. The time limit for up keep and maintenance of the books of account or other records u/s 36 is?

(a) seventy-two months from the date of filing of Annual Return or due date of filing the Annual Return, whichever is earlier.

(b) forty-Eight months from the last date of filing of Annual Return Place.

(c) seventy-two months from the due date of filing of Annual Return.

(d) None of the above.

Ans. (c) seventy-two months from the due date of filing of Annual Return

Q2. In case, the assessee is a party to an appeal or revision or any other proceeding before any Appellate Authority or Appellate Tribunal or Court, (as an appellant or a respondent), then the time limit for retaining the records shall be ___

(a) Upto the final disposal of such appeal or revision or proceeding.

(b) One year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1) 53, whichever is earlier.

(c) Six months after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 47(1), whichever is later.

(d) One year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1), whichever is later.

Ans. (d) One year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1) 53, whichever is later.

Chapter– IX
Returns

Statutory Provision

37. Furnishing details of outward supplies

(1) Every registered taxable person, other than an input service distributor, a non-resident taxable person and a person paying tax under the provisions of section 10, section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected, during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within the time and in the manner as may be prescribed:

PROVIDED that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner

(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier

Explanation.—For the purposes of this Chapter, the expression "details of outward supplies" shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period

37.1 Introduction

This provision relates to furnishing of details of outward supplies by the supplier

37.2 Analysis

(a) A return of Outward supplies under this Section should be furnished by every registered taxable person except for the following persons namely

- Input service distributor
- A non-resident taxable person
- A person paying tax under the provisions of section 10 (composition levy)
- A person paying tax under the provisions of section 51 (TDS)
- A person paying tax under the provisions of section 52 (TCS)

(b) The "Details of outward supplies" shall include details of Invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period. This e-return shall be filed within 10 days from the end of the tax period in FORM GSTR-1

(c) Such returns shall be for supply of goods or services or both as effected during a tax period and shall be filed electronically

(d) The registered person shall not be allowed to furnish any details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period. This implies that the filing portal may not be available for the person filing the return of outward supplies during the above said dates.

(e) In case of late filing of the above details, the person who defaults shall pay a sum of rupees One hundred for every day of continuing default subject to a maximum to Rupees five thousand only

(f) The Commissioner is empowered to notify any extension of due date of filing, for any class of persons, beyond the tenth of the succeeding month, with reasons to be recorded in writing

(g) The present process of return filing envisages that the recipient of the supply shall be Provided an opportunity to accept, reject, amend or delete the details in a two-way communication process. The details Provided by the supplier shall be auto – populated and available electronically to the recipient, for matching purposes, in a FORM GSTR-2A

(h) In case any error or omission is discovered in the course of matching as specified in the Act and discussed under Section 42 and 43, rectifications of the same shall be effected

and tax and interest, if any as applicable shall be paid on such corrections by the person responsible for filing the return of outward supplies

(i) Such rectification, however, is not permitted after filing of annual return or the return for the month of September of the following financial year to which the details pertain whichever is earlier.

For example, let us say an entity has furnished the annual returns for the year 2018-19 on August 15, 2019. An error is discovered in respect of a transaction pertaining to July 2018. The entity has filed the returns for the month of September 2019 on October 18, 2019. In this above case, the rectification of the error pertaining to a transaction in July 2018 cannot be rectified beyond August 15, 2019

Process and Formats for Filing of returns and the due date

Activity	Due Date
The return for outward supplies shall be filed in FORM GSTR–1	Before 10th day of the month succeeding the tax period
The details of FORM GSTR-1 furnished by the supplier shall be made available to the recipients in PART-A of FORM GSTR-2A	11th to the 15th day of the month succeeding the tax period
The FORM GSTR-2A shall be reviewed and modified by the recipient of the supply and based on the same a FORM GSTR-2 shall be filed by them. In case any outward supplies are not matched with the respective recipients' return of inward supplies (discussed under section 38), the return for outward supplies requires rectification. All such modifications made by the recipient and filed in FORM GSTR-2, shall be made available to the outward supplier in FORM GSTR-1A.	Before end of 15th day of the month succeeding the tax period
Accept or reject the details communicated by GSTN	Before end of 17th day of the month succeeding the tax period
Submission of FORM GSTR-2 will cause auto-population of FORM GSTR-1A which shall be reviewed by the supplier and relevant corrections shall be effected in FORM GSTR-1 which will be the final details as filed. The supplier may either accept or reject the modification, deletion or inclusion made by the recipients on or before 17th day of the succeeding month. Such amendments shall be incorporated in the original details filled by the supplier. The revised details shall feature in the returns filed under Sec 39 in the FORM GSTR-3	Before end of 20th day of the month succeeding the tax period

Components of valid GST Return for Outward Supplies made by the Taxpayer (FORM GSTR-1)

This return form would capture the following information:

1. GSTIN
2. Name
3. Period to which the return pertains
4. Aggregate turnover of the taxpayer in the previous Financial Year. This information would be submitted by the taxpayers only in the first year and will be auto-populated in subsequent years.
5. The following particulars shall be furnished – at an invoice / consolidated level based on the table as below:

Type	Supplies made to	Invoice Value	Level of submission
Interstate	Registered Persons	Any	Invoice level
Intrastate	Registered Persons	Any	Invoice level
Interstate	Unregistered Persons (stated as Consumer in the return)	> Rs 250,000	Invoice level

Type	Supplies made to	Invoice Value	Level of submission
Intrastate	Unregistered Persons (stated as Consumer in the return)	Any	Consolidated
Interstate	Unregistered Persons (stated as Consumer in the return)	< Rs 250,000	Consolidated

6. There are separate tables as under:

S No	Content of FORM GSTR-1
5	Taxable outward supplies to a registered person at invoice level
5A	Amendments to details of Outward Supplies to a registered person of earlier tax periods at invoice level
6	Taxable outward supplies to a consumer where Place of Supply (State Code) is other than the State where supplier is located (Inter-state supplies) and Invoice value is more than Rs 2.5 lakh at invoice level
6A	Amendments to above – 6 at invoice level
7	Taxable outward supplies to consumer (Other than 6 above) at consolidated level where Table includes both inter-state supplies (invoice value below 2.5 lakhs) and intra-state supplies

S No	Content of FORM GSTR-1
7A	Amendment to 7 at consolidated level
8	Details of Credit/Debit Notes showing reverse charge and non-reverse charge separately. This will include the details of Credit/Debit Note issued by the suppliers and the differential value impact and the associated tax payable or refund/tax credit sought. Information on Debit and Credit notes shall be submitted only if such documents are issued as a supplier.
8A	Amendment to Details of Credit/Debit Notes of earlier tax periods
9	Nil rated, Exempted and Non-GST outward supplies (nil and exempt if not furnished in 5,6 and 7) indicating separately interstate and intrastate for registered persons and consumers
10	Supplies Exported (including deemed exports) with and without payment of GST
10A	Amendment to Supplies Exported (including deemed exports)
11	Tax liability arising on account of Time of Supply without issuance of Invoice in the same period
11A	Amendment to Tax liability arising on account of Time of Supply without issuance of Invoice in the same tax period.
12	Tax already paid (on advance receipt/ on account of time of supply) on invoices issued in the current period
13	Supplies made through e-commerce portals of other companies Part-1 - Supplies made through e-commerce portals of other companies to Registered Taxable Persons Part-2 - Supplies made through e-commerce portals of other companies to Unregistered Persons Part-2A - Amendment to Supplies made through e-commerce portals of other companies to Unregistered Taxable Persons
14	Invoices issued during the tax period including invoices issued in case of inward supplies received from unregistered persons liable for reverse charge

Indication of HSN details

It is proposed that in the return the description of goods and services may not be required to be submitted by the taxpayer as the same will be identified through the submission of HSN code for goods and Accounting Code for services.

HSN code as specified below shall be furnished in FORM GSTR-1. In order to differentiate between the HSN code and the Service Accounting Code (SAC), the latter will be prefixed with "S". The taxpayers who have turnover below the limit of Rs 1.5 Crore will have to mention the description of goods/service, as the case may be, wherever applicable.

Category of taxable person and turnover in the preceding financial year	Any taxpayer, irrespective of his turnover, may use HSN code at 6- digit or 8-digit level if he so desires.
Aggregate Turnover is < Rs 1.5 crores	HSN/SAC is not mandatory for taxable person whose aggregate turnover is less than 1.5 crores. (Hence, composition dealers may not be required to specify HSN at 2-digit level also.) For exports 8 digit HSN is mandatory
Aggregate Turnover is Rs 1.5 to Rs 5 crores	HSN codes may be specified only at 2-digit chapter level as an optional exercise to start with. This would be mandatory from the second year of GST implementation For exports 8 digit HSN is mandatory SAC code is mandatory
Aggregate Turnover is > Rs 5 crores	HSN – minimum of 4 digits – mandatory For exports 8 digit HSN is mandatory SAC code is mandatory
All exports included above categories	HSN Codes at 8-digit level

Statutory Provision

38. Furnishing details of inward supplies

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10, section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.

(2) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such FORM and manner as may be prescribed:

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner

(3) The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed

(4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (2) or sub-section (4) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.

(5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier

38.1 Introduction

This provision relates to furnishing of details of inward supplies by the recipient

38.2 Analysis

(a) In respect of the return for outward supplies filed by the supplier of goods / services (under section 37) the receiver is required to match his receipts with the details of supplies filed by the supplier.

(b) The process flow as envisaged requires that the details of outward supplies as filed by the supplier, shall be made available to the recipient of such supply in Part A of FORM GSTR-2A after the 10th day of the subsequent month. The receiver is required to – verify, validate, modify or even delete, if necessary – the details furnished by the suppliers.

Part B, Part C and Part D of the above Form GSTR-2A shall contain respectively details relating to ISD and Tax Deductions at Source and Tax Collections at Source

(c) Part A of FORM GTSR 2A shall contain the following details on an auto-populated basis

S No	Content of FORM GSTR 1
4	Inward supplies received from Registered Taxable Persons
4A	Amendments to details of inward supplies received in earlier tax periods
7	Details of Credit/Debit Notes
7A	Amendment to Details of Credit/Debit Notes of earlier tax periods

d. The above details will then be validated by the recipient with reference to their records Now, these details as accepted by the recipient will be filed by them in the Format i.e. FORM GSTR-2 for inward supplies of the recipient.

e. This detail viz GSTR 2 , must be filed by the recipient of (goods/services) supplies within 15 days from the end of the relevant tax period. The Commissioner is empowered to notify any extension, for any class of taxable persons, with reasons to be recorded in writing.

f. Any modification, deletion or inclusion of inward supplies by the receiver in his inward return i.e. FORM GSTR-2 shall be communicated to the Outward supplier which will be visible to them as GSTR 1A.

g. GSTR 1A shall contain the following particulars auto drafted based on GSTR 2 filed by the recipient

S No	Content of GSTR 1A
5	Taxable outward supplies to a registered person
5A	Amendments to details of Outward Supplies to a registered person of earlier tax periods
8	Details of Credit/Debit Notes
8A	Amendment to Details of Credit/Debit Notes of earlier tax periods

h. In case any error or omission is discovered in the course of matching as specified in the Act and discussed under Section 42 and 43 , rectifications of the same shall be effected and tax and interest, if any as applicable shall be paid on such corrections by the person responsible for filing the return of inward supplies

i. Such rectification, however, is not permitted after filing of annual return or the return for the month of September of the following financial year to which the details pertain whichever is earlier.

Components of valid GST Return for Inward Supplies received by the Taxpayer (GSTR-2):

The information submitted in GSTR-1 by the Counterparty Supplier of the taxpayer will be auto-populated in the concerned tables of GSTR-2A. The same may be modified i.e. added or deleted by the Taxpayer. After modification in GSTR-2A, the FORM GSTR-2 shall be prepared. The recipient would be permitted to add invoices (not uploaded by the counterparty supplier) if he is in possession of invoices and has received the goods or services.

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Final invoice-level inward supply information pertaining to the tax period for goods and services separately

S No	Content of FORM GSTR-2
4	From Registered Taxable Persons including supplies received from unregistered person in case of reverse charge. If the supply is received in more than one lot, the invoice information should be reported in the return period in which the last lot is received and recorded in the books of accounts
4A	Amendments to details of inward supplies received in earlier tax periods
5	Goods /Capital goods received from Overseas (Import of goods). In respect of capital goods, there will be a field to capture appropriate information regarding availing ITC
5A	Amendments in Goods /Capital goods received from Overseas (Import of goods) of earlier tax periods. In respect of capital goods, there will be a field to capture appropriate information regarding availing ITC
6	Services received from a supplier located outside India (Import of services)
6A	Amendments in Services received from a supplier located outside India (Import of services) of earlier tax periods
7	Details of Credit/Debit Notes
7A	Amendment to Details of Credit/Debit Notes of earlier tax periods
8	Supplies received from composition taxable person/unregistered person & other exempt/nil/non-GST supplies
9	ISD credit received
10(1)	TDS Credit received
10(2)	TCS Credit received
11	ITC Received on an invoice on which partial credit availed earlier
12	Tax liability under Reverse Charge arising on account of time of Supply without receipt of Invoice
13	Tax already paid under Reverse Charge in earlier tax periods on account of time of supply for which invoices issued in the current period
14	ITC Reversal
14A	Amendment to ITC Reversal

Auto-Population in this return from GSTR-1 will be done on or after 11th of the succeeding month in GSTR-2A. Verification, modification or Deletion of the invoice or Credit Note/Debit Note in GSTR-2A by the taxpayer will be permitted upto 15th of the succeeding month. Addition of Inward supplies would also be permitted upto 15th of the succeeding month.

Rule 2 – Form and Manner of Furnishing details of inward supplies

(1) Every registered person required to furnish the details of inward supplies of goods or services or both received during a tax period under sub-section (2) of section 38 shall, on the basis of details contained in Part A, Part B, Part C and Part D of FORM GSTR-2A, prepare such details as specified in sub-section (1) of the said section and furnish the same in FORM GSTR-2 electronically through the Common Portal, either directly or from a Facilitation Centre notified by the Commissioner, after including therein details of such other inward supplies, if any, required to be furnished under sub-section (2) of section 38.

(2) Every registered person shall furnish the details, if any, required under sub-section (5) of section 38 electronically in FORM GSTR-2.

(3) The registered person shall specify the inward supplies in respect of which he is not eligible, either fully or partially, for input tax credit in FORM GSTR-2 where such eligibility can be determined at the invoice level.

(4) The registered person shall declare the quantum of ineligible input tax credit on inward supplies which is relatable to non-taxable supplies or for purposes other than business and cannot be determined at the invoice level in FORM GSTR-2.

(5) The details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 under rule 7 shall be made available to the recipient of credit in Part B of FORM GSTR-2A electronically through the Common Portal and the said recipient may include the same in FORM GSTR-2.

(6) The details of tax deducted at source furnished by the deductor under sub–section (3) of section 39 in FORM GSTR-7 shall be made available to the deductee in Part C of FORM GSTR-2A electronically through the Common Portal and the said deductee may include the same in FORM GSTR-2.

(7) The details of tax collected at source furnished by an e-commerce operator under section 52 in FORM GSTR-8 shall be made available to the concerned person in Part D of FORM GSTR–2A electronically through the Common Portal and such taxable person may include the same in FORM GSTR-2.

(8) The details of inward supplies of goods or services or both furnished in FORM GSTR-2 shall include, inter-alia:

(a) invoice wise details of all inter-State and intra-State supplies received from registered persons or unregistered persons;

(b) import of goods and services made; and

(c) debit and credit notes, if any, received from supplier.

Rule 23. Details of inward supplies of persons having Unique Identity Number

(1) Every person, who has been issued a Unique Identity Number and claims refund of the taxes paid on his inward supplies, shall furnish the details of such supplies of taxable goods or

services or both in FORM GSTR-11 along with application for such refund claim either directly or through a Facilitation Centre, notified by the Commissioner.

(2) Every person, who has been issued a Unique Identity Number for purposes other than refund of the taxes paid, shall furnish the details of inward supplies of taxable goods or services or both as may be required by the proper officer in FORM GSTR-11.

Statutory Provision

39. Returns

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10, section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such FORM and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.

(2) A registered taxable person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such FORM and in such manner as may be prescribed, a return, electronically, of inward supplies of goods or services, tax payable and tax paid within eighteen days after the end of such quarter.

(3) Every registered taxable person required to deduct tax at source under the provisions of section 51 shall furnish, in such FORM and in such manner as may be prescribed, a return, electronically, for the month in which such deductions have been made along with the payment of tax so deducted within ten days after the end of such month.

(4) Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such FORM and in such manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.

(5) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such FORM and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

(6) The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

(7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.

(9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

10. A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.

39.1 Analysis

This section deals with filing of GST Return under various class of registered persons

A. Return and due dates for payment of tax and filing of return for the registered person

Section Ref – (A)	Person Liable – (B)	FORM – (C)	Rule – (D)	Due date for payment of tax –(E)	Due Date for filing of return - (F)	Periodicity – (G)
39(1)	Regular Taxpayers (other than registered person covered under subsection 2, 3,4 & 5 of Section 39	GSTR-3	Return rule – 3	On or before the due date of filing of return – Ref column (F)	On or before 20th of the month succeeding such calendar month	Monthly
39(2)	Compounding Taxable persons	GSTR-4	Return rule – 4	On or before the due date of filing of return – Ref column (F)	Within 18th days after end of such quarter	Quarterly

39(3)	Any Registered person who is liable to deduct tax under section 51	GSTR-7	Return rule – 7	On or before the due date of filing of return – Ref column (F)	On or before 10th of the month succeeding such calendar month	Monthly
39(4)	Input Service Distributor	GSTR-6	Return rule – 6		On or before 13th of the month succeeding such calendar month	Monthly
39(5)	Non-Resident Taxable person	GSTR-5	Return rule – 5	On or before the due date of filing of return – Ref column (F)	Within 20 days end of the calendar month or within 7 days after the last day of the period of registration specified in Section27(1) whichever is earlier	

B. The extension of time limit for furnishing the returns

The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns for any class of registered persons.

Extension of time limit notified by the State/UT Commissioner shall be deemed to be notified by CGST Commissioner.

C. Mandatory to file returns

Every Registered person covered under section 39(1) & 39(2) shall furnish a return for every tax period whether or not any supplies of goods and/or services have been effected during such tax period.

In other words the registered person covered under Section 39(1) and 39(2) are obliged to file "NIL RETURN" even when there is no transaction effected by them in any tax period.

D. Payment and Interest etc.

(i) All registered person who are required to file a return under Section 39(1), 39(2), 39(3), 39(4) & 39 (5) are allowed to rectify any omission or incorrect particulars filed in the return.

(ii) Any omission or incorrect particulars therein, can be rectified in the return to be filed for

the month or quarter, during which such omission or incorrect particulars are noticed, subject to payment of specified interest as applicable.

(iii) Such rectification cannot be done when omission or incorrect particulars are discovered as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities,

(iv) No such rectification of any omission or incorrect particulars shall be allowed after the due date for filing of return for the month of September or second quarter following the end of the financial year, or the actual date of filing of relevant annual return, whichever is earlier.

E. Non-submission of previous tax period returns

The registered person shall not be allowed to furnish a return for a tax period if the returns for any pervious tax periods has not been furnished him.

F. Monthly return on the basis of finalization of details of outward supplies(FORM GSTR–1) and inward supplies (FORM GSTR–2)

1. Return of regular taxpayer

(i) Every registered taxable person shall file his return in FORM GSTR-3 other than a taxable person registered under section 10 i.e. composition dealer, or under section 51 i.e. deductor of tax at source or section 52 i.e. a person liable to collect tax at source or an Input Service Distributor or a non-resident taxable person.

(ii) For every calendar month the registered person shall furnish return in FORM GSTR-3 electronically in the common portal: and it shall contain

(a) inward and outward supplies of goods and/or services,

(b) input tax credit availed,

(c) tax payable,

(d) tax paid and

(e) other particulars as may be prescribed

This return should be filed on or before 20th of the month succeeding such calendar month or part thereof.

Contents of FORM GSTR-3:

FORM GSTR–3 return shall capture the following information:

1. Basic details of the Taxpayer i.e. Name and Address along with GSTIN

2. Period to which the Return pertains

3. Turnover Details including Gross Turnover, Export Turnover, Exempted Domestic Turnover, Nil Rated Domestic Turnover, Non GST Turnover and Net Taxable Turnover

4. Final aggregate level outward and inward supply information. These details will be auto-populated from FORM GSTR-1 and FORM GSTR-2.

5. There will be separate tables for calculating tax amounts on outward and inward supplies based on the information contained in various tables in the FORM GSTR-3 return.

6. There will be a separate table for capturing the TDS credit received and which has been credited to his cash ledger (the deductee).

7. Tax liability under CGST, SGST, IGST and cess if any

8. Details regarding revision of invoices relating to outward and inward supplies

9. Details of other liabilities (i.e. Interest, Penalty, Fee, others etc.).

10. Information about ITC ledger, Cash ledger and Liability ledger (these are running electronic ledgers maintained on the dashboard of taxpayer by GSTN). These would be updated in real time on an activity in connection with these ledgers by the taxpayer. Both the ITC ledger and the cash ledger will be utilized by the taxpayer for discharging the tax liabilities of the returns and others. Details in these ledgers will get auto-populated from previous tax period return (irrespective of mode of filing return i.e. online/ offline utility)

11. Details of ITC utilized against tax liability of CGST, SGST and IGST on supplies of goods and services.

12. Net tax payable under CGST, SGST, IGST and cess if any.

13. Details of the payment of tax under various tax heads of CGST, SGST, IGST and cess if any, separately would be populated from the debit entry in Credit/Cash ledger. GST Law may have provision for maintaining four heads of account for CGST, SGST, IGST and cess if any and at associated minor heads for interest, penalty, fee and others. Excess payment, if any, will be carried forward to the next return period. The taxpayer will have the option of claiming refund of excess payment through the return for which appropriate field will be Provided in the return FORM. The return FORM would display all bank account numbers mentioned in the registration, out of which one will be selected by the taxpayer to which the refund will be credited.

14. Details of other payments - Interest/Penalties/Fee/Others, etc. This will be auto-populated from the Debit entry in Cash ledger irrespective of mode of filing i.e. online / offline utility.

15. Details of ITC balance (CGST, SGST and IGST) at the end of the tax period will be auto-populated in the ITC ledger irrespective of mode of filing return. In case of net exporter or taxpayers dealing with inverted duty structure or similar other cases, where input tax credit is greater than output tax due on supply, the taxpayer would be eligible for refund. The return would have a field to enable the tax payer to claim the refund or to carry forward the ITC balance (CGST, SGST and IGST). The return form should display all bank account numbers mentioned in the registration, out of which one will be selected by the taxpayer to which the refund will be credited. To begin with GST law may provide that the refund will be processed quarterly.

16. Details of cash balance (CGST, SGST, IGST and cess) in personal ledger at the end of the tax period (this will be auto-populated irrespective of mode of filing return).

17. Information regarding quantity of goods (as per Unique Quantity Code) supplied will not be contained in the monthly return. However, the same would be submitted by the taxpayer in the annual return.

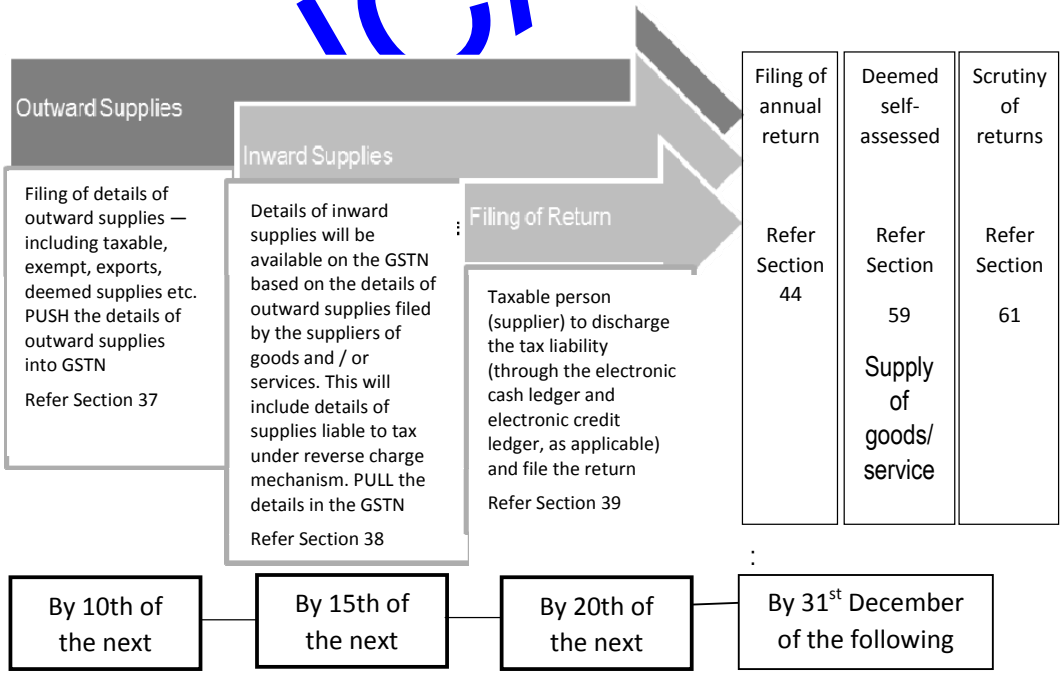
The return (FORM GSTR-3) would be entirely auto-populated through FORM GSTR-1 (of counterparty suppliers), own FORM GSTR-2, ISD return (FORM GSTR-6) (of Input Service Distributor), TDS return (FORM GSTR-7) (of counterparty deductor), own ITC Ledger, own cash ledger, own Tax Liability ledger. However, the taxpayer may be allowed to fill the missing details to begin with.

The return would be permitted to be filed both on online and offline mode. In case of offline mode, payment by debit to cash / ITC ledger can be done at an earlier date also and such debit entry number would be verified at the time of uploading of the return. In online mode, both debiting and filing can be done simultaneously.

The return would be filed by 20th of the succeeding month. Late filing would be permitted on payment of late fees only.

2. Valid Return -

Three returns are involved with respect to inward / outward supplies for each tax period. The following chart may be referred to in this regard



Rule 3. Form and manner of submission of monthly return

1. Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

2. Part A of the return under sub-rule (1) shall be electronically generated on the basis of information furnished through returns in FORM GSTR-1, FORM GSTR-2 and based on other liabilities of preceding tax periods.

3. Every registered person furnishing the return under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or these rules by debiting the electronic cash ledger or electronic credit ledger and include the details in Part B of the return in FORM GSTR-3.

4. A registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in Part B of the return in FORM GSTR-3 and such return shall be deemed to be an application filed under section 54 .

5. Where the time limit for furnishing of details in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 has been extended, return in FORM GSTR-3B, in lieu of FORM GSTR-3, may be furnished in such manner as may be notified by the Commissioner.

G. Quarterly return by the composition supplier

(i) Registered persons paying tax under composition scheme shall furnish a return in FORM GSTR-4 for each quarter, electronically, within 18 days after the end of such quarter: The FORM GSTR-4 shall be prepared on the basis of the FORM GSTR-4A made available to him through the common portal.

(ii) Rule 4 - Form and manner of submission of quarterly return by the composition supplier

(1) Every registered person paying tax under section 10 shall, after adding, correcting or deleting the details in FORM GSTR-4A, furnish a quarterly return in FORM GSTR-4 electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) Every registered person furnishing the return under sub-rule (1) of Rule 4 shall discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or these rules by debiting the electronic cash ledger.

(3) The return furnished under sub-rule (1) Rule 4 shall include, inter–alia:

(a) invoice wise inter-State and intra-State inward supplies received from registered and un-registered persons;

(b) import of goods and services made;

(c) consolidated details of outward supplies made; and

(d) debit and credit notes issued and received, if any;

(4) A registered person who has opted to pay tax under section 10 from the beginning of a financial year, shall furnish the details of outward and inward supplies and return under rule 1, rule 2 and rule 3 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

H. Furnishing Return by any registered person who is liable to deduct tax at source

(i) Registered person required to deduct tax at source shall furnish a return in FORM GSTR-7 electronically, for the month in which such deductions have been made along with the payment of tax so deducted, within 10 days after the end of such month. The details furnished by the taxable person required to deduct tax at source in FORM GSTR-7 shall be made available to each of the supplier in Part-C of his FORM GSTR-2A.

(ii) Contents of FORM GSTR – 7 (TDS Return)

Refer discussion under section 51 with regard to deduction of tax at source.

The return shall capture the following information:

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Details of GSTIN of the Supplier along with the invoices against which the Tax has been deducted. This will also contain the details of tax deducted against each major head i.e. CGST, SGST and IGST.
4. Details of other payments - Interest/Penalties/Fee/Others, etc. (This will be auto populated from the Debit entry in Cash ledger)

This return should be filed by 10th of the succeeding month.

(iii) Rule 7 Form and manner of submission of return by a person required to deduct tax at source

(1) Every registered person required to deduct tax at source under section 51 shall furnish a return in FORM GSTR-7 electronically through the Common Portal either directly or from a Facilitation Centre notified by the Commissioner.

(2) The details furnished by the deductor under sub-rule (1) of Rule 7 shall be made available electronically to each of the suppliers in Part C of FORM GSTR-2A on the Common Portal after the due date of filing of FORM GSTR-7.

(3) The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the Common Portal in FORM GSTR-7A on the basis of the return furnished under sub-rule (1) of Rule 7.

I. Furnishing of return by Input Service Distributor(ISD)

(i) Every Input Service Distributor(ISD) shall, for every calendar month or part thereof, furnish a return in FORM GSTR-6 electronically within 13 days after the end of such month. The FORM GSTR-6 shall be prepared on the basis of the FORM GSTR-6A made available to him through the common portal. The details of FORM GSTR-6A shall be verified, added, corrected or deleted for the purpose of preparing FORM GSTR-6.

(ii) Content of GSTR – 6 (Return for ISD)

Refer discussion under section 20 with regard to distribution of credit by Input Service Distributor.

The return shall capture the following information:

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Final invoice-level inward supply information pertaining to the tax period separately for goods and services on which the ITC is being claimed. This will be auto populated on the basis of FORM GSTR-1 filed by the Counterparty Supplier of the taxpayer. The same may be modified i.e. added or deleted by the Taxpayer while filing the ISD return. The recipient would be permitted to add invoices (not uploaded by the counterparty supplier) if he is in possession of invoices and has received the services.
4. Details of the Invoices along with the GSTIN of the receiver of the credit i.e. to whom the ISD is distributing credit.
5. There will be separate ISD Ledger in the return that will detail the Opening Balance of ITC (to be auto- populated on the basis of previous return), credit for ITC services received, debit for ITC reversal and ITC distributed and Closing Balance.

This return should be filed by 13th day of the succeeding month.

(iii) Rule 6. Form and manner of submission of return by an Input Service Distributor

Every Input Service Distributor shall, after adding, correcting or deleting the details contained in FORM GSTR-6A, furnish electronically a return in FORM GSTR-6, containing the details of tax invoices on which credit has been received and those issued under section 20, through the Common Portal either directly or from a Facilitation Centre notified by the Commissioner.

J. Furnishing of return by Non Resident Taxable Person

(i) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish FORM GSTR-5 electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.

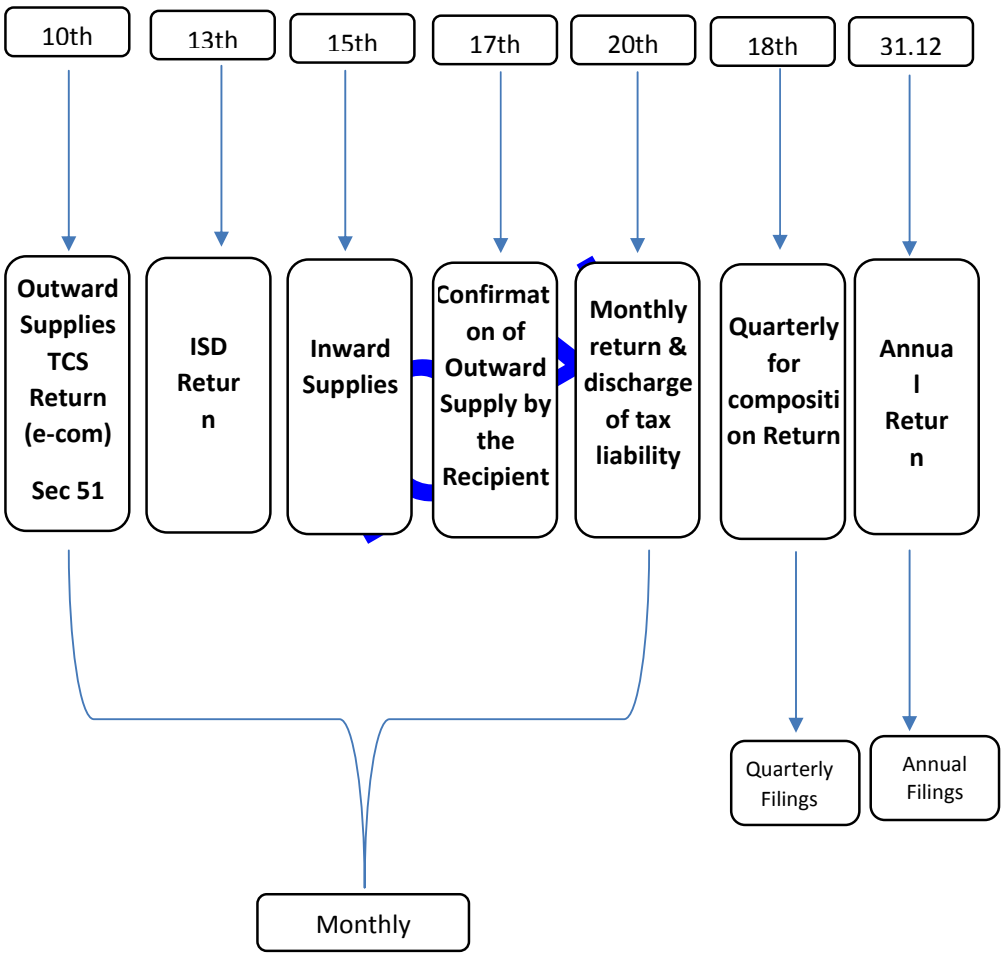
(ii) Rule 5. Form and manner of submission of return by non-resident taxable person

Every registered non-resident taxable person shall furnish a return in FORM GSTR-5

electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner,

The return shall include therein the details of outward supplies and inward supplies and shall pay the tax, interest, penalty, fees or any other amount payable under the Act or these rules within twenty days after the end of a tax period or within seven days after the last day of the validity period of registration, whichever is earlier.

Summary of due of Filing of various returns



If the Process "Return Filing" must be understood with due focus on practical aspects, the following Transaction Flow will help.

Steps for Return Filing:

Step 1: The taxpayer will upload the final FORM GSTR-1 return in the Common Portal or by uploading the file containing the said FORM GSTR-1 return FORM through Apps by10thday of month succeeding the month during which supplies has been made. The increase / decrease (in supply invoices) would be allowed, only on the basis of the details uploaded by the counter-party purchaser in FORM GSTR-2, upto 17th day of the month. (i.e. within a period of 7 days). In other words, the supplier would not be allowed to include any missing invoices on his own after 10th day of the month.

GSTN will facilitate periodic (may be daily, weekly etc.) upload of such information to minimize last minute load on the system. GSTN will facilitate offline preparation of FORM GSTR-1.

Step 2: GST Common Portal (GSTN) will auto-populate FORM GSTR-2A of the registered person based on the supply invoice details reported by the counter-party registered person (supplier) on a near real-time basis.

Step 3: Recipient will accept / reject/ modify such auto-populated FORM GSTR-2A. (A registered person will have the option to download his provisional purchase statement from the Portal or through Apps using Application Programming Interface (APIs) and update / modify it off-line).

Step 4: Recipient will also be able to add additional purchase invoice details in his FORM GSTR-2 which have not been uploaded by counter-party registered person (supplier) as described in Step 1 and 2 above, provided he is in possession of valid invoice issued by counter-party registered person and he has received such supplies.

Step 5: Recipient will have the option to do reconciliation of inward supplies with counter-party registered person (suppliers) during the next 7 days by following up with their counter-party registered person for any missing supply invoices in the FORM GSTR-1 of the counter-party registered person, and prompt them to accept the same as uploaded by the Recipient. All the invoices would be auto-populated in the ITC ledger of Recipient. The Recipient would, however, indicate the eligibility / partial eligibility for ITC in those cases where either he is not entitled or he is entitled for partial ITC.

Step 6: The registered person will finalize their FORM GSTR-1 and FORM GSTR-2 by using online facility at Common Portal or using GSTN compliant off-line facility in their accounting applications, determine the liability on their supplies, determine the amount of eligible ITC on their purchases and then generate the net tax liability from the system for each type of tax. Cash details as per personal ledger/ carried forward from previous tax period, ITC carried forward from previous tax period, ITC reversal and associated Interest/Penalty, taxes paid during the current tax period etc. would get auto-populated in the FORM GSTR-3.

Step 7: Taxpayers will pay the amount as shown in the draft FORM GSTR-3 return generated automatically at the Portal post finalization of activities mentioned in Step 6 above.

Step 8: Taxpayer will debit the ITC ledger and cash ledger and mention the debit entry No. in the FORM GSTR-3 return and would submit the same.

Statutory provision

40. First Return
Every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

40.1 Analysis

First Return - After obtaining registration, the taxable person is required to file his very first return. This section provides for the aspects that need to be considered while filing this first return, namely:

Transaction to be reported	Consideration involved
Outward supplies	From date on which he becomes liable to get registered till the date on which registration is granted

40.2 FAQs

Q1. From when do the first returns needs to be filed by taxable person in respect of outwards supplies?

Ans. First returns of outwards supplies needs to be filed from the date on which he became liable to registration till the end of the month in which the registration has been granted.

Q2. From when do the first returns needs to be filed by taxable person in respect of inward supplies?

Ans. First return of inward supplies needs to be filed from the effective date of registration till the end of the month in which the registration has been granted

Statutory provision

41. Claim of input tax credit and provisional acceptance thereof
1. Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.
2. The credit referred to in sub section (1) shall be utilised only for payment of self-assessed output tax liability as per the return referred to in the said sub-section.

41.1 Introduction

This Section relates to claim of input tax credit and its provisional acceptance.

41.2 Analysis

All registered person shall be eligible to avail eligible input tax credit on self-assessment basis.

Such amount shall be credited to his electronic credit ledger

This self assessed input tax credit shall be utilised only for payment of self-assessed output tax.

Statutory provision

42. Matching, reversal and reclaim of input tax credit

(1) The details of every inward supply furnished by a registered person (hereafter in this section referred to as the "recipient") for a tax period shall, in such manner and within such time as may be prescribed, be matched-

(a) with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the "supplier") in his valid return for the same tax period or any preceding tax period,

(b) with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him, and

(c) for duplication of claims of input tax credit.

(2) The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.

(3) Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.

(4) The duplication of claims of input tax credit shall be communicated to the recipient in such manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under subsection (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

(7) The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39..

(8) A recipient in whose output tax liability any amount has been added under subsection

(5) or sub-section (6), shall be liable to pay interest at the rate specified under subsection (1) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.

(10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

42.1 Introduction

This provision relates to matching, reversal and reclaim of input tax credit.

42.2 Analysis

A. Matching, reversal and reclaim envisages the following circumstances

Situation	Remarks
All Transactions where Input credit details of recipient are matched for output tax as stated by supplier and recipient	The transaction is treated as matched (see Para B below – Matched transactions)
Transactions where input credit as claimed by the recipient is less than the output tax as declared by the supplier in their return	The transaction is treated as matched (see Para B below – Matched transactions)
Transactions where the input tax credit is duplicated by the recipient	Shall be communicated to the registered person in FORM GST MIS 1 (see Para C below – Duplicated transactions of recipient)
Transactions where the claim for input tax credit is higher than the output tax as declared by the supplier	Shall be added to the output tax liability of the recipient (See Para D below)
Transactions where the claim for input tax credit is higher than the output tax as declared by the supplier because the supplier has not furnished a particular transaction	Shall be added to the output tax liability of the recipient (See Para D below)
Interest on such mismatched transactions	See Para E below

B. Matched Transactions

(i) The details in a return of inward supplies of a recipient should be matched in prescribed time and manner

— With Outward supplies furnished by corresponding taxable person in his return (supplier)

— With IGST paid on goods imported under Section 3 of the Customs Tariff Act 1975 which represents the Additional Duty of Customs (for which Credit was available under the erstwhile Central Excise Act)

— To identify any duplicate claims of input tax credit

(ii) When the claim for input tax credit in respect of inward supplies matches with the corresponding outward supply or IGST in respect of goods imported, the same shall be finally accepted and communicated to the recipient in the prescribed manner.

(iii) Rule 10 of draft rules return - Matching of claim of input tax credit

The following details relating to the claim of input tax credit on inward supplies including IGST claimed on imports shall be matched after the due date for furnishing the return in FORM GSTR-3 (Final return with payment of tax to be filed on or before 20th of the following month). The matching is done for the following parameters based on the GSTIN of the Supplier and the recipient

(a) GSTIN of the supplier;

(b) GSTIN of the recipient;

(c) Invoice/ or debit note number;

(d) Invoice/ or debit note date;

(e) taxable value; and

(f) tax amount:

It may be noted that if the supplier has not paid the tax and / or not filed the return on or before the due date (or extended due date, if any), the return filed by him shall not be treated as a valid return for the purposes of the above matching exercise. The transactions between the parties interest, will be treated as unmatched

<u>The rule provides for two specific circumstances, where the claims for input tax credit are treated as Matched</u>

(a) Where the claim of input tax credit in respect of invoices and debit notes in FORM GSTR-2 that were accepted by the recipient on the basis of FORM GSTR-2A without amendment, if the corresponding supplier has furnished a valid return.

(b) Where the amount of input tax credit claimed is equal to or less than the output tax paid on such tax invoice or debit note by the corresponding supplier.

Note :

However, where the time limit for furnishing FORM GSTR-1 specified under section 37 and FORM GSTR-2 specified under section 38 has been extended, the date of matching relating to claim of input tax credit shall also be extended accordingly.

(iv) Rule 11. Final acceptance of input tax credit and communication thereof

The final acceptance of claim of input tax credit in respect of any tax period, shall be made available electronically in FORM GST MIS -1 through the Common Portal.

The claim of input tax credit in respect of any tax period which had been communicated as mismatched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in FORM GST MIS - 1 through the Common Portal.

C. Duplicate Transactions

The duplication of claims of input tax credit shall be communicated to the recipient in such manner as stated below. Further, the amount claimed as input tax credit that is found to be in excess on account of such duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

Rule 13. Claim of input tax credit on the same invoice more than once

Duplication of claims of input tax credit in the details of inward supplies shall be communicated to the registered person in FORM GST MIS - 1 electronically through the Common Portal

D. Input tax claim is higher than output tax for a tax period as declared

Where the credit claimed in respect of inward supplies is in excess when compared to the tax declared by the supplier or where the supplier has not at all declared the outward supply in his return, the discrepancies will be communicated to both parties

When discrepancies communicated to the outward supplier are not rectified by supplier in a valid return for the month (not by revision of return for the month in which the discrepancy occurred within 17th), the tax amount involved will be added to the output liability of the recipient for the month succeeding the month in which the discrepancy is communicated

The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return furnished for the month during which such omission or incorrect particulars are noticed and interest is paid as required under this Act

Rule 12. Communication and rectification of discrepancy in claim of input tax credit and reversal of claim of input tax credit

Any discrepancy in the claim of input tax credit in respect of any tax period, specified specified in (iii) above and the details of output tax liable to be added by the recipient of supply as per (v) above on account of continuation of such discrepancy shall be made available to the registered person making such claim electronically in FORM GST MIS -1 and to the supplier electronically in FORM GST MIS-2 through the Common Portal on or before the last date of the month in which the matching has been carried out.

The supplier to whom discrepancy is made available as above may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

Similarly, a recipient to whom any discrepancy is made available as above may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available within the time permitted.

Where the discrepancy is not rectified by neither the supplier nor the recipient of supply, an amount to the extent of discrepancy shall be added to the output tax liability of the recipient in his return to be furnished in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.

Explanation 1. - Rectification by a supplier means adding or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient.

Explanation 2. - Rectification by the recipient means deleting or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

E. Interest on mismatched transactions

Recipient will be liable to payment of interest in every case when discrepancy is added for the period starting from the date of availing the credit till the corresponding additions are made.

If the supplier declares the details of invoice or debit note in his valid return filed within the time specified u/s 39(9) i.e. before the due date of filing of the return for the month of September of the subsequent financial year or filing of annual return whichever is earlier the recipient is eligible to reduce from his output tax liability the amount so added earlier.

In case of such reduction in output tax liability, he is entitled for refund of interest paid as per (vi) above. However this interest shall not exceed the amount of interest paid by the supplier.

A Comprehensive Illustration

The recipient of supply has filed his return for the month of July, 2017 on 20th of August, 2017. The mismatch, not rectified either by recipient of supply or by the supplier shall be communicated to both on 31/08/2017.

The supplier ideally should make rectification in his statement of outwards supply for the month of August 2017. Similarly the recipient may make rectification in the statement of inward supplies for the month of August, 2017. If neither of them rectify or only partially rectify the tax relating to unrectified value shall be added to the output tax liability of the recipient of supply in his return in FORM GSTR-3 for the month of September 2017. Interest is to be paid on such addition.

However, if the supplier declares the invoice or debit note in any subsequent month but before the time limit prescribed, say in the month Jan 2018, the recipient of supply can reduce the relevant tax amount from the output tax liability for the month of January 2018. He is also eligible for the refund of interest paid earlier.

Example - 1

Supplier	A Limited	A Limited
Recipient	B Limited	B Limited
Date of transaction	13-Jul-17	13-Jul-17
Taxable value	1,000,000	1,000,000
Tax rate	18%	18%
Nature of error by B Limited	Duplication	Duplication
Return by supplier on (due - 20 Aug)	19-Aug-17	19-Aug-17
Communicated to parties on (due 31 Aug)	30-Aug-17	30-Aug-17
Rectified by B Limited on	05-Sep-17	05-Sep-17
Impact		
Add to output tax liability for Aug 2017	180,000	180,000
Interest	18%	18%
Return filed and paid on	20-Sep-17	20-Sep-17
Period of interest (days)	69	32
Interest amount	6,124.93	2,840.55

Example – 2

A Ltd supplies manufactured goods to B Ltd for Rs 1000 in May 2017; CGST thereon is, say, Rs. 120. Unfortunately, A Ltd did not furnish these details in its outward supply to B Ltd.

While matching the credit, B Ltd failed to set this right and went ahead with credit claim and utilized the credit against CGST liability. Later, GST officer intimates this mismatch, say by August 2017. In the absence of A Ltd's due response, B Ltd may pay back the credit with interest (for wrong credit).

A Ltd rectifies the outward return with details omitted earlier, in October 2017. Accordingly, B Ltd can certainly take back the credit earlier reversed.

Example – 3

A Ltd, the supplier failed to furnish right details in time. B Ltd the recipient of supply had to pay back the credit utilised for mismatching credit figures, with interest.

Of late, A Ltd has corrected its returns reflecting B Ltd's name and interest for the same paid by A Ltd. B Ltd is entitled for the credit now; it is eligible to claim back the interest paid. This interest cannot exceed the interest paid by A Ltd.

Statutory Provision

43.	Matching, reversal and reclaim of reduction in output tax liability
(1)	The details of every credit note relating to outward supply furnished by a registered taxable person (hereinafter referred to in this section as the 'supplier') for a tax period shall, in the manner and within the time prescribed, be matched -

(a) with the corresponding reduction in the claim for input tax credit by the corresponding taxable person (hereinafter referred to in this section as the 'recipient') in his valid return for the same tax period or any subsequent tax period, and

(b) for duplication of claims for reduction in output tax liability.

(2) The claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in the claim for input tax credit by the recipient shall be finally accepted and communicated, in the manner as may be prescribed, to the supplier.

(3) Where the reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for input tax credit or the corresponding credit note is not declared by the recipient in his valid returns, the discrepancy shall be communicated to both such persons in the manner as may be prescribed.

(4) The duplication of claims for reduction in output tax liability shall be communicated to the supplier in the manner as may be prescribed.

(5) The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the recipient in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the supplier, in the manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(6) The amount in respect of any reduction in output tax liability that is found to be on account of duplication of claims shall be added to the output tax liability of the supplier in his return for the month in which such duplication is communicated.

(7) The supplier shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the recipient declares the details of the credit note in his valid return within the time specified in sub-section (9) of section 39.

(8) A supplier in whose output tax liability any amount has been added under subsection (5) or sub-section (6), shall be liable to pay interest at the rate specified under subsection (1) of section 50 in respect of the amount so added from the date of such claim for reduction in the output tax liability till the corresponding additions are made under the said sub-sections..

(9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the supplier by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the recipient.

(10) The amount reduced from output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the supplier in his return for the month in which such contravention takes place and such supplier shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

43.1 Introduction

This provision relates to matching, reversal and reclaim of output tax liability caused by the issuance of a credit note

43.2 Analysis

A. Issuance of Credit note for reduction in output tax liability

(a) Where the output tax is reduced by outward supplier by issuing a credit note, details of every such credit note issued should be matched with the corresponding reduction in the credit by the recipient of the amount involved in the credit note in his valid return filed for the current or subsequent tax period. For example, a sale invoice at Rs 150,000 was overstated by Rs 50,000 for which a credit note was issued. This credit note should be accounted by the recipient in a valid return filed for the current or subsequent tax period

(b) Similarly where the supplier has raised say, two invoices and has paid out put tax twice, where a credit note has been raised, the same shall also be accounted by the recipient. However if the recipient has accounted for the invoice only once, he need not account for the credit note

B. Communication of corrections and impact of corrections

Particulars	Communication
When credit note and claim for reduction of output tax liability by the supplier matches with the corresponding reduction in input tax credit claim by the recipient or is lower than the ITC claim by the recipient for the said credit note Example A – both parties account for a credit note raised by the supplier, that results in lower of output tax liability and input tax credit by Rs 10000 Example B - A issues a credit note for Rs 10000 reduction in output tax liability as compared to an reduction in input tax credit for Rs 11000 by the recipient will also be treated as a matched transaction	The same will be accepted and communicated to the supplier in FORM GST MIS -3
When credit note and claim for reduction of output tax liability by the supplier exceeds, partly with the corresponding reduction in input tax credit by the recipient as declared in his returns Example where a credit note that results in the reduction of output tax liability for Rs 10000 has been accounted for Rs 4000 and stated as such in their return at Rs 4000	The discrepancy will be communicated to both parties and shall be added to the output tax liability of the supplier for Rs 6000 , in the month in which the discrepancy is communicated in FORM GST MIS- 3 and FORM GST MIS- 4

When credit note and claim for reduction of output tax liability by the supplier exceeds, wholly with the corresponding reduction in input tax credit by the recipient as declared in his returns Example where a credit note that results in the reduction of output tax liability for Rs 10000 has not been accounted at all or considered in his returns	The discrepancy will be communicated to both parties and shall be added to the output tax liability of the supplier for Rs 10,000 in the month in which the discrepancy is communicated in FORM GST MIS- 3 and FORM GST MIS- 4

C. Consequence of acceptance of correction by recipient

If the recipient accepts the discrepancy and rectifies the same by filing a valid return subsequently, then the tax amount involved will be excluded from the output liability of the supplier for the month in which the discrepancy is communicated.

In other words, as soon as discrepancy is communicated, the tax involved will be recovered from the supplier which will be readily reversed when the recipient admits and rectifies the discrepancy.

Discrepancies relating to duplicate claims for reduction of output tax liability will be added to the output liability of the supplier for the month in which the discrepancy is communicated.

D. Charge of interest

Supplier will be liable to payment of interest in every case when discrepancy by way of amount of output tax liability is added and interest will be paid on reversal of the liability added earlier after due rectification by the recipient.

Supplier shall be eligible to reduce, from his output tax liability, the amount of discrepancy added, when the recipient declares the details of the credit note in his valid return within the time specified.

Refund provisions under section 54 shall not to be applicable and this refund will be credited into the electronic cash ledger. Interest paid that is reversed to the supplier will not exceed interest recovered from the recipient. *Reference may be had to the discussion under section 42 which discusses this aspect of payment of interest by the recipient.*

Any reduction of amount from output tax liability by the supplier in contravention of the provisions will be added to the output liability of the supplier in his return for the month in which such contravention takes place and recovered along with applicable interest.

Rule14. Matching of claim of reduction in the output tax liability

The following details relating to the claim of reduction in output tax liability shall be matched under section 43 after the due date for furnishing the return in FORM GSTR-3 –

(a) GSTIN of the supplier;

(b) GSTIN of the recipient;

(c) credit note number;

(d) credit note date;

(e) taxable value; and

(f) tax amount:

Provided that where the time limit for furnishing FORM GSTR-1 under section 37 and FORM GSTR-2 under section 38 has been extended, the date of matching of claim of reduction in the output tax liability shall be extended accordingly.

Explanation 1.- The claim of reduction in output tax liability due to issuance of credit notes in FORM GSTR-1 that were accepted by the recipient in FORM GSTR-2 without amendment shall be treated as matched if the corresponding recipient has furnished a valid return.

Explanation 2.- The claim of reduction in the output tax liability shall be considered as matched, where the amount of reduction claimed is equal to or less than the claim of reduction in input tax credit admitted and discharged on such credit note by the corresponding recipient in his valid return.

Rule 15. Final acceptance of reduction in output tax liability and communication thereof

(1) The final acceptance of claim of reduction in output tax liability in respect of any tax period, specified in sub-section (2) of section 43, shall be made available electronically to the person making such claim in FORM GST MIS–3 through the Common Portal.

(2) The claim of reduction in output tax liability in respect of any tax period which had been communicated as mis-matched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in FORM GST MIS–3 through the Common Portal.

Rule 16. Communication and rectification of discrepancy in reduction in output tax liability and reversal of claim of reduction

(1) Any discrepancy in claim of reduction in output tax liability, specified in sub-section (3) of section 43, and the details of output tax liability to be added under sub-section (5) of the said section on account of continuation of such discrepancy shall be made available to the registered person making such claim electronically in FORM GST MIS–3 and the recipient electronically in FORM GST MIS–4 through the Common Portal on or before the last date of the month in which the matching has been carried out.

(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

(3) A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.

(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier and debited to tax liability register and also shown in his return in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.

Explanation 1.- Rectification by a supplier means deleting or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient.

Explanation 2.- Rectification by the recipient means adding or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

Rule 17. Claim of reduction in output tax liability more than once

Duplication of claims for reduction in output tax liability in the details of outward supplies shall be communicated to the registered person in FORM GST MIS – 3 electronically through the Common Portal.

Rule 18. Refund of interest paid on reclaim of reversals

The interest to be refunded under sub-section (9) of section 42 or sub-section (9) of section 43 shall be claimed by the registered person in his return in FORM GSTR-3 and shall be credited to his electronic cash ledger in FORM GST PMT-3 and the amount credited shall be available for payment of any future liability towards interest or the taxable person may claim refund of the amount under section 54.

F. Transactions through E-commerce Operators

Rule 19 deals with the matching of details furnished by the e-Commerce operator with the details furnished by the supplier

The following details relating to the supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1-

(a) GSTIN of the supplier;

(b) GSTIN or UIN of the recipient, if the recipient is a registered person;

(c) State of place of supply;

(d) invoice number of the supplier;

(e) date of invoice of the supplier;

(f) taxable value; and

(g) tax amount:

Provided that for all supplies where the supplier is not required to furnish the details separately for each supply, the following details relating to such supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1

(a) GSTIN of the supplier;

(b) State of place of supply;

(c) total taxable value of all supplies made in the State through e-commerce portal; and

(d) tax amount on all supplies made in the State:

Provided further that where the time limit for furnishing FORM GSTR-1 under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

Rule 20 deals with Communication and rectification of discrepancy in details furnished by the e-commerce operator and the supplier

(1) Any discrepancy in the details furnished by the operator and those declared by the supplier shall be made available to the supplier electronically in FORM GST MIS-5 and to the e-commerce portal electronically in FORM GST MIS–6 through the Common Portal on or before the last date of the month in which the matching has been carried out.

(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

(3) An operator to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement to be furnished for the month in which the discrepancy is made available.

(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier in his return in FORM GSTR-3 for the month succeeding the month in which the details of discrepancy are made available and such addition to the output tax liability and interest payable thereon shall be made available to the supplier electronically on the Common Portal in FORM GST MIS–5.

Statutory Provision

44. Annual return

(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year..

(2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

44.1 Introduction

This section applies to all registered taxable person other than,

— Input Service Distributor

— A person paying tax under Section 51 (TDS)

— A person paying tax under Section 52 (TCS)

— A casual tax Taxable person

— Non-resident taxable person

Due date for filing Annual Return is on or before 31st December following the end of the financial year for which Annual return to be submitted.

44.2 Analysis

Every taxable person shall file annual return in FORM GSTR-9 (FORM GSTR-9A in case of person opted to pay tax under composition scheme under section 10) for every financial year electronically on or before 31st December following the end of such financial year

However, this provision shall not apply to,

— Input Service Distributor

— A person paying tax under Section 51 (TDS)

— A person paying tax under Section 52 (TCS)

— A casual tax Taxable person

— Non-resident taxable person

In case the registered person is required to get his accounts audited in accordance with the provisions of Section 35 (5) (whose aggregate turnover during the financial year exceeds Rs. One crores) shall file annual return FORM GSTR-9B electronically along with,

— A copy of audited annual accounts

— Reconciliation statement reconciling the value of supplies as per annual return and as per audited financial statement

Statutory Provision

45. Final return

Every registered person who is required to furnish a return under sub-section (1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed.

45.1 Introduction

This section applies to all registered taxable person other than,

— Input Service Distributor

— A person paying tax under Section 51 (TDS)

— A person paying tax under Section 52 (TCS)

— Non-resident taxable person

— A person paying tax under Section (10) composition levy

45.2 Analysis

Every registered person whose registration is cancelled shall file final return in FORM GSTR-10 through common portal within 3 months from the date of cancellation (voluntary cancellation) or date of order of cancellation (forceful cancellation by authority), whichever is later.

However, this provision shall not apply to a register person who is,

- Input Service Distributor
- A person paying tax under Section 51 (TDS)
- A person paying tax under Section 52 (TCS)
- Non-resident taxable person

A person paying tax under Section (10) composition levy

Statutory Provision

46. Notice to return defaulters

Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.

46.1 Introduction

This section applies to all registered person who fail to furnish return under section 39 or section 44.

46.2 Analysis

Notice to defaulter

Notice in FORM GSTR–3A shall be issued electronically to a registered person who have failed to file return under 39 (monthly return) and under section 44 (annual return) requiring him to file a return within 15 days.

Statutory Provision

47. Levy of late fee

(1) Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.

(2) Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory.

47.1 Introduction

This provision relates to levy of late fees on filing belated return.

47.2 Analysis

For late filing of return, the following late fee shall be levied:

Defaulted Return	*Late fee*
Details of Outward Supplies (Ref: Sec 37)	Rs. 100 per day of delay Maximum Rs 5,000
Details of Inward Supplies (Ref: Sec 39)	same as above
Monthly Return (Ref: Sec 39)	same as above
Final Return in case of cancellation of registration (Sec 45)	same as above
Annual Return (Sec 44)	Rs 100 per day of delay Maximum = 0.25% on Turnover in the state/UT*

* "turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess

Explanation. - Aggregate turnover does not include the value of inward supplies on which tax is payable by a person on reverse charge basis under sub-section 3 of Section 9 and the value of inward supplies

Aggregate turnover = Total turnover – (input supplies for which tax paid under reverse charge + Central Tax + State Tax + UT Tax + Integrated Tax and Cess)

Statutory Provision

48. Goods and Service tax practitioners

(1) The manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed

(2) A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 in such manner as may be prescribed.

(3) Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any particulars furnished in the return or other details filed by the goods and services tax practitioners shall continue to rest with the registered person on whose behalf such return and details are furnished.

48.1 Introduction

This provision relates to:

— Procedure followed in appointment/termination of Goods and Service Tax practitioners

— How to engage/disengage GST practitioner by the registered person

— What are all the activities can be performed by GST practitioner on behalf of registered person

48.2 Analysis

Following Procedure must be followed:

(1) An application in FORM GST PCT-1may be made to the officer authorised in this behalf for enrolment as Goods and Services Tax Practioner by any person who satisfies any of the conditions specified below, namely:

(a) (i) he is a citizen of India;

(ii) he is a person of sound mind;

(iii) he is not adjudicated as insolvent;

(iv) he has not been convicted by a competent court for an offence with imprisonment not less than two years; and

(b) that he is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Excise and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower in rank than that of a Group-B gazetted officer for a period of not less than two years; or

(c) he has passed:

(i) a graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force; or

(ii) a degree examination of any Foreign University recognized by any Indian University as equivalent to the degree examination mentioned in clause (i); or

(iii) any other examination notified by the Government for this purpose; or

(iv) any degree examination of an Indian University or of any Foreign University recognized by any Indian University as equivalent of the degree examination and has also passed any of the following examinations, namely. -

(a) final examination of the Institute of Chartered Accountants of India; or

(b) final examination of the Institute of Cost Accountants of India; or

(c) final examination of the Institute of Company Secretaries of India; or

(2) On receipt of the application referred to in sub-rule (1), the authorised officer shall, after making such enquiry as he considers necessary, either enrol the applicant as a Tax Return Preparer and issue a certificate to that effect in FORM GST PCT-2 or reject his application where it is found that the applicant is not qualified to be enrolled as a Goods and Services Tax Practioner.

(3) The certificate given to GST practitioner is valid until it is cancelled.

(4) If any Goods and Services Tax Practioner is found guilty of misconduct in connection with any proceeding under the Act, the authorised officer may, by order, in FORM GST PCT-4 direct that he shall henceforth be disqualified under section 48. However, before cancellation show cause notice in FORM GST PCT-3 to be served and give him a reasonable opportunity of being heard.

(5) Any person against whom an order of disqualification under sub-rule (4) is made may, within thirty days from the date of the order under sub-rule (4), appeal to the Commissioner against such order.

(6) A list of Goods and Services Tax Practioner enrolled under sub-rule (1) shall be maintained on the Common Portal in FORM GST PCT-5 and the authorised officer may make such amendments to the list as may be necessary from time to time, by reason of any change of address or death or disqualification of any goods and service tax practitioner .

(7) Any registered person who wants to avail the services of goods and service tax practitioner may, at his option, authorise GST practitioner on the Common Portal in FORM GST PCT-6 to carry out certain activities on his behalf. Similarly, registered person at any time, can disengage the GST practitioner through common portal by withdrawing such authorisation in FORM GST PCT-7.

(8) Based on the authorisation given to the GST practitioner by the registered person, the statement to be furnished by registered person shall be furnished by GST practitioner. The registered person can sought the confirmation for the completion of the work by GST practitioner either through email or SMS. The statement furnished by GST practitioner shall be available in the common portal for review and confirmation of the registered person.

If the taxable person fails to confirm the statements furnished by GST practitioner on or before the last date of furnishing of such statement, it shall be deemed that such statement has been confirmed by registered person.

(9) A GST practitioner can undertake any or all of the following activities on behalf of a registered person, if so authorised by the registered person to:

(a) furnish details of outward and inward supplies;

(b) furnish monthly, quarterly, annual or final return;

(c) make deposit for credit into the electronic cash ledger;

(d) file a claim for refund; and

(e) file an application for amendment or cancellation of registration.

(10) Any registered person opting to furnish his return through a GST practitioner shall-

(a) give his consent in FORM GST PCT-6 to any GST practitioner to prepare and furnish his return; and

(b) before confirming submission of any statement prepared by the GST practitioner, ensure that the facts mentioned in the return are true and correct before signature.

(11) The GST practitioner shall-

(a) prepare the statements with due diligence; and

(b) affix his digital signature on the statements prepared by him or electronically verify using his credentials.

In all cases Registered person shall remain to be liable for the correctness of the return filed through GST practitioner.

Chapter–X
Payment of Tax

Statutory provision

49	Payment of Tax, Interest, Penalty and other Amounts
(1)	Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.
(2)	The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.
(3)	The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
(4)	The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.
(5)	The amount of input tax credit available in the electronic credit ledger of the registered person on account of-
	(a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
	(b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
	(c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
	(d) the Union territory tax shall first be utilised towards payment of Union territory tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
	(e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and
	(f) the State tax or Union territory tax shall not be utilised towards payment of central tax.

(6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.

(7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register as may be prescribed.

(8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:

(a) self –assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to the return of current tax period;

(c) any other amount payable under the Act or the rules made thereunder including the demand determined under Section 73 or 74.

(9) Every person who has paid the tax on goods and /or services under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.

Explanation.1- For the purposes of this section,

(a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;

(b) the expression

(i) "tax dues" means the tax payable under this Act and does not include interest, fee and penalty; and

(ii) "other dues" means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.

49.1 Introduction

This section provides for the following:

1. Methodology or mode of payment of tax, interest, penalty, fee or any other amount by a taxable person,
2. This Section prescribes three kinds of ledgers to be maintained by the taxable person.
   (a) Electronic Cash Ledger;
   (b) Electronic Input Tax Credit Leger or Electronic Credit Ledger;
   (c) Electronic Tax Liability Register.
3. The Section further provides for availability of credit in the Cash Ledger or the credit ledger depending on the payment made by the taxable person.
4. It provides for utilization of credit and also prescribes the method of cross utilization of credit.
5. Transfer of input tax credit from UTGST to IGST account when UTGST is utilized for payment of IGST; similar provisions are there in SGST Act also

In the following analysis, sections referred are generally referred to CGST Act unless otherwise mentioned in specific.

49.2 Analysis

A. ELECTRONIC CASH LEDGER:

The provisions regarding Electronic Cash Ledger and amounts credited into this ledger are dealt with in sub-Section (1) & (3) of Section 49 of the CGST Act.

1. Deposit of Tax, interest, penalty, fee or any other amount by a taxable person can be made by the following modes: -
   - Internet Banking
   - Credit /Debit cards
   - National Electronic Fund Transfer (NEFT)
   - Real Time Gross Settlement (RTGS)
   - [1]Over the Counter payment (OTC) through authorized banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft. This amount restriction is not applicable to remittances by
     - Government Departments
     - Proper Officer or any other Officer recovering outstanding dues or during any investigation or enforcement activity or ad hoc deposit
   - Any Other Mode as may be prescribed.
2. The 'deposit' made by one of the above mentioned modes will be credited to the Electronic Cash Ledger of the taxable person. This ledger shall be maintained in FORM GST PMT-05[1]
3. Any person, or a person on his behalf, shall generate a challan in FORM GST PMT-06 on the Common Portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount[1]
4. The challan in FORM GST PMT-06 generated at the Common Portal shall be valid for a period of fifteen days[1]
5. Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the Common Portal[1]
6. Date of credit into the account of the Government is deemed to be the date of deposit (not the actual date of debit to the account of the taxable person)
7. On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number (CIN) will be generated by the collecting Bank and the same shall be indicated in the challan[1]
8. Where the bank account of the person concerned, or the person making the deposit on

his behalf, is debited but no Challan Identification Number (CIN) is generated or generated but not communicated to the Common Portal, the said person may represent electronically in FORM GST PMT-07 through the Common Portal to the Bank or electronic gateway through which the deposit was initiated[1]

9. The amount available in the Electronic Cash Ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of the Act or Rules. Manner of utilization, conditions and time limit would be prescribed

10. Any amount deducted under section 51 (TDS by Central / State Government or local authority or Government Agencies) or collected under section 52 (TCS by e-commerce operator) and claimed in FORM GSTR-02 by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger[1]

B. ELECTRONIC CREDIT LEDGER

1. Sub Section (2) of Section 49 of the CGST Act provides that the self-assessed Input Tax Credit as per return filed by a taxable person shall be credited to its Electronic Credit Ledger.

2. This ledger shall be maintained in FORM GST PMT-02 for each registered person eligible for input tax credit under the Act on the Common Portal and every claim of input tax credit under the Act shall be credited to the said Ledger[1].

3. The Electronic credit ledger may include the following:

   — ITC on inward supplies from registered tax payers.

   — ITC available based on distribution from input services distributor (ISD).

   — ITC on Input of Stock held/ semi-finished goods or finished goods held in stock on the day immediately preceding the date from which the taxpayer became liable to pay tax Provided he applies for registration within 30 days from the date of his liability.

   — Permissible ITC on inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the day of conversion from composition scheme to regular tax scheme.

   — ITC eligible on payment made on reverse charge basis

   The above list is illustrative and not exhaustive.

4. A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the Common Portal in FORM GST PMT-04[1]

COMMON POINTS FOR ELECTRONIC CASH & CREDIT LEDGER

1. Where a person has claimed refund of any amount from the electronic cash or credit ledger, the said amount shall be debited to the electronic cash or credit ledger[1]

2. If the refund so claimed is rejected, either fully or partly, the amount debited earlier, to

the extent of rejection, shall be credited to the electronic cash or credit ledger by the proper officer by an order made in FORM GST PMT-03[1]

MANNER OF UTILISATION OF ITC AND CROSS UTILIZATION

1. The amount available in the electronic credit ledger may be used for making any payment towards output tax payable under the Act or Rules. The manner of utilization, conditions and time lines would be prescribed.

2. The Electronic Credit Ledger has only three Major Heads of Credit:

Input tax	Output tax
IGST	IGST CGST SGST
CGST	CGST IGST
SGST	SGST IGST
UTGST	UTGST IGST

3. Hence cross-utilization of credit is available only as above in that order. The main restriction is that the CGST credit cannot be utilized for payment of SGST or UTGST and vice versa

4. Sub-Section (6) provides that the balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount may be refunded in accordance with the provisions of section 54 (dealing with refunds)

5. A unique identification number shall be generated at the Common Portal for each debit or credit to the electronic cash or credit ledger, as the case may be[1]. The said UIN must be used to discharge tax liability.

C. TAX LIABILITY LEDGER:

1. Tax Liability Ledger is required to be maintained electronically for all liabilities of a taxable person in FORM GST PMT-01[1].

2. [1]This ledger shall be debited by the following amounts (liability is created by debiting)

— the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;

— the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person;

— the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or

— any amount of interest that may accrue from time to time

3. [1]This ledger shall be credited for the following payments (liability is discharged by crediting)

   — Tax Deducted at Source under section 51

   — Tax Collected at Source under section 52

   — Reverse Charge on supply of goods or services under sub- section 3 of section 9 of CGST /SGST Act, sub-section 3 of section 5 of IGST Act and sub section 3 of section 7 of UTGST Act

   — Tax on supplies from unregistered suppliers under sub section 4 of section 9 of CGST/SGST Act, sub section 4 of section 5 of IGST Act and sub section 4 of section 7 of UTGST Act

   — Compounding levy under section 10 of CGST Act

Order of discharge of tax

Sub-Section (8) prescribes the chronological order in which the liability of a taxable person must be discharged:

1. Self-assessed tax and other dues arising out of returns for previous tax periods must be discharged first.
2. Self-assessed tax and other dues relating to the return of the current tax period.
3. Any other amount payable under the Act/Rules (liability arising out of demand notice or adjudicated proceedings etc).

Presumption that incidence of tax is passed on

Sub-Section (9) of CGST/SGST Act provides that the incidence of tax paid on goods/services is deemed to have been passed to the recipient of such goods and /or services. This is subject to the contrary being proved.

49.3 Comparative Review

The Electronic Cash Ledger, Electronic Credit Ledger and Tax Liability Register are unique features of the GST law. This would ensure only eligible credits are availed thereby eliminating the need for Forms such as 'C' or 'F' or 'H' etc.

On the other hand assessee would be expected to reconcile their financial ledgers with the corresponding Electronic ledgers.

49.4 FAQ

Q1. What are the three types of Ledgers to be maintained by a taxable person under the GST Law?

Ans. The three types of ledgers to be maintained are: Electronic credit ledger, electronic cash ledger and electronic tax liability register.

Q2. What are the deposit amounts that need to be reflected in the Electronic Cash Ledger?

Ans. Electronic Cash Ledger shall contain details of every deposit made towards tax,

interest, penalty or any other amount (including the Tax Deducted at Source u/s 51 and Tax Collected at Source u/s 52).

Q.3 What are the major and minor heads of Credit in the Electronic Cash Ledger?

Ans

Major heads
IGST
CGST
SGST
UTGST

Minor Heads
Tax
Interest
Penalty
Any other amount

Q4. What is meant by Cross-utilization of credit and how is it done in the Electronic Credit Ledger?

Ans. Cross utilization means utilizing IGST/ CGST/ SGST/ UTGST liabilities against Electronic Credit Ledger under IGST/ CGST/ SGST/ UTGST Act. The amount available in the Electronic Credit ledger may be used for making payment towards output tax payable under the Act or Rules.

Q5. Is cross-utilization permissible among Major heads in the Electronic Cash Ledger?

Ans. Yes, cross-utilization is permissible among major heads in the Electronic Cash Ledger except that CGST credit cannot be utilized for payment of SGST/UTGST and vice versa.

Q6. What are the amounts to be reflected in the Electronic Credit Ledger?

Ans. The input tax credit as self-assessed in the details of inward supplies (Form GSTR-2) of a taxable person shall be reflected in the electronic credit ledger.

Q7. Can direct remittances to the Treasury be shown in the Electronic Credit Ledger?

Ans. No, direct remittances to the Treasury cannot be shown in the electronic credit ledger.

Q8. Is there any possibility of refund under the GST Act or is adjustment alone permissible?

Ans. There is a possibility of refund under GST Act.

Q9. What is the order in which tax liability has to be discharged?

Ans. The order in which the liability of a taxable person must be discharged is as under:

1. Self-assessed tax and other dues arising out of returns for previous tax periods must be discharged first.
2. Self-assessed tax and other dues relating to the return of the current tax period.
3. Any other amount payable under the Act/Rules (liability arising out of demand notice or adjudicated proceedings etc).

49.5 MCQ

Q1. Deposits towards tax, penalty, interest, fee or any other amount are credited into the ---------- of a taxable person:

(a) Electronic Credit Ledger

(b) Tax Liability Ledger

(c) Electronic Cash Ledger

(d) None of the above

Ans. (c) Electronic Cash Ledger

Q2. The Input Tax Credit as self-assessed by a taxable person is credited into the

(a) Electronic Credit Ledger

(b) Tax Liability Ledger

(c) Electronic Cash Ledger

(d) None of the above

Ans. Electronic Credit Ledger

Q3. Cross-Utilization of credit of available IGST after utilization towards payment of IGST is done in the following chronological order:

(a) CGST then SGST/UTGST

(b) SGST/UTGST then CGST

(c) CGST, UTGST and SGST simultaneously

(d) None of the Above

Ans. (a) CGST then SGST//UTGST

Q4. Which of the following Statements is true?

(a) ITC of CGST is first utilized for payment of CGST and the balance is utilized for payment of SGST/UTGST

(b) ITC of SGST is first utilized for payment of SGST and the balance is utilized for payment of CGST

(c) ITC of CGST is first utilized for payment of CGST and the balance is utilized for payment of IGST

(d) None of the Above

Ans. (c) ITC of CGST is first utilized for payment of CGST and the balance is utilized for payment of IGST

Statutory provision

50. Interest on delayed payment of tax

(1) Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall, for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen percent, as may be notified by the Government, on the recommendation of the Council.

(2) The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which tax was due to be paid.

(3) A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty four percent, as may be notified by the Government on the recommendations of the Council.

50.1 Introduction

This section lays down the provisions for payment of interest under the Act for delayed payment of tax.

Provisions which are common under CGST (UTGST) and SGST Act have been analyzed hereunder.

50.2 Analysis

Section 50 of CGST Act makes it mandatory for a tax payer to pay interest on belated payment of tax i.e. when he fails to pay tax (or part of tax) to the Government's account within the due date.

50.2.1 Interest - When Payable

Interest under section 50 of CGST Act is payable in the following three circumstances

1. Sub-section (1) : Delay in payment of tax, in full or in part
2. Sub-section (3) : Undue or excess claim of input tax credit under section 42 (10)
3. Sub-section (3) : Undue or excess reduction in output tax liability under section 43 (10)

It may also be recalled that –

a) section 42 (10) CGST/SGST Act deals with contravention of provisions for matching of claims for input tax credit by a recipient and

b) section 43 (10) CGST/SGST Act deals with contravention of provisions for matching of claims for reduction in output tax liability by a supplier

50.2.2 Rate of Interest

The actual rate of interest shall be notified by the Government on a future date on the basis of recommendation of the council. However, such rate to be notified shall not exceed –

1. Eighteen percent in the case of tax dues as per sub-section (1)
2. Twenty-four percent in case tax dues as per of sub-section (3)

50.2.3 Manner of Computation of Interest

1. The manner of computation of period of interest under sub-section (1) or sub-section (3) has not been addressed in the Revised Draft Rules. It is hence expected that it may be included in the final version of the Rules or may be notified by the Government on a future date, based on the recommendation of the Council. The period of interest shall be from the date following the due date of payment to the actual date of payment of tax.
2. Where the *tax admitted* by the taxable person in his return has not been deposited along with the returns, interest is leviable immediately on the payment of the admitted tax.

   It may be noted that, Section 39 (7) lays down the last date for remittance as the last date on which the taxable person is required to furnish such return. Also, Section 2 (117) lays down that a return shall be considered valid only if the tax payable as per the return is paid in full.
3. Section 73 (5) & 73 (6) provide that if the tax along with interest has been paid, the adjudicating authority shall not serve any show cause notice.
4. Section 73 (8) provides that where a person has been served with show cause notice but has made the payment of tax and penal interest under Section 50 within thirty days of issue of notice, no penalty is payable and all proceedings in respect of that tax amount are deemed to be concluded.
5. Thus from a conjoint reading of Section 50 (1), 73 (5), 73 (6) and 73 (8) of the Act, it is evident that where a person makes a voluntary payment of interest along with belated payment of tax whether admitted and on his own or within thirty days from the date of issue of show cause notice, then the proceedings are deemed to be concluded and no penalty is leviable.

50.2.4 Other Important Points to Note

1. The term 'tax' here means the tax payable under the Act or Rules made thereunder.
2. The phrase 'on his own' used in sub-section (1) indicates that such payment of interest should be made voluntarily (i.e.) even without a demand.
3. There are no specific provisions for payment of interest on the interest amount due.
4. The interest payable under this section shall be debited to the Electronic Tax Liability Register as per Rule 1 (1) of Draft Payment of Tax Rules
5. Such liability for interest can be settled by adjustment with balance in Electronic Cash Ledger <u>but not</u> with balance in Electronic Credit Ledger

50.3 Comparative Review

1. This provision is similar to that in service tax and excise laws. In the case of VAT laws, if the payment of tax and interest is after issuance of show cause notice, it is at the

discretion of the adjudicating authority to drop the penalty. Some State VAT laws have mandatory penalty provisions.

2. The view laid down by the Hon'ble Supreme Court in [Prathibha Processors v. UOI (1996) 11 SCC 101] that interest is automatic as it is compensatory in nature and not penal in character, holds good even under the subject Act.

50.4 FAQ

Q1. When is a person liable to pay interest?

Ans. When a person who is liable to pay tax under the provisions of the Act or the respective rules made thereunder, fails to pay the whole/ part of the tax due, to the account of the Government, within the prescribed time, he shall be liable to pay interest.

Q2. How is the interest computed?

Ans. Interest is computed for the period for which the tax remains unpaid at the notified rate, i.e., from the date following the day on which tax becomes due to be paid, till the date of payment of tax.

Q3. Is penalty still payable if a person pays the tax and interest as per show cause notice?

Ans. Where the person has made payment of tax and interest under Section 50 within thirty days of issue of the show cause notice, no penalty is payable and all proceedings in respect of that tax amount is deemed to be concluded.

Q4. Is interest leviable on excess claim of Input Tax Credit or undue claim of Input Tax Credit?

Ans. Yes, interest is also leviable where there is undue or excess claim of ITC under Section 42 (10)

Q5. Is interest leviable on excess reduction of reduction of Output tax liability ?

Ans. Yes, interest is also leviable where there is undue or excess reduction in output tax liability under section 43 (10).

Q6. Is a show cause notice or demand required to determine the liability to pay interest?

Ans. No, there is no requirement of demand from the department to determine the interest liability. It is the responsibility of the person liable to pay tax to compute and pay the interest 'on his own'.

50.5 MCQ

Q1. Interest is payable on :-

(a) Belated payment of tax

(b) Undue/excess claim of Input Tax Credit.

(c) Undue/Excess reduction in output tax liability

(d) All of the above

Ans. (d) All of the above

Q2. Interest is calculated :-

(a) From the date following the day on which tax becomes due to be paid

(b) Last day such tax was due to be paid

(c) No periods specified

(d) None of the above

Ans. (a) From the date following the day on which tax becomes due to be paid

Statutory provision

51 Tax Deducted at Source

(1) Notwithstanding anything to the contrary contained in this Act, the Government may mandate,––

(a) a department or establishment of the Central Government or State Government; or

(b) local authority; or

(c) Governmental agencies; or

(d) such persons or category of persons as may be notified by the Government on the recommendations of the Council,

(hereafter in this section referred to as "the deductor"), to deduct tax at the rate of one per cent from the payment made or credited to the supplier (hereafter in this section referred to as "the deductee") of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation.—For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

(2) The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.

(3) The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.

(4) If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five-day period until the failure is rectified, subject to a maximum amount of five thousand rupees.

(5) The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.

(6)	If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.
(7)	The determination of the amount in default under this section shall be made in the manner specified in section 73 or section74.
(8)	The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54: Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.

51.1 Introduction

This Section provides for deduction of tax at source in certain circumstances.

The Section specifically lists out the deductors who are mandated by the Central Government to deduct tax at source, the rate of tax deduction and the procedure for remittance of the tax deducted. The amount of tax deducted is reflected in the Electronic Cash Ledger of the deductee.

Provisions which are common under CGST (/UTGST) and SGST Act have been analyzed herein.

51.2 Analysis

CGST Act vide Section 2 (55) defines the term Government to *mean* the Central Government. SGST Act vide Section 2 (55) defines the term Government to *mean* the State Government. Section 51 (1), ibid refers to TDS related mandating by 'Government' (Central/State Government). Such mandating shall be for the following persons -

Department or Establishment of Central Government
Local Authority.
Government Agencies.
Persons or category of persons notified by the Central Government on recommendation of the Council.

1. The above 'persons' are referred to as deductors.
2. The deductors have to deduct tax at the rate of 1% from the payment made or credited to the supplier of taxable goods and / or services, notified by the Central Government or State Government on the recommendations of the Council. Deduction is required where the total value of supply under 'a contract' exceeds INR 2.5 lakhs. Value of supply shall exclude the tax indicated in the invoice. No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient
3. The amount deducted shall be paid to the Central Government within ten days after the end of the month in which such deduction is made.

Draft Rules relating to Payment of Taxes read (vide Rule 4) that payment shall be made by debiting the electronic cash ledger (and crediting the electronic tax liability register).

4. The deductor shall furnish a TDS certificate in Form GSTR-7A to the deductee mentioning in it the following:
   (a) contract value
   (b) rate of deduction
   (c) Amount deducted
   (d) Amount paid to the appropriate Government
   (e) Any other particulars as may be prescribed
5. This certificate has to be furnished within five days of remittance as mentioned above.
6. Certificate not furnished by the deductor:- If the deductor does not furnish the certificate of deduction-cum- remittance within five days of the remittance, the deductor has to pay a late fee of INR 100 per day from the 6th day until the day he furnishes the certificate. The maximum late fee is prescribed as INR 5000.
7. Non-remittance by the deductor: If the deductor does not remit the amount deducted as TDS, he is liable to pay penal interest under Section 50 in addition to the amount of tax deducted.
8. The amount of tax deducted reflected in Electronic Cash Ledger of deductee in the return in Form GSTR-7 filed by deductor shall be claimed as credit.

   This provision enables the Government to cross-check whether the amount deducted by the deductor is correct and that there is no mis-match between the amount reflected in the Electronic Cash Ledger as reflected in the return filed by deductor. One may draw easy analogy from existing practice in income tax related E TDS returns filed by deductor and 26AS statement available for viewing the TDS remitted in respect of his transactions by deductee.
9. Refund on excess collection: The deductor or the deductee can claim refund of excess deduction or erroneous deduction. The provisions of section 54 relating to refunds would apply in such cases. However, if the amount deducted has been credited to the Electronic Cash Ledger of the deductee, the deductor cannot claim refund (only deductee can claim).
10. As mentioned above, UTGST Act 2017, subject to its own provisions, adopts the provisions in CGST Act in respect of Tax Deduction at Source *mutatis mutandis* (Ref: Sec 21 of UTGST Act).

51.3 Comparative review

Provisions for deduction of tax at source exist in the VAT laws. There are no TDS provisions in central excise or service tax laws today, though there is a concept of reverse charge. Under most State VAT laws, TDS provisions are applicable on payments made to works contractors. Some States have provisions for TDS on 'transfer of right to use goods'

Comparative table between State VAT Law and CGST Act:

TDS Provisions under

S.No.	State VAT Law	CGST Act
1.	Applicable only to works contractors.	Applicable to suppliers notified by the Central Government on recommendations of council.
2.	Two different standard rates	One standard rate viz. 1%
3.	Deductor- every works contractee or awarder of contract	(a) A department or establishment of the Central or State Government, or (b) Local authority, or (c) Governmental agencies, or (d) Such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council.
4.	Two certificates have to be furnished by the Deductor. 1. Certificate of deduction 2. Certificate of remittance.	One single certificate of deduction –cum-remittance to be furnished by the Deductor within five days of remittance.
5.	If certificate of deduction alone is furnished by the Deductor, burden on the works contractor to prove deduction of tax at source.	No such burden cast on the Deductee. More onus is on the Deductor.
6.	Refund provisions and Credit provisions not clear.	Refund provisions clear. Credit can also be claimed from the amount reflected in the Electronic Cash Ledger.
7.	TDS would apply on payments towards transfer of property in goods in the State. Inter-state supplies are generally not subject to TDS.	TDS would apply on the payment made or credited to the supplier. No TDS on interstate supplies.

51.4 FAQ

Q1. Who are the 'persons' who can deduct tax at source under Section 51 of CGST Act?

Ans. The following persons are to deduct tax as per the provisions of Section 51 of the CGST Act:

(a) A department or establishment of the Central or State Government,

(b) Local authority,

(c) Governmental agencies,

(d) Such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council.

Q.2 Under what circumstances can the Deductors mentioned in Section 51 deduct tax at source?

Ans. The Deductors u/s 51 are required to deduct tax from the payment made or credited to the supplier of taxable goods and/ or services, notified by the Central Government on the recommendations of the Council, where the total value of such supply, under a contract, exceeds rupees 2.50 lakh, exclusive of the tax as per the invoice.

Q3. What is the rate of tax deduction at source?

Ans. The prescribed rate of tax to be deducted at source is a 1% from the payment made or credited to the supplier of taxable goods and / or services.

Q4. What is the time limit for remittance of the deducted tax by the Deductor into the credit of the Government?

Ans. The amount deducted shall be paid to the credit of the Government within 10 days from the end of the month in which such deduction is made.

Q5. What is the nature of certificate to be furnished by the Deductor to the Deductee and what is the time limit?

Ans. The Deductor shall furnish a certificate in in Form GSTR-7A mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the appropriate Government and such particulars as may be prescribed in this behalf, to the Deductee. This certificate is to be furnished within five days of crediting the amount so deducted to the appropriate Government, failing which, the Deductor would be liable to pay late fee being rupees one hundred per day during which the failure continues but subject to Maximum of rupees 5000.

Q6. Can the Deductee claim credit of the remittance of TDS amount by the Deductor?

Ans. Yes, the Deductee can claim credit of the tax deducted, in his electronic cash ledger. This deduction would also be reflected in the return of the Deductor filed under sub-section (3) of Section 39, in the manner prescribed.

Q7. Can tax, once deducted, be claimed as a refund? Who can claim refund?

Ans. Yes, it is possible to claim refund arising on account of excess or erroneous deduction, and this would be governed by the provisions of Section 54. Fine text of refund rules may please be referred.

Such refund may be claimed either by the Deductor or the Deductee, but not both. Further, no refund would be available to the Deductor once the amount deducted has been credited to the electronic cash ledger of the Deductee.

51.5 MCQ

Q1. The deduction of tax by the Deductor under Section 51 of CGST Act is at the rate of:

(a) 2%

(b) 3%

(c) 1%

(d) None of the above.

Ans. (c) 1%

Q2. The amount of tax deducted by the Deductor has to be paid to the credit of the appropriate Government within ..... days after the end of the month in which such deduction is made:

(a) 20 days

(b) 10 days

(c) 15 days

(d) 5 days

Ans. (b) 10 days

Q3. The time limit for furnishing the deduction –cum- remittance certificate by the Deductor to the Deductee is:

(a) 10 days

(b) 20 days

(c) 5 days

(d) None of the above.

Ans. (c) 5 days

Q4. The Deductee can claim credit of the remittance made by the Deductor in his,

(a) Electronic Credit Ledger

(b) Tax liability Ledger

(c) Electronic Cash Ledger

(d) None of the above.

Ans. (c) Electronic Cash Ledger

Q5. If excess or erroneous deduction has been made by the Deductor and this amount is credited to Electronic Cash Ledger of the Deductee, refund can be claimed by,

(a) Deductor

(b) Deductee

(c) Both Deductor and Deductee

(d) None of the above

Ans. (d) Deductee (Subject to fine text of related Rules)

Q6. Tax deduction shall be made if -

(a) A contract is for an amount exceeds Rs 25 lakh

(b) A contractor supplies goods or services or both exceeding Rs 2.5 lakh in a year

(c) A contractee receives goods or services or both exceeding Rs 2.5 lakh in a year from various contractors

(d) None of the above

Ans. (b) A contractor supplies goods or services or both exceeding Rs 2.5 lakh in a year

Statutory provision

52. Tax Collected at Source

(1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Explanation.—For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

(3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

(4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

(5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

(6) If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit,

inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

(7) The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.

(8) The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.

(9) Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.

(10) The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.

(11) The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.

(12) Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—

(a) supplies of goods or services or both effected through such operator during any period; or

(b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

(13) Every operator on whom a notice has been served under sub-section (12) shall furnish

the required information within fifteen working days of the date of service of such notice.

(14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

Explanation. —For the purposes of this section, the expression "concerned supplier" shall mean the supplier of goods or services or both making supplies through the operator.

52.1 Introduction

This Section provides for collection of tax at source in certain circumstances. The Section specifically lists out the tax collecting persons who are mandated by the Central Government to collect tax at source, the rate of tax collection and the procedure for remittance of the tax collected. The amount of tax collected is reflected in the Electronic Cash Ledger of the person from who tax collected.

Provisions which are common under CGST (,UTGST) and SGST Act have been analyzed herein.

52.2 Analysis

(i) Every E-Commerce Operator shall collect TCS at a rate not exceeding 1% on the net value of transaction in which he collects consideration of the supply. Please note that if there is returning of supplies to Suppliers, then the same shall be reduced from the gross value; TCS shall be worked on such net figure only(after such reduction). It is pertinent to note the following definitions here –

Section 2 (44), –

"electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;

Section 2 (45), –

"electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce

(ii) The amount collected so shall be paid to the Central/State Government respectively within ten days after the end of the month in which such collection is made.

(iii) In case the E-commerce operator fails to collect to tax under sub-section 1 of section 52 or collects an amount which is less than the amount required to be collected under said sub-section or where he fails to pay to the government the amount collected as tax under sub-section 3 of section 52, he shall be liable to penalty under clause (vi) of sub-section 1 of section 122 of the Act, i.e. Rs.10,000 or the amount of TCS involved, whichever is higher.

(iv) E-Commerce operator shall furnish details of outward supplies of goods or services or both made through it, including the supplies returned through it and the amount collected by it in sub-section 1, in Form GSTR-8 within the 10 days after end of the month in which supplies are made.

(v) The details of tax collected at source furnished by an E-commerce operator under section 52 in Form GSTR-8 shall be made available to the supplier in Part D of FORM GSTR - 2A electronically through the Common Portal and such taxable person may include the same in FORM GSTR-2."

(vi) Section 52 (5) of CGST Act requires filing of Annual Statement by E-Commerce operator on or before 31st December following the year end (31st March of relevant year).

(vii) The amount of tax collected is reflected in Electronic Cash Ledger of supplier since related monthly return is filed by E-Commerce Operator.

(viii) Any mismatch between the data submitted by the E-Commerce operator in his monthly returns and that of suppliers making supplies through him shall cause due 'mismatch enquiry' from the proper officer; and either party may rectify the erroneous data. If rectification is not carried out by supplier his offence get confirmed. Short remittance, if any, identified thus will have to be paid by erring supplier (who under reported the turnover) with interest calculated as per Section 50.

(ix) Any authority, in the rank of Deputy Commissioner or above it can issue a notice – during, or before a proceeding under this Act - to E Commerce Operator seeking information on –

(a) supplies of goods or services or both effected through such operator during any period; or

(b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

This shall be a notice which need to be responded within 15 days from the date of receipt by the E Commerce Operator. Failure to submit the required details will cause penalty under Section 52 (14) of the Act which may extend to Rs. 25,000.

(x) UTGST Act 2017, subject to its own provisions, adopts the provisions in CGST Act in respect of Tax Collection at Source *mutatis mutandis* (Ref: Sec 21 of UTGST Act).

52.3 FAQ

Q1. Who are the 'persons' liable to make collection of tax under Section 52 of CGST/SGST Act?

Ans. E Commerce operator (as defined in Section 2 (45)) is the person to collect the tax on net value of taxable supply by him/her.

Q2. What is a Net Value of Taxable Supply for the purpose of TCS U/s 52 of the Act?

Ans. The expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the

operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

Q3. Which format of monthly return has to be filed by E Commerce Operator?

Ans. Tax collecting E Commerce operator shall use GSTR 8 return to make statement of outward supplies made through him in that particular month.

Draft Rules on Returns read as follows –

"The details of tax collected at source furnished by an e-commerce operator under section 52 in FORM GSTR-8 shall be made available to the concerned supplier* in Part D of FORM GSTR - 2A electronically through the Common Portal and such taxable person may include the same in FORM GSTR-2."

Q4. Whether an E Commerce operator collected tax should file any annual return? What is the format thereof?

Ans. Section 52 (5) of CGST/SGST Act requires filing of Annual Statement by E Commerce operator on or before 31st December following the year end (31st March of relevant year). However, Rule 21 of Draft Rules on Returns at present excludes explicitly the tax collecting parties under Section 52. Rule 21, ibid, reads as follows -

(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return as specified under sub-section (1) of section 44 electronically…

This contradiction, may be set right by law makers before making fine text of rules.

Q5. What is the penalty if an E Commerce operator failed to respond as required in a notice issued by Deputy Commissioner or an officer of higher rank?

Ans. Failure to submit the required details will cause penalty Under Section 52 (14) of the Act upto Rs. 25,000. *In addition to this*, penalty under section 122 of the Act 'shall' also be there (Rs. 10,000 or the amount of TCS involved, whichever is higher).

52.4 MCQ

Q1. Tax Collection at Source under Section 52 of CGST Law shall be at the rate of:

(a) 1%

(b) 2%

(c) 0.5%

(d) A percentage not exceeding 1%.

Ans. (d) A percentage not exceeding 1%

Q2. The amount of tax collected by the E Commerce Operator has to be paid to the credit of the appropriate Government within …… days after the end of the month in which such TCS is made:

(a) 5 days

(b) 10 days

(c) 15 days

(d) 20 days

Ans. (b) 10 days

Q3. E Commerce operators should file:

(a) Monthly returns only

(b) Annual return only

(c) Quarterly return only

(d) Monthly Returns as well as Annual Return

Ans. (d) Monthly Returns as well as Annual Return

Q4. A notice to E Commerce operators seeking information can be issued by:

(a) Superintendent

(b) Inspector

(c) Assistant Commissioner

(d) Deputy Commissioner

Ans. (d) Deputy Commissioner

Q5. E Commerce operator received notice which sought information as per Section 52 of the CGST Act but he failed to duly respond to the same. The penalty -

(a) Shall not be there

(b) Penalty U/s 52 shall be there

(c) Penalty U/s 122 may be there

(d) Both the penalty U/s 52 as well as 122 shall be there

Ans. (d) Both the penalty U/s 52 as well as 122 shall be there

Statutory provision

53. Transfer of input tax credit

53. On utilisation of input tax credit availed under this Act for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under sub-section (1) of section 39, the amount collected as central tax shall stand reduced by an amount equal to such credit so utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed

53.1 Introduction

This Section provides simple but important modus operandi in respect of post CGST/ SGST/UGTST utilisation towards IGST liability.

53.2 Analysis

U/s 49 (5) (b) (c) and (d) of the Act, SGST / CGST / UTGST credits can be utilised by a tax payer on priority basis to respective SGST / CGST / UTGST dues first. Then, in case of CGST, balance, if any, can be used pay towards IGST. If used so, there shall be reduction in central tax caused by Central Government and equal credit shall be ensured to IGST in the prescribed manner.

Such treatment shall be ensured by the Central Government for UTGST and SGST also in respective cases.

For better clarity, it may please be noted that equivalent provision is there vide Section 18 of Integrated Goods and Services Act 2017 –

53.3 FAQ

Q1. If CGST is utilised to pay towards dues of IGST how the Central Government shall ensure due credit to IGST?

Ans. There shall be reduction in CGST on such utilisation; the Central Government shall transfer equivalent amount to the credit of IGST account.

53.4 MCQ

Q1. Section 53 of CGST/SGST Act, 2017 provides for transfer of amount (equivalent to CGST credit utilised) by Central Government to:

(a) CGST A/c

(b) SGST A/c

(c) UTGST A/c

(d) IGST A/c

Ans. (d) IGST A/c

Chapter–XI
Refunds

Statutory provision

Refund of tax

(1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from relevant date in such form and manner as may be prescribed::

PROVIDED that a registered taxable person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions as per sub-section (6) of section 49 may claim such refund in return furnished under section 39 in such manner as may be prescribed.

(2) A specialized agency of United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner prescribed, before the expiry of sixth months from the last day of the quarter in which such supply was received

(3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilized input tax credit at the end of any tax period:

PROVIDED that no refund of unutilized input tax credit shall be allowed in cases other than zero rated supplies made without payment of tax or in cases where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies, other than nil rated or fully exempt supplies, except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

PROVIDED FURTHER that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.

PROVIDED ALSO that no refund of input tax credit shall be allowed if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies .

(4) The application shall be accompanied by—

(a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and

(b) such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and

interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:

PROVIDED that where the amount claimed as refund is less than two lac rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but, he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

(5) If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered person, other than such category of registered taxable persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis ninety percent of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.

(7) The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.

(8) Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to–

(a) refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;

(b) refund of unutilized input tax credit under sub-section (3);

(c) refund of tax paid on supply which is not Provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;

(d) refund of tax in pursuance of section 77;

(e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or

(f) the tax or interest borne by such other class of applicants as the Government may, on the recommendation of the Council, by notification, specify.

(9) Notwithstanding anything to the contrary contained in any judgment, decree, order or

direction of the Appellate Tribunal or any Court or in any other provision of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).

(10) Where any refund is due under the said sub-section(3) to a registered taxable person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority by the specified date, the proper officer may—

(a) withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;

(b) deduct from the refund due, any tax, interest penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under the Act or under the existing law.

Explanation- For the purposes of this sub-section the expression "specified date" shall mean the last date for filing an appeal under this Act.

(11) Where an order giving rise to a refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceeding on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.

(12) Where a refund is withheld under sub-section (11), the taxable person shall notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent, as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to Refund.

(13) Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27 shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.

(14) Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant if the amount is less than one thousand rupees.

Explanation. — For the purposes of this section -

1. "refund" includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as Provided under sub-section (3).

2. "relevant date" means –

(a) in the case of goods exported out of India where a refund of tax paid is

available in respect of the goods themselves or, as the case may be, the inputs or input services used in such goods, -

(i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or

(ii) if the goods are exported by land, the date on which such goods pass the frontier, or

(iii) if the goods are exported by post, the date of despatch of goods by Post Office concerned to a place outside India;

(b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;

(c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of -

(i) receipt of payment in convertible foreign exchange, where the supply of service had been completed prior to the receipt of such payment; or

(ii) issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice;

(d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of Appellate Authority, Appellate Tribunal or any Court, the date of communication of such judgment, decree, order or direction;

(e) in the case of refund of unutilized input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;

(f) in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof.

(g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and

(h) in any other case, the date of payment of tax.

54.1 Introduction

This section deals with the legal and procedural aspects of claiming refund by any person in respect of -

- any tax (which was excess paid);
- interest paid on such tax; or
- any other amount paid (which is not required to have been paid);
- input tax relating to goods and/or services that are exported out of India;

- tax on inputs or input services "used" in the goods and/or services exported out of India including zero rated supply;
- tax on the supply of goods regarded as deemed exports;
- unutilized input tax credit at the end of tax period in cases of:
  - exports, other than when
    - goods are subjected to export duty.
    - the supplier avails drawback of central tax or claims refund of integrated tax paid on such supplies.
  - input tax rate being higher than output tax rate, other than NIL rated or fully exempted.

This Section provides for conditions and procedures for claiming refund without specifying all the circumstances in which the refund will be eligible to an applicant.

Thus, it can be inferred that refund is possible only when tax, interest or any other amounts are physically paid in cash and in respect of exports / deemed exports in the form of input tax.

54.2 Analysis

(i) This provision states that the application for refund shall be made;
- before the expiry of two years from the relevant date;
- In such form and manner as may be prescribed;

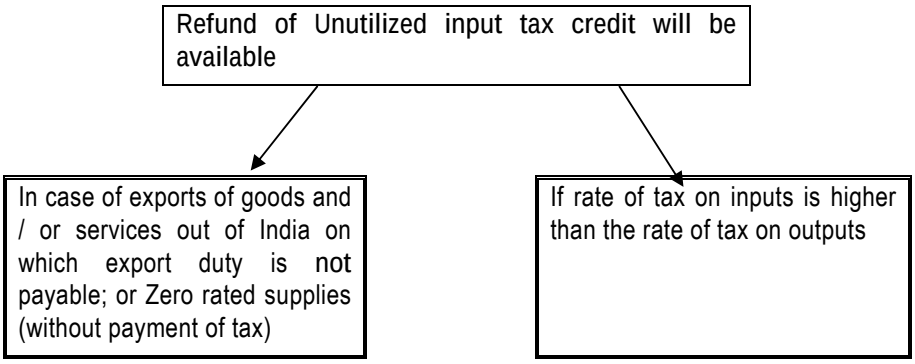
(ii) The time limit of two years will not apply where tax / interest / or any other amount has been paid under protest or otherwise.

(iii) In case of taxable person claiming refund of any balance in the electronic cash ledger, it can be claimed in the return furnished under section 39.

(iv) Following persons are entitled to a refund of tax paid by it on inward supplies of goods or services or both –
- (a) A specialized agency of the United Nations Organization or
- (b) Any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947,
- (c) Consulate or Embassy of foreign countries or
- (d) any other person or class of persons as notified under section 55.

(v) Such agencies may make an application for refund, in such specified form and manner as may be prescribed within six months from the end of the quarter in which such supply was received.

(vi) Refund of the unutilized input tax credit can be claimed at the end of any tax period in the following cases:



However, refund is also not eligible in the following cases:

(a) If the goods exported out of India are subjected to export duty; or

(b) If the goods supplied are exempted or nil rated;

(c) If supplier claims refund of output tax paid under IGST Act.

(d) If the supplier avails duty drawback or refund of IGST on such supplies.

In a business scenario, such a situation will not arise as once tax is paid on outward supply there will not be any balance left relating to such transaction in respect of which refund is possible.

(vii) The refund application has to be supported by prescribed documents evidencing facts that the refund is due to the applicant.

(viii) The applicant must submit documentary evidences [including invoice or any other similar tax paying document] to establish the fact that incidence of tax/interest/amount paid was not passed on by the claimant to any other person.

(ix) If the amount of refund claim is less than rupees 2 lakhs, a self-declaration based on the documentary and other evidences available with the claimant, certifying that he has not passed on the incidence of such tax and interest would suffice to claim refund.

(x) The refund relating to an application if found in order, will be sanctioned within sixty days from the date of receipt of application.

(xi) The refund will be sanctioned to the claimant, in the following cases –

- refund of tax paid on zero-rated supply of goods or services or both
- refund of tax on inputs or input services used in making zero-rated supply
- refund of unutilized input tax credit as indicated supra;
- the tax / interest / other amounts paid by the applicant, if he had not passed on the incidence of tax to any other person; or
- refund of tax paid on a supply which is not Provided, either wholly or partially, and for which invoice has not been issued or where a refund voucher has been issued

- refund of tax in pursuance of section 77 which means a registered person who has paid CGST/SGST/UTGST on a transaction considered by him as INTRA-STATE supply but held as INTER-STATE supply;
- the tax or interest borne by notified (by Central/State Government on the recommendation of the council) class of applicants;

(xii) In all cases other than the one listed above, where the application is found to be in order, the refund amount, shall be credited to Consumer Welfare Fund within 60 days of receipt of the application.

(xiii) In case of refund claim by persons other than notified registered person where refund is on account of export of goods and/or services, the proper officer may refund ninety percent of the total amount claimed (excluding input tax credit not yet finalized). This refund of 90% will be on a provisional basis, and will be subject to conditions, limitations and safeguards. Remaining ten percent may be refunded after due verification of documents furnished by the applicant.

(xiv) In case of claim of refund of accumulated input tax credit, the refund due will be either withheld or deducted in cases where –

- A person defaults in furnishing any return;
- A person is required to pay any tax, interest or penalty ordered, which is not stayed by Court or appellate Authority within the last date for filing an appeal under this act.

(xv) The deduction from refund due may be tax, interest, penalty, fee or any other amount which remains unpaid under GST Act or existing law. in cases where the refund is as a consequence of an order and such order is in –

- appeal; or
- further proceeding; or
- any other proceeding under this Act, and

If the Commissioner is of the opinion that grant of refund would affect the revenue adversely in the appeal or proceeding on account of malfeasance or fraud committed, the commissioner may withhold the refund till such time as it may be determined. This can be done only after affording the taxpayer an opportunity of being heard

(xvi) The amount of advance tax deposited by a casual taxable person or a non-resident taxable person at the time of taking registration would be refunded only after completion of entire period for which the certificate of registration granted and all the returns required to be furnished under section 39 are furnished.

(xvii) No refund shall be granted or paid to an applicant, if the amount is less than rupees one thousand.

Relevant date: The relevant date is crucial to determine the time within which the refund claim has to be filed. If the refund claim is made after the relevant date, the refund claim

would be rejected at the threshold and there is no provision in the Act to condone the delay in filing refund claim and accept delayed refund claims.

The relevant date is identified as follows:

- Refund of tax paid on goods exported itself or tax paid on inputs/input service
  - If exported by sea or air ->date when the ship or the aircraft leaves India; or
  - If exported by land ->date when such goods pass the Customs frontier; or
  - If exported by post ->date of dispatch of goods by concerned Post Office to a place outside India.
- Deemed exports supply of goods->the date on which the return relating to such deemed exports is furnished.
- Refund of tax paid on such services exported itself or tax paid on inputs/input service
  - If supply of service is completed prior to the receipt of payment–>date of receipt of payment in convertible foreign exchange;
  - If payment for the service received in advance prior to the date of issue of invoice –> date of issue invoice.
- Refund of tax as a consequence of judgment, decree, order or direction of Appellate authority, Appellate Tribunal or any Court -> date of communication of such judgement/decree/order/ direction.
- Refund of unutilized input tax credit accumulated due to exports including zero rated supplies - end of the financial year in which such claim for refund arises;
- Provisionally paid tax - the date of adjustment of tax after the final assessment.
- In the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
- In any other case, the date of payment of tax

Situation of Refund	2 years from the Relevant Date as under
On account of excess payment	Date of payment of tax
On account of Export of Goods	Date on which proper officer gives an order for export known as "LET EXPORT ORDER
On account of Export of Services	Date of BRC
On account of finalization of provisional assessment	Date of the finalization order

In pursuance of an appellate authority's order in favour of the taxpayer	Date of communication of the appellate authority's order
On account of no/less liability arising at the time of finalization of investigation proceedings	Date of communication of adjudication order or order relating to completion of investigation
On account of accumulated credit of GST in case of a liability to pay service tax in partial reverse charge cases	Date of providing of service

54.3 Comparative review

These provisions are broadly similar to the provisions contained in existing Central Indirect Tax law. However, they are restrictive when compared to the refund mechanism under present State Value Added Tax law. The GST Law provides refund of unutilised credit in certain specified circumstances where the State VAT Laws provide for refund of unutilised credit under any circumstances.

54.4 Related provisions

Section	Description	Remarks
Section 2(39)	Deemed Exports	Maybe from Foreign Trade Policy
Section33	Amount of tax to be indicated in tax invoice.	Invoice or other documents referred to in Section 30 has to be enclosed along with refund application.
Section57	Fund/Consumer Welfare Fund.	Where the claimant is unable to establish the fact that incidence of duty is not passed on, the amount of refund claimed will be credited to Consumer Welfare Fund.

54.5 FAQs

Q1. Whether there is any time limit to file refund claim?

Ans. Generally, Yes. The refund claim has to be filed within two years from the relevant date. However, if the tax or interest thereon or amount claimed as refund is paid under protest, the time limit is not applicable.

Q2. Whether there is any provision for condonation of delay in filing refund claim beyond two years from the relevant date (where tax/interest/amount is not paid under protest)?

Ans. No. There is no provision to condone the delay and the refund claim will be rejected at the threshold without getting into merits of the refund claim.

Q3. Whether there is any procedure to pay tax/interest/amount under protest?

Ans. There is no mechanism or procedure set out in the GST Act or. As per the practice prevailing under the present central indirect tax laws, a letter expressing the fact that the tax/interest/amount is being paid under protest setting out the reason may be sufficient to consider that the payment is made under protest.

Q4. What would be the time limit for sanctioning refund?

Ans. The refund has to be sanctioned within 60 days from the receipt of duly completed application containing all the prescribed information/documents.

Q5. What happens in case the incidence of duty/tax has been passed on by the person claiming the refund?

Ans. The refund claimed and eligible will be credited to Consumer Welfare Fund.

Q6. Is there a minimum amount specified below which no refund can be claimed?

Ans. Yes. The minimum amount of refund payable should be ₹ 1000/- or more.

Q7. Whether refund of unutilized credit at the end of tax period can be claimed by supplier who does not have any exports.

Ans. Yes. It is available in cases where the accumulation of credit is for the reason of tax rate on inputs being higher, than the rate of tax on outputs other than NIL rated or fully exempted.

MCQ

Q1. In case of refund claim on account of export of goods and/or services made by such category of registered taxable persons as may be notified in this behalf, what percent would be granted as refund on a provisional basis?

(a) 70%

(b) 65%

(c) 80%

(d) 90%

Ans. (d) 90%

Q2. What is the relevant date in case of refund on account of excess payment of GST due to mistake or inadvertence?

(a) Date of payment of GST

(b) Last day of the financial year

(c) Date of providing of service

(d) None of the above

Ans. (a) Date of payment of GST

Q3. Refund of accumulated input tax credit at the end of any tax period is eligible in cases of?

(a) Due to purchase of huge stocks

(b) Credit cannot be used for any reason.

(c) Due to Exports and input tax rate being higher than output tax rate

(d) Due to Exports only.

Ans. (c) Due to Exports and input tax rate being higher than output tax rate

Q4. Relevant date for computing time limit to claim refund in case of Deemed exports supply of goods is –

(a) Date of filing returns relating to such deemed exports;

(b) Date of goods leaving India;

(c) Date of payment of Tax;

(d) Date of receipt of consideration in Foreign Exchange;

Ans. (a) Date of filing returns relating to such deemed exports

Statutory Provision

55. Refund in certain cases

The Government may, on the recommendation of the Council, by notification, specify any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

55.1 Introduction

This section deals with refund of taxes paid on notified supplies of goods or services or both received by certain specified agencies notified by the Government on the recommendation of the Council.

55.2 Analysis

This section provides that –

(i) The Government, is vested with powers to notify certain agencies on the recommendation of the Council, to be entitled to claim refund.

(ii) The agencies that can be notified are –

(a) any specialized agency of the United Nations Organization or

(b) any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947,

(c) any other person or class of persons as may be specified.

(iii) In addition to the above, Consulate or Embassy of foreign countries would also be eligible for refund.

(iv) The agencies mentioned above would be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them. The refund claim is subject to such conditions and restrictions as may be prescribed,

55.3 Related provision

Section	Description
Section 54	Refunds

55.4 FAQs

1. Name the agencies that can be notified to be eligible to claim refund of taxes under Section 55 of the CGST Act?

   Any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947 and any other person or class of persons as may be specified in this behalf, are the agencies that can be notified.

2. What refund are the agencies specified above entitled to claim under this section?

   The agencies specified above are entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

55.5 MCQs

Q1. Who is empowered to notify the agencies that are entitled to claim refund under this section?

(a) Government

(b) Board

(c) GST Council

(d) None of the above

Ans. (a) Government

Statutory Provision

56. Interest on delayed refunds

If any tax ordered to be refunded under sub-section (5) of section 54 within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of an application under the said sub-section till the date of refund of such tax.

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation.- For the purpose of this section, Where any order of refund is made by an Appellate Authority, Tribunal or any Court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Tribunal or, as the case may be, by the Court shall be deemed to be an order passed under the said sub-section (5).

56.1 Introduction

This section provides for payment of interest on delayed refunds beyond the period of sixty days from the date of receipt of application to avoid delays in sanction or grant of refund.

56.2 Analysis

(i) The section provides that interest is payable if –

- Tax paid becomes refundable under section 54(5) to the applicant; and
- It is not refunded within 60 days from the date of receipt of application for refund of tax under Section 54(1)

(ii) Interest is liable to be paid from the due date for payment of refund till the date of sanction or grant of refund.

(iii) The interest rate not exceeding the rate specified in the Section will be notified by the Government on the recommendations of the Council.

Illustration:

A Ltd has filed a refund claim of excess tax paid with all the documents and records on 19.08.2017. The department sanctioned the refund on 30.11.2017. In such a case, interest has to be paid for the period from 19.10.2017 to 30.11.2017.

(iv) Explanation to section provides that in cases where the orders of Appellate Authority / Tribunal / Court sanctions refund in an appeal, against the order of refund sanctioning authority, the order of Appellate Authority / Tribunal / Court will be considered as orders passed by refund sanctioning authority. In other words, by virtue of such order, the refund has become due and the interest will then be computed form the date of completion of 60 days from the date of original refund claim made.

Illustration:

A Ltd has filed a refund claim of excess tax paid with all the documents and records on 19.08.2017. It was rejected by refund sanctioning authority. On Appeal the Appellate Authority passed the order for refund based on which the department sanctioned the refund on 30.09.2018. In such case, interest has to be paid for the period from 18.10.2017 to 30.09.2018.

56.3 Comparative analysis with the present regime

The refund provisions under the GST regime are in line with the refund provisions envisaged in the present regime under Central Excise law under section 11BB of the Central Excise Act, 1944.

56.4 Related provisions

Section/Rule/Form	Description	Remarks
Section 54	Refunds	Provision providing for refund of tax.

56.5 FAQ

Q1. Whether interest is payable on delayed sanction of refund of tax only?

Ans. Yes. The provision for payment of interest is only with respect to delayed payment of refund of tax only and not interest or any other amount sanctioned as refund.

Q2. What would be the rate of interest on delay of sanctioning refund?

Ans. The rate of interest not exceeding 6% or 9% as the case may be to be notified by Government as per the recommendation of the GST Council.

Q3. Whether interest is payable on delayed refund of unutilized input tax credit.

Ans. The provision only refers to refund claim under Section 48(1) relating to tax paid and not Section 54(3). Therefore, there is no provision for payment of interest on delayed refund of unutilized input tax credit.

56.6 MCQ

Q1. Interest U/s 56 is applicable on delayed payment of refunds issued under?

(a) Section 54

(b) Section 44

(c) Section 41

(d) Section 45

Ans. (b) Section 54

Q2. Interest U/s56 has to be paid for delayed refunds, if the refund is not granted within .....

(a) 90 days

(b) 3 months

(c) 60 days

(d) None of the above

Ans. (c) 60 days

Statutory Provision:

57. Consumer Welfare Fund

The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund,—

(*a*) the amount referred to in sub-section (*5*) of section 54;

(*b*) any income from investment of the amount credited to the Fund; and

(*c*) such other monies received by it,

in such manner as may be prescribed.

57.1 Introduction

If the applicant is unable to prove that the incidence was not actually passed onto any other person then the refund amount is credited to the Consumer Welfare fund.

The overall objective of the Consumer Welfare Fund is to provide financial assistance to promote and protect the welfare of the consumers and strengthen the consumer movement in the country.

57.2 Analysis

The following amounts will be credited to the Fund, in such manner as may be prescribed, -

- the amount of refund referred to in sub-section (5) or sub-section (6) of section 54; and
- any income earned from investment of the amount credited to the Fund and
- such other monies received by it from the Government.

57.3 Comparative Analysis with the present law

These provisions are broadly similar to the provisions contained in existing Central Indirect Tax laws.

57.4 Related provisions

Section	Description
Section 54	Provision for claiming refund of tax
Section 58	Provisions relating to the manner of utilization of the fund.

57.5 FAQs

Q1. Which are the amounts credited to Consumer Welfare Fund?

Ans. The following amounts will be credited to the Fund, in such manner as may be prescribed, -

- the amount of refund referred to under sub-section (5) or sub-section (6) of section 54; and
- any income earned from investment of the amount credited to the Fund and
- such other monies received.

57.6. MCQ

Q1. In cases where the application of refund is found to be in order, the refund amount shall be credited to …… Fund.

(a) Investor Protection and Education Fund

(b) Consumer Protection Fund

(c) Consumer Welfare Fund

(d) Refund Claim Fund

Ans. (c) Consumer Welfare Fund

Q2. The overall objective of the Consumer Welfare Fund is

(a) To facilitate a simplified refund mechanism.

(b) to promote and protect the welfare of the consumers and strengthen the consumer movement in the country.

(c) To boost the overall growth of the economy

(d) Both a and c

Ans. (b) to promote and protect the welfare of the consumers and strengthen the consumer movement in the country

Statutory Provision

58. Utilization of the Fund

(*1*) All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.

(*2*) The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

58.1 Introduction

The monies credited to the Consumer Welfare Fund are meant to provide financial assistance to promote and protect the welfare of the consumers and strengthen the consumer movement in the country.

58.2 Analysis

(i) It should be ensured that the monies credited to the fund shall be utilized to provide assistance to protect the welfare of consumers as per the rules made by the Government

(ii) The Government shall maintain proper and separate records in relation to the Fund in consultation with the Comptroller and Auditor-General of India.

58.3 Comparative review

These provisions are broadly similar to the existing provisions contained in Section 12D of the Central Excise Act, 1944.

58.4 Related provisions

Section	Description
Section 54	Provision for claiming refund of tax
Section 57	Provisions relating to the amounts to be credited to Consumer Welfare Fund.

58.5 FAQ

Q1. How can it be traced whether the amount in the fund is utilised for the welfare of the consumers?

Ans. The Government shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India. From these records, it can be ascertained if the amount in the fund were utilised for the welfare of the consumers.

58.6 MCQ

Q1. Proper and separate account and other relevant records in relation to the Fund in prescribed form in consultation with the Comptroller and Auditor-General of India shall be maintained by .....

(a) the Government

(b) the authority specified by the Government

(c) the assessee who is claiming refund

(d) (a) or (b)

Ans. (d) (a) or (b)

Chapter XII
Assessment

Statutory Provision

59. Self-assessment
Every registered taxable person shall himself assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39.

59.1 Introduction

In terms of Section 2(11) of the Act, *"assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgement assessment.*

The CGST Act contemplates several types of assessments as under:

- Self-assessment (Section 59)
- Provisional Assessment (Section 60)
- Summary Assessment in certain special cases (Section 64)

Additionally, the CGST Act also provides for determination of the tax liability by:

- Scrutiny of tax returns filed by registered taxable persons (Section 61)
- Assessment of registered taxable person who have failed to file the tax returns (Section 62)
- Assessment of unregistered persons (Section 63)

Section 59 refers to the assessment made by the taxable person himself while all other assessments are undertaken by tax authorities.

Provisional assessment under Section 60 is an Assessment undertaken at the instance of the assessee. It is later followed by a final assessment. Section 61 which deals with scrutiny of returns is basically a pre-assessment procedure for the purpose of determination of tax liability and passing of an order under Section 73 of the Act. Assessments under Sections 62 and 63 are assessments undertaken by tax authorities on the principles governing best judgment assessment. Assessment under Section 64 refers to a protective assessment based on information gathered from intelligence wing of the tax authorities in a particular case.

59.2 Analysis:

Self-assessment means an assessment by the tax payer himself and not an assessment by the Proper Officer. The GST regime continues to promote the scheme of self-assessment. Hence, every registered taxable person would be required to assess his tax dues in accordance with the provisions of GST Act and report the basis of calculation of tax dues to the tax administrations, by filing periodic tax returns.

Although the definition includes 'reassessment' there is no provision permitting 're-examination' of an assessment (of any kind) conducted earlier by the same or any other officer. This drafting anomaly is yet to be corrected. Power to reassess cannot be inherent in the power to assess (of any kind) permitted in the Act.

59.3 Comparison with equivalent provisions under other laws:

The principles of self-assessment are presently contained in Central Excise Law, Service Tax Law as well as VAT Laws.

Presently, Rule 6 of Central Excise Rules, provides that the assessee shall himself assess the duty payable on excisable goods (except in the case of cigarettes). As regards service tax, concept of self-assessment is envisaged in Section 70 of the Act which provides that every person liable to pay service tax shall himself assess the tax due on services Provided by him. State VAT laws also provide for filing of returns and payment of VAT on self-assessment basis [For instance, Section 20 of MVAT Act, 2002 or Section 38 of the Karnataka VAT Act, 2003]

59.4 Related provisions

Section / Rule / Form	Description
Section 39	Returns

59.5 FAQ

Q1. Who is the person responsible to make assessment of taxes payable under the Act?

Ans. Every registered taxable person shall himself assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39.

Statutory Provision

60. Provisional Assessment

(1) Subject to provision of sub-section (2),Where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

(2) The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.

(3) The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-Section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment.

PROVIDED that the period specified in this sub-Section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint/Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.

(4) The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under subsection (7) of section 39 or the rules made thereunder at the rate specified under sub-Section (1) of Section 50, or both from the first day after the due date of payment of tax in respect of the said supply of goods and/or services till the date of actual payment, whether such amount is paid before or after the issue of order for final assessment.

(5) Where the registered person is entitled to a refund consequent to the order for final assessment under sub-Section (3), subject to sub-Section (8) of Section 54, interest shall be paid on such refund as Provided in Section 56.

60.1 Analysis

A Provisional assessment can be resorted to in the following situations:

(i) Value of supply cannot be determined by the taxable person, viz, there is a difficulty in ascertaining:

- Transaction value to be adopted for determination of tax payable;
- Inclusion or exclusion of any amounts in the value of supply
- Existence of any circumstance causing failure of transaction value declared

(ii) Rate of tax applicable on the supply cannot be determined by the taxable person, viz there is difficulty in ascertaining:

- Classification of the goods and / or services under the relevant Schedule;
- Eligibility to any exemption notification or compliance with conditions associated with such exemption.

Except for the above instances i.e. the value or rate of tax applicable thereto the facility of provisional assessment is not available in any other instance. For example, there may be uncertainty about the kind of tax (IGST or CGST-SGST) applicable, time of supply, supplies to be treated as “supply of goods” or “supply of services”, etc. In these cases, no recourse is available to the taxable person to seek provisional assessment of tax.

Once it is determined that this section is applicable, then the following conditions are to be fulfilled:

- Taxable person must initiate a request to the Proper Officer in writing giving reasons (i.e. information for which self-assessment cannot be done by him) to be permitted to pay tax on provisional basis;

— Proper Officer is to pass an order within 90 days of receipt of request allowing payment of taxes on provisional basis subject to execution of bond by the registered person with surety or security for any differential tax that may be eventually assessed.

Thus, provisional assessment can be made only upon a written request made by the registered person in FORM GST ASMT-01 electronically through common portal, along with the documents in support of his request. The provisional assessment cannot be resorted to by the Proper Officer on *suo-motu* basis.

The proper officer may, issue a notice in FORM GST ASMT-02 wherein it requires the registered person seeking provisional assessment to appear in person or furnish additional information or documents in support of his request. The applicant has to file a reply to the notice in FORM GST ASMT – 03.

After considering the reply filed, the proper officer has to pass an order in FORM GST ASMT-04, either rejecting the application, stating the grounds for such rejection or allowing payment of tax on provisional basis.

Such order should indicate the value or the rate or both on the basis of which the provisional assessment is to be made.

The order so passed should also indicate the amount for which bond has to be executed by the taxable person for payment of the difference between the amount of tax (IGST, CGST, SGST as well as UTGST), as may be finally assessed, and the amount of tax provisionally assessed. Further the said order would also intimate the quantum of security to be furnished which shall not exceed 25% of the bond amount.

On such order by the proper officer, the registered person has to execute a bond in FORM GST ASMT-05 along with a security in the form of a bank guarantee as ordered. A bond furnished to the proper officer under the *Central/State* Goods and Services Tax Act or Integrated Goods and Services Tax Act or Union Territory Goods and Services Tax Act and cess, if any shall be deemed to be a bond furnished under the provisions of this Act and the rules thereunder.

Under the GST Act, a Proper Officer shall be required to finalise the assessment and pass the final assessment order. For this purpose, the proper officer shall issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment. After that the proper officer would issue a final assessment order in FORM GST ASMT-07, specifying the amount payable by the registered person or the amount refundable, if any.

The finalisation of assessment has to be completed, within a period of 6 months from the date of communication of provisional assessment order However, on sufficient cause being shown and for reasons to be recorded in writing, this period can be extended by Joint / Additional Commissioner or by the Commissioner for such further period as mentioned below:

Additional / Joint Commissioner	Maximum of 6 months
Commissioner	Maximum of 4 years

It may be noted that, in the statement of outward supply to be furnished by a registered person under section 37(1) i.e. in Form GSTR-1, the invoices in respect of which tax is paid under provisional assessment is required to be mentioned.

If the amount of tax determined to be payable under final assessment order, is more than tax which is already paid along with return under section 39, the registered person shall be liable to pay interest on the shortfall, at the rates specified in Section 50(1) of the Act, from the first day after due date of payment of tax in respect of the said goods and /or services, till the date of actual payment, irrespective of whether such shortfall is paid before or after the issuance of order for final assessment. Likewise, when the registered person is entitled to refund consequent upon the order for final assessment, interest shall be paid on such refund at the rates specified in Section 56. As such, the registered person must avail this opportunity of provisional assessment after much thought and careful consideration.

Any claim for refund of taxes paid in excess under this Section must be in accordance with Section 54 and except for authorizing refund, this Section does not itself permit grant of refund.

On issue of provisional assessment order, the applicant may file an application in FORM GST ASMT- 08 for release of security furnished after issue of order. On such application, the the proper officer has to release the security furnished, after ensuring the payment of the amount specified in the order and issue an order in FORM GST ASMT–09. This has to be issued within a period of 7 working days from the date of receipt of the application for release of security.

60.2 Comparison with equivalent provisions under other laws:

Section 60 of the CGST Act, is broadly drafted on the lines of the current provisions of Central Excise and Service Tax law. A provisional assessment is permitted under Central Excise Act & also under the Finance Act 1994, and is governed by the procedure contained in Rule 7 of the Central Excise Rules or as the case may be, Rule 6(4)/(4A)/(4B)/(5) of Service Tax Rules. Under both these Acts, provisional Assessment is carried out only at the instance of the assessee.

Under the State VAT Acts, the concept of provisional assessment “at the instance of assessee”, is not prevalent. Some State Acts have used this term to cover the cases of best-judgment assessment done by the tax authorities, in the absence of returns or records. For example, refer Section 32 of Gujarat Value Added Tax Act or Section 40 of the Orissa Value Added Tax Act.

60.3 Related Provisions:

Section / Rule / Form	Description
Section 50	Interest
Section 54	Refunds

60.4 FAQ

Q1. When is a taxable person permitted to pay tax on a provisional basis?

Ans. Tax payments can be made on a provisional basis only when a proper officer passes an order for permitting the same. For this purpose, the registered person has to make a written request to the proper officer, giving reasons for payment of tax on a provisional basis. The reasons for this purpose may be a case where the registered person is unable to determine the value of goods and/ or services or determine the applicable tax rate, etc. Further, the registered person may also be required to execute a bond in the prescribed form, and with such surety or security as the proper officer may deem fit.

Q2. What is the latest time by which final assessment is required to be made?

Ans. It is the responsibility of the proper officer to pass the final assessment order after taking into account such information as may be required for finalizing the assessment, within six months from the date of the communication of the order for provisional assessment. However, on sufficient cause being shown and for reasons to be recorded in writing, the timelines may be extended by the Joint/Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding 4 years as he may deem fit.

60.5 MCQs

Q1. Where the tax liability as per the final assessment is higher than tax paid at the time of filing of return u/s 39 the registered person shall_____.

(a) not be liable to interest, Provided he proves that his actions were bonafide

(b) be liable to pay interest from due date till the date of actual payment

(c) be liable to pay interest from date of the final assessment till the date of actual payment

(d) be liable to pay interest from due date till the date of the final assessment

Ans. (b) be liable to pay interest from due date till the date of actual payment

Q2. Provisional assessment under the GST law is permitted to be:

(a) At the instance of the taxable person

(b) At the instance of the tax authorities on a best judgment basis in absence of adequate details or response from registered person

(c) Either of (a) and (b)

(d) Available only to certain notified persons

Ans. (a) At the instance of the taxable person

Q3. On the grounds of sufficient reasons being Provided by proper officer the time period for passing final assessment order can be extended by Joint/ Additional Commissioner for further period of not exceeding

(a) 2 months

(b) 4 months

(c) 6 months

(d) No time limit.

Ans. (c) 6 months

Q4. On the grounds of sufficient reasons being Provided by proper officer the time period for passing final assessment order can be extended by Commissioner for further period of

(a) 2 months

(b) 4 years

(c) 6 months

(d) No time limit.

Ans. (b) 4 years

Statutory Provision

61 Scrutiny of Returns

(1) The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any in such manner as may be prescribed and seek explanation thereto.

(2) In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.

(3) In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the taxable person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under Section 65, 66 or Section 67, or proceed to determine the tax and other dues under sub-Section (7) of Section 73 or Section 74.

61.1 Analysis

Section 61 deals with a discretionary power to a Proper Officer to scrutinize returns filed by registered persons to verify the correctness of the return.. It is a pre-adjudication process. The process of adjudication is Provided in Sections 73 to 75 of the Act. During such scrutiny, discrepancies if any noticed has to be communicated vide notice to the registered person in FORM GST ASMT-10, and also seeking his explanation within such time set out in the notice, not exceeding 15 days from the date of service of the notice. The notice should also contain the details as to the quantified amount of tax, interest and any other amount payable in relation to such discrepancy. This Section also authorizes registered person to receive and respond in FORM GST ASMT-11 wherein either the explanations called for by the proper

officer is furnished or in case where the discrepancy is accepted, pay the tax, interest and any other amount and inform the same in that.

Where the explanations offered are satisfactory, this fact shall be informed to the registered person and no further action is to be taken in this regard.

In case, satisfactory explanation is not obtained within 30 days of being informed or such further period as permitted by proper officer or after accepting discrepancies, registered person fails to take corrective measures, in his return for the month in which the discrepancy is accepted by him, the proper officer, may, take recourse after issuance of notice to any of the following provisions:

- Conduct audit at the place of business of registered person in a manner Provided in Section 65 of the Act; or
- Direct such registered person by notice in writing to get his records including books of accounts examined and audited by a Chartered Accountant or Cost Accountant under Section 66 of the Act; or
- Undertake procedures of inspection, search and seizure under Section 67 of the Act
- And proceed to determine dues under sections 73 & 74 of the CGST Act.

The first stage in return scrutiny denotes a prima facie scrutiny, in order to ascertain whether the information furnished by the assessee in returns is prima facie valid and not inadequate or internally inconsistent. The second stage appears to be a detailed assessment calling for records and determination of tax liability under sections 73 to 75.

In doing so, the proper officer is also entitled to exercise his power under section 67 of the Act, which deals with power of inspection, search and seizure.

From the language employed in section 67, it appears that, these powers are required to be exercised not in routine manner but only under circumstances when there is reasonable belief regarding probable suppression or intention to evade tax.

It's important to note that, section 61(3) empathetically provides that, in case the explanation given by the tax payer in response to discrepancies informed by the proper officer, is found acceptable, the registered person shall be informed accordingly in FORM GST ASMT-12 and no further action shall be taken in this regard.

61.2 Comparison with equivalent provisions in other laws

The provisions as to scrutiny of returns are presently also contained in Service Tax / Central Excise and State VAT laws. For example, Rule 12 of Central Excise Rules. Rule 12(3) provides that, the 'Proper Officer' may on the basis of information contained in the return filed by the assessee under rule 12(1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board. CBEC has issued guidelines for detailed scrutiny of Central Excise Returns vide Circular No. 1004/11/2015-CX, dated 21-7-2015.

61.3 Related Provisions

Section / Rule / Form	Description
Section 65	Audit by tax authorities
Section 73 &74	Determination of tax not paid, short paid, erroneously refunded
Section 67	Power of inspection, search and seizure

61.4 FAQ

Q1. Describe the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy in the return.

Ans. In case, satisfactory explanation is not obtained or after accepting discrepancies, registered person fails to take corrective measures, in his return for the month in which the discrepancy is accepted by him, the Proper Officer may take recourse to any of the following provisions:

(a) Conduct audit at the place of business of registered person in a manner Provided in Section 65 of the Act, or;

(b) Direct such registered person by notice in writing to provide his records including audited books of account examined and audited by a Chartered Accountant or Cost Accountant under Section 66 of the Act or

(c) Undertake procedures of inspection, search and seizure under Section 67 of the Act; and

(d) Issue notice under Sections 73 to 75 of the Act.

Q2. What does Section 61 deal with?

Ans. Section 61 deals with scrutiny of returns filed by registered persons to verify the correctness of such returns.

Q3. What is the proper officer required to do, if the information obtained from assessee u/s 61is found satisfactory?

Ans. In case the explanation is found acceptable, the registered person shall be informed accordingly in Form GST ASMT-12 and no further action shall be taken in this regard.

61.5 MCQ

Q1. Where the tax authorities notice a discrepancy in the details during the scrutiny of returns, the registered person:

(a) would be liable for interest if he is unable to prove that the discrepancy did not arise on his account and it was a fault of another person

(b) is required to provide satisfactory/ acceptable explanation for the same within 30 days or any extended timelines as may be permitted

(c) must prepare documents to cover up the discrepancy.

(d) Both (a) and (b)

Ans. (b) is required to provide satisfactory/ acceptable explanation for the same within 30 days or any extended timelines as may be permitted

Q2. If the information obtained from taxable person is not found satisfactory by the proper officer, he can pass assessment order u/s 61 raising demand of disputed tax demand.

(a) True

(b) False

Ans. (b) False

Q3. What is the time limit after which action under section 61 cannot be taken?

(a) 30 days from filing of return or such further period as may be decided by proper officer.

(b) No time Limit

(c) Time limit mentioned in Section 73 or 75 of the Act.

Ans. (c) Time limit mentioned in Section 73 or 75 of the Act.

Q.4 What's the time limit, within which the registered person should take corrective measures after accepting the discrepancies communicated to him by proper officer?

(a) reasonable time

(b) 30 days from the date of communication of discrepancy.

(c) 30 days from date of acceptance of the discrepancy

(d) date of filing of return for the month in which the discrepancy is accepted

Ans: (d) date of filing of return for the month in which the discrepancy is accepted.

Statutory Provision

62. Assessment of non-filers of returns

(1) Notwithstanding anything to the contrary contained in section 73 or section 74,where a registered taxable person fails to furnish the return required under Section 39 or Section 45, even after the service of a notice under Section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within the period of five years limit from the date specified of Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

(2) Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-Section (1), the said assessment order shall be deemed to have been withdrawn. But the liability for payment of interest under sub-section (1) of section 50 or for the payment of late fee under section 47 shall continue..

62.1 Introduction

Section 62 of the Act can be invoked only in case of registered taxable persons who have

failed to file returns, as required, under Section 39 or as the case may be, or final return on cancellation of registration under Section 45 of the Act. Issuing notice under section 46 appears to be a pre-condition for initiating proceedings under Section 62 of the Act.

62.2 Analysis of Provisions

Non-compliance with the notice under Section 46 paves the way for intimating the proceedings under this section. If the assessee fails to furnish the return, the Proper Officer may after serving him notice under section 46 proceed to assess the tax liability to the best of his judgment, taking into account all the relevant material available on record, and issue an assessment order. This is also known as 'best judgment assessment'. It can be completed without giving notice of hearing to the assessee.

It may be noted that a return filed under Section 39 can be revised not later than the due date of furnishing of return for the month of September following the end of the financial year or actual date of filing annual return under Section 44, whichever is earlier.

Therefore, issuance of notice under Section 46 is a necessity for commencing proceedings under Section 62. Non-issuance of notice under Section 46 closes the door on invoking Section 62 although other provisions are available to recover the tax dues.

If, however, a registered person furnishes a 'valid return' within 30 days of the service of assessment order, the said assessment order shall be deemed to be withdrawn. 'Valid return' is defined in per Section 2(117) to mean a return filed under Section 39(1) of the Act on which self-assessed tax has been paid in full. In order to avail the facility of withdrawal of the assessment order passed, filing of a valid return is required, including payment of taxes declared therein.

Time limit of 5 years (extended period for cases covered under Section73), is also applicable for issuing order under section 62.

Consequence of late fee under Section 47 and interest under Section 50 will both be applicable in cases of conclusion of best judgement assessment made under this Section.

An order passed under this section shall be communicated to the registered person in FORM GST ASMT 13

62.3 Comparison with equivalent provisions in other laws

It appears that Section 62 of the CGST Act is incorporated predominantly on the basis of provisions contained in the present State VAT Acts.

At present, Section 72 of the Finance Act, 1994 provides for assessment of persons liable to pay service tax, but who has failed to furnish return under Section 70. However, procedure contained in Section 72 requires that every such person shall be given a reasonable opportunity of being heard before the order is passed.

62.4 Related Provisions

Section / Rule / Form	Description
Section 2(117)	Valid return

Section 39	Returns
Section 45	Final return
Section 46	Notice to return defaulters
Section 47	Late fee
Section 50	Interest

62.5 FAQ's

Q1. Whether Proper Officer is required to give any notice to taxable person before completing assessment u/s 62?

Ans. The assessment u/s 62 can be initiated only after the service of notice under section 46 i.e. Notice to return defaulters.

Q2. If a registered person files a return after receipt of notice u/s 46 but fails to make the payment disclosed by him in the return, can assessment order u/s 62 be passed in this case?

Ans. An assessment order u/s 62 is deemed to have been withdrawn if the registered person furnishes a valid return (including payment of taxes).

62.6 MCQ's

Q1. What is the time limit for issuing order under section 62?

(a) 15 days from the date of service of notice

(b) 30 days from the date of service of the assessment order

(c) Yet to be prescribed

(d) None of the above

Ans. (d) None of the above.

Q2. The proper officer can complete assessment under section 62 without issuing any notice to the registered taxable person before passing assessment order.

(a) True

(b) False

Ans. (b) False

Q3. What is the time limit for issuing order under section 62?

(a) 9 months from the end of financial year.

(b) 3 years for cases covered U/s 73 or 5 years for cases covered under 74

(c) 5 years for cases covered U/s 73 or 3 years for cases covered under 74

(d) 5 years from the due date of filing annual return.

Ans. (d) 5 years from the due date of filing annual return

Q4. The assessment order u/s 62 shall be deemed to be cancelled if:

(a) Where the registered person furnishes a valid return within 30 days of the service of the assessment order.

(b) Where the registered person within 90 days of the service of the assessment order.

(c) Assessment order under section 46 cannot be cancelled.

(d) Where assessee intimates to the Proper Officer that he has filed the valid return.

Ans. (a) Where the registered person furnishes a valid return within 30 days of the service of the assessment order.

Q5. After serving of notice u/s 46,the proper officer is not required to give notice of hearing to the registered tax person before passing assessment order.

(a) True

(b) False

Ans. (a) True.

Statutory Provision

63. Assessment of unregistered persons

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so, or whose registration has been cancelled under sub section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard

63.1 Introduction

This Section is applicable to unregistered persons i.e., persons who are liable to obtain registration under Section 22 and have failed to obtain registration will come within scope of operation of this Section. This provision also covers the cases whose registration was cancelled as per section 29 (2) claiming of the GST Act. Section 29(2) of the Act covers 5 instances as follows:

(a) A person who contravenes the provisions of this Act or Rules made thereunder;

(b) A composition person who fails to furnish returns for 3 consecutive tax periods.

(c) A person other than composition person who fails to furnish returns for 6 consecutive months.

(d) A person who has sought voluntary registration but has failed to commence business within 6 months.

(e) Where registration has been obtained by way of fraud, willful misstatement or suppression of facts.

63.2 Analysis

This Section is applicable to unregistered taxable persons. In such cases, the proper officer is required to give a reasonable opportunity of being heard to such persons before proceeding to assess such person. The section begins with the phrase "Notwithstanding anything to the contrary contained in section 73 or section 74". It therefore appears that, assessment under section 63 can be completed independent of section 73 and Section 74, however, procedures contained in section 73 or 74 to the extent they are not inconsistent with section 63 need to be followed, while completing the assessment on principles governing best judgment assessment. Even though no return would have actually been filed in such cases, the authority to pass such assessment order is extinguished on the expiry of 5 years from due date applicable for filing annual return for the year to which tax not paid relates.

For assessment under this section, notice has to be issued in FORM GST ASMT-14 by the proper officer. The notice would contain the grounds on which the assessment is proposed to be made on best judgment basis. The registered person is allowed a time of 15 days to furnish his reply, if any. After considering the said explanation, the order has to be passed in FORM GST ASMT- 15.

63.3 Comparison with equivalent provisions in other laws:

Section 23(4) of the MVAT Act contains similar provision as that in Section 63 of the GST Act.

63.4 Related Provisions

Section	Description
Section 22	Registration
Section 73 & 74	Determination of tax not paid, short paid, erroneously refunded

63.5 FAQs

Q1. What is the time limit for passing order u/s 63?

Ans. The proper officer has to pass an assessment order u/s 63 within a period of five years from the due date for filing the annual return for the year to which such tax unpaid relates to.

Q2. Can an assessment order be passed without affording an opportunity of being heard to the person liable to be registered?

Ans. No, an assessment order cannot be passed without giving him an opportunity of being heard.

63.7 MCQs

Q1. What is the time limit for passing order u/s 63?

(a) 5 years from the date due date for filing of the annual return for the year to which tax not paid relates.

(b) 5 years from the end of financial year in which tax not paid relates to

(c) No time limit

Ans. (a) 5 years from the date due date for filing of the annual return for the year to which tax not paid relates

Q2. No Notice is required to be given before passing assessment order under section 63?

(a) True

(b) False

Ans. (b) False

Q3. Section 63 deals with

(a) Assessment of taxable persons who have failed to file the returns.

(b) Assessment of registered taxable person who have filed returns as per the law.

(c) Assessment of unregistered taxable persons

(d) Assessment of any taxable person, whether registered or unregistered.

Ans. (c) Assessment of unregistered taxable persons

Statutory Provision

64. Summary assessment in certain special cases

(1) The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional/Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so will adversely affect the interest of revenue:

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax and any other amount due under this section.

(2) On any application made by the taxable person within thirty days from the date of receipt of order passed under sub-Section (1) or on his own motion, if the Additional/Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in Section 73 or section 74.

64.1 Analysis

The word "summary assessment" is generally used in a tax legislation to denote 'fast track assessment' based on return filed by the assessee. It allows the Tax Officer to make prima facie adjustments based on errors or factors based on the available information without an

occasion for calling for further information from an assessee or inspecting his records. In the GST Act, it is used to denote those assessments which are completed ex-parte and on priority basis when there is reason to believe that there will be loss of tax revenue, if such assessment is delayed. This provision is only the first step in invoking the machinery Provided to enforce recovery of dues from potential defaulters, and this requires an assessment of the tax liability. Such amounts are also colloquially known in the common word as protective assessments which is in a sense protects Government revenue. This section pre supposes the fact that the proper officer be in possession of sufficient grounds to believe that any delay will adversely affect revenue.

The summary assessment can be undertaken in case all of the following conditions are satisfied:

- The Proper Officer must have evidence that there may be a tax liability.
- The Proper Officer has obtained prior permission of Additional / Joint Commissioner to assess the tax liability summarily. The proper officer must have sufficient ground to believe that any delay in passing assessment order would result in loss of revenue.

Summary assessment under this Section of the CGST Act can therefore be construed in some sense as a 'protective assessment' carried out in special circumstances, where there are sufficient grounds to believe that taxable person will fail to make payment of any tax, penalty or interest, if the assessment is not completed immediately. Such failure to pay tax, penalty or interest must be due to reasons attributable to the tax payer (ex: insolvency, instances of defaulting, absconding etc). Hence, summary assessment under this Section is not a substitute for assessment getting time barred. Further, mere possibility of non-payment cannot be a grounds for resorting to summary assessment, unless there are factors indicating that such non-payment pertains to admitted or undisputed tax liability. However, it is important to note that upon grant of permission by the Additional / Joint Commissioner, it appears that the evidence available with the Proper Officer or his apprehension of possible loss of revenue, cannot be called into question. The summary assessment order should be in FORM GST ASMT-16.

The section allows the person who is assessed and is served the order so passed, to come forward and make an application in FORM GST ASMT–17 to the Additional / Joint Commissioner, which will then be examined and if the Additional/ Joint Commissioner is satisfied, the summary assessment order will be withdrawn. As regards the contents of this application, it may be understood that the applicant may attempt to challenge the facts or reasons for the belief about risk of revenue loss and further accept to be available to respond, if proceedings under Section 73/74 were to be undertaken. Besides, the Additional / Joint Commissioner may, on his own motion, withdraw such order and follow the procedure laid down in Section 73 or as the case may be Section 74 for determination of taxes not paid or short paid or erroneously refunded, if he considers that such order is erroneous.

From the above, it appears that every summary assessment order so withdrawn under sub-Section (2), must be followed by a notice under Section 73 or as the case may be 74.

On receipt of application the proper officer has to pass the order of withdrawal or, rejection of the application in FORM GST ASMT-18.

Many times, summary assessments are undertaken in circumstances, when a taxable person to whom liability pertains is not ascertainable. In such cases, the law provides that, if the liability pertains to supply of goods, then person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax and amount due on completion of summary assessment. There is no deeming provision when unpaid tax liability relates to supply of services.

64.2 Related Provisions

Section / Rule / Form	Description
Section 73 &74	Determination of tax not paid, short paid, erroneously refunded

64.3 FAQ

Q1. When can Summary Assessment be initiated?

Ans. Summary Assessments can be initiated by a proper officer on seeking permission from the Additional Commissioner / Joint Commissioner and proving that the taxable person is liable to pay tax

64.4 MCQ

Q1. What is the time period within which a person can apply to the Additional/ Joint Commissioner for withdrawal of such order under this Section?

(a) 30 days

(b) 45 days

(c) 60 days

(d) No time limit.

Ans. (a) 30 days

Chapter–XIII
Audit

Statutory provision

65. Audit by tax authorities

(1) The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.

(2) The officers referred to in sub-Section (1) may conduct audit at the place of business of the registered person and/or in their office.

(3) The registered person shall be informed, by way of a notice, not less than fifteen working days, prior to the conduct of audit in such manner as may be prescribed.

(4) The audit under sub-Section (1) shall be completed within a period of three months from the date of commencement of audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation.- For the purposes of this sub-Section, 'commencement of audit' shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

(5) During the course of audit, the authorised officer may require the registered person,

(i) to afford him the necessary facility to verify the books of account or other documents as he may require,

(ii) to furnish such information as he may require and render assistance for timely completion of audit.

(6) On conclusion of audit, the proper officer shall within thirty days, inform the registered person, whose records are audited, about the findings, his rights and obligations and the reasons for the findings.

(7) Where the audit conducted under sub-Section (1) results in detection of tax not paid or such short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under Section 73 or 74.

65.1 Introduction

(a) Audit of records of tax payers is the bed rock for the proper functioning of a self-assessment based tax system. This provision provides for audit of the business

transactions of any registered person. It is an important tool in the tax administration to ensure compliance of law and prevent revenue leakage.

65.2 Analysis

(a) Section 65 authorizes conduct of audit by the proper officer or the Commissioner of the transactions of the registered persons only. The Commissioner may issue a general order or a specific order, to authorize officers to conduct such audit. As per the draft Assessment and Audit Rules, the period of audit under sub-section (1) of Section 65 shall be a financial year or multiples thereof. The frequency and manner for conducting such audit are yet to be prescribed. It is important to note that the said order of Commissioner must be specific to the auditee and the tax period selected for audit. Absence, error and deficiency in such orders aborts any preparatory step taken by the audit officer and preparation to respond taken by the auditee.

(b) The audit will be conducted at the place of business of the registered person or office of tax authorities. Intimation of audit is to be issued to the taxable person at least 15 days in advance in Form GST ADT-01 and the audit is to be completed within 3 months from the date of commencement of audit, which may be extended by the Commissioner, where required, by a further period not exceeding 6 months.

The Commissioner needs to record reasons in writing for grant of any such extension.

(c) During the course of audit, the authorized officer may require the registered person to afford him the necessary facility to verify the books of account and also to furnish the required information and render assistance for timely completion of the audit. As per the draft Assessment and Audit Rules, the proper officer shall verify the documents on the basis of which the accounts are maintained and the periodical returns/statements are furnished.

(d) The proper officer while conducting the audit is authorized to:

a. Verify books & records

b. Returns & statements

c. Correctness of turnover, exemptions & deductions

d. Rate of tax applicable in respect of supply of goods and/or services

e. The input tax credit claimed/availed/unutilized and refund claimed.

(e) The provisions of section 65(5) casts an obligation on the registered person to afford necessary facility for verification of books and records, render assistance for timely completion of audit and furnish information and statements.

(f) Some of the best practices to be adopted for GST audit among others could be:

The evaluation of the internal control viz a viz GST would indicate the area to be focused. This could be done by verifying:

(a) The Statutory Audit report which has specific disclosure needs in regard to maintenance of record, stock and fixed assets.

(b) The Information System Audit report and the internal audit report.

(c) Internal Control questionnaire designed for GST compliance.

(ii) The use of generalised audit software to aid the GST audit would ensure modern practice of risk based audit are adopted.

(iii) The reconciliation of the books of account or reports from the ERP's to the return is imperative.

(iv) The review of the gross trial balance for detecting any incomes being set off with expenses.

(v) Review of purchases/expenses to examine applicability of reverse charge applicable to goods/services. The foreign exchange outgo reconciliation would also be necessary for identifying the liability of import of services.

(vi) Quantitative reconciliation of stock transfer within the State or for supplies to job workers under exemption.

(vii) Ratio analysis could provide vital clues on areas of non-compliance.

(g) On audit completion, information is required to be Provided to the registered person including the findings during the audit in FORM GST ADT-02 within thirty days of conclusion of the audit. In cases where tax liability is identified during the audit or input tax credit wrongly availed or utilized by the auditee, the procedure laid down under Section 73 or 74 is to be followed. Audit cannot conclude automatically resulting in a demand. Independent application of mind is necessary for a valid demand to be raised.

65.3 Comparative Review

1. The Central Excise law empowers the Central Government to make provision for verification of records of assessee. However, the GST Act itself specifically provides for audit of the registered person. In EA 2000, the Director General of Audit supervises the audit functions. Separate Audit Commissionerate have been constituted with effect from 15.10.2014 which will plan, delegate and administer the audit. The audit of the assessee is carried out through visits by 'audit groups' which consist of Superintendents and Inspectors.

2. The audit groups shall prepare the assessee master file, collect the relevant information and documents. Desk review shall be done before forming the audit plan. As planned, audit will be conducted and corrections and improvements shall be suggested to the assessee.

3. The draft audit report would be discussed and communicated to the assessee and with the details of spot recoveries and willingness of the assessee to accept the demand etc. the same shall be placed before monitoring committee. If the assessee does not accept the audit para, adjudication process will be initiated by the Jurisdictional GST Officer.

65.4 Related Provisions

Section	Description
Section 73	Determination of tax not paid, short paid, erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts
Section 67	Determination of tax not paid, short paid, erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts

65.5 FAQ

Q1. Whether audit is mandatory in case of every registered person?

Ans. No, it is not mandatory. It will be applicable only in cases where the appropriate authorities authorize the same by issue of general / specific orders.

Q2. Whether any prior intimation is required before conducting the audit?

Ans. Yes, prior intimation is required and the taxable person should be informed at least 15 days prior to conduct of audit in FORM GST ADT-01.

Q3. What is the period within which the audit is to be completed?

Ans. The audit is required to be completed within 3 months from the date of commencement of audit or within the extended period of 6 months in cases where the Commissioner is satisfied for reasons to be recorded in writing that the audit cannot be completed in 3 months.

Q4. What is meant by commencement of audit?

Ans. It means the date on which the records and documents requisitioned by the tax authorities are made available by the registered person or the actual institution of audit at the place of business whichever is later

Q5. What are the obligations of the taxable person when he receives the notice of audit?

Ans. The taxable person should afford necessary facility / information / assistance / documents for smooth conduct of audit and its timely completion.

Q6. What would be the action by the proper officer upon conclusion of the audit?

Ans. The proper office must within 30 days inform the registered person (i.e. the auditee) about his findings, reasons for findings and his rights and obligations in respect of such findings.

65.6 Case Study 1:

A notice for audit was served to M/s. ABC Ltd, on 20.02.2020. Required information was given by M/s. ABC Ltd, on 25.05.2020. The audit officers visited the place of business on 26.06.2020. What is the last date within which the audit is to be completed?

It will be 3 months from 25.05.2020, viz., 24.08.2020 or within an extended period of 6 months. The extended period would be 24.02.2021.

Statutory provision

66. Special Audit

(1) If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner having regard to the nature and complexity of the case and interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such taxable person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

(2) The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:

Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.

(3) The provision of sub-Section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provision of this Act or any other law for the time being in force.

(4) The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-Section (1) which is proposed to be used in any proceedings under this Act or rules made thereunder.

(5) The expenses of the examination and audit of records under sub-Section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.

(6) Where the special audit conducted under sub-Section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under Section 73 or 74.

66.1 Introduction

(a) Availing the services of experts is an age old practice of due process of law. These experts have done yeoman service to the process of delivering justice. One such facility extended by the Act is in Section 66 where an officer not below the rank of Assistant Commissioner, duly approved, may avail the services of a Chartered Accountant or Cost Accountant to conduct a detailed examination of specific areas of operations of a registered person.

66.2 Analysis

(a) Availing the services of the expert be it a Chartered Accountant or Cost Accountant is permitted by this section only when the officer considering the nature & complexity of the business and in the interest of revenue is of the opinion that:

— Value has not been correctly declared; or

— Credit availed is not within the normal limits.

It would be interesting to know how these 'subjective' conclusions will be drawn and how the proper officers determines what is the normal limit of input credit availed.

(b) An Assistant Commissioner who nurses an opinion on the above two aspects, after commencement and before completion of any scrutiny, enquiry, investigation or any other proceedings under the Act, may direct a registered person to get his books of accounts audited by an expert. Such direction is to be issued in FORM GST ADT-03

(c) The Assistant Commissioner needs to obtain prior permission of the Commissioner to issue such direction to the taxable person

(d) Identifying the expert is not left to the registered person whose audit is to be conducted but the expert is to be nominated by the Commissioner.

(e) The Chartered Accountant or the Cost Accountant so appointed shall submit the audit report, mentioning the specified particulars therein, within a period of 90 days, to the Assistant Commissioner in FORM GST ADT-04.

(f) In the event of the an application to the Assistant Commissioner by Chartered Accountant or the Cost Accountant or the registered person seeking an extension, or for any material or sufficient reason, the due date of submission of audit report may be extended by another 90 days.

(g) Considering the special nature of this audit, (audit having been conducted under other proceedings or under other laws) do not preclude the proper officer from exercising this option.

(h) While the report in respect of the special audit under this section is to be submitted directly to the Assistant Commissioner, the registered person is to be Provided an opportunity of being heard in respect of any material gathered in the special audit which is proposed to be used in any proceedings under this Act. This provision does not appear to clearly state whether the registered person is entitled to receive a copy of the entire audit report or only extracts or merely inferences from the audit. However, the observance of the principles of natural justice in the proceedings arising from this audit would not fail the taxable person on this aspect.

(i) The remuneration to the expert is to be paid by the Commissioner whose decision will be final.

(j) As in the case of audit under section 65, no demand of tax, even *ad interim*, is permitted on completion of the special audit under this section. In case any possible tax liability is identified during the audit, procedure under section 73 or 74 as the case may be is to be followed.

66.3 Comparative Review

Law relating to Central Excise

(a) Similar provision exists under the Central Excise law. Unduly large proportion of credit availment considering the industry is a reason for audit. This could also be a reason for special audit under GST also. The availing or utilization of cenvat credit by reason of fraud, collusion or any willful mis-statement or suppression of facts can also be the reason for issuing notice for special audit. Under GST law, no special audit will be directed for wrong utilization of the credit, but wrong availment alone without any reason of fraud, collusion or any willful mis-statement or suppression of facts is sufficient to issue notice for special audit.

(b) Under Central Excise law, the permission is given by the Principal Chief Commissioner or the Chief Commissioner of Central Excise. Under GST Act, the said permission is to be given by the Commissioner.

(c) Under Central Excise law, the period within which the Chartered Accountant or the Cost Accountant should submit the audit report is not specified presently, but the maximum extended period within which the audit report should be submitted remains to be 180 days. Under CGST Act, the audit report shall normally be submitted within 90 days and the maximum further extension could be another 90 days.

Law relating to Service Tax

(d) The authority to direct the special audit rests with the Principal Commissioner or the Commissioner.

(e) The special audit may be initiated where person liable to pay service tax;

  (i) has failed to declare or determine the value of taxable service correctly; or

  (ii) has availed and utilized the cenvat credit which is not within the normal limits or by means of fraud, collusion or any willful mis-statement or suppression of facts; or

  (iii) has operations at multiple locations and true and complete picture of his accounts are not possible to get at his registered premises.

(f) The special audit report shall be submitted within the period as may be specified by the Commissioner. The time limit of maximum 180 days is not applicable.

(g) No provision exists regarding remuneration payable for the special audit, however, the same shall be paid by the Central Government

66.4 Related Provisions

Section	Description	Remarks
Section 65	Audit by tax authorities	The audit under Section 66 is a special audit to be conducted by a Chartered Accountant or Cost Accountant nominated by the Commissioner whereas the audit under Section 65 is a routine audit by the tax office.

66.5 FAQ

Q1. Who can serve the notice for special audit?

Ans. An officer not below the rank of an Assistant Commissioner with prior approval of the Commissioner may serve notice for special audit, having regard to the nature and complexity of the case and the interest of revenue.

Q2. Under what circumstances notice for special audit shall be issued?

Ans. If the proper officer (not below the rank of Assistant Commissioner) is of the opinion that the value has not been correctly declared or credit availed is not within the normal limits, a special audit may be ordered.

Q3. Who will conduct the special audit?

Ans. A Chartered Accountant or a Cost Accountant so nominated by the Commissioner may undertake the audit.

Q4. What is the time limit to submit the audit report?

Ans. The auditor will have to submit the report within 90 days or the further extended period of a 90 days.

Q5. Who will bear the cost of special audit?

Ans. The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner.

Q6. What action the tax authorities may take after the special audit?

Ans. Based on the findings / observations of the special audit, action can be initiated under Section 73 or 74 as the case may be of the CGST Act.

Chapter– XIV
Inspection, Search, Seizure and Arrest

Statutory Provision

67. Power of inspection, search and seizure

(1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that –

(a) a taxable person has suppressed any transaction relating to supply of goods and/or services or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under the Act or has indulged in contravention of any of the provisions of this Act or rules made thereunder to evade tax under this Act; or

(b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,

he may authorize in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.

(2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorize in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents, books or things:

Provided that where it is not practicable to seize any such goods, the proper officer, or any authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:

Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceeding under this Act.

(3) The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied on for the issue of notice under the Act or rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.

(4) The officer authorized under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any *almirah*, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are

suspected to be concealed, where access to such premises, *almirah*, electronic devices, box or receptacle is denied.

(5) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorized officer at such place and time as the authorized officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.

6. The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.

7. Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:

Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months.

8. The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.

9. Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorized by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.

10. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word “Magistrate”, wherever it occurs, the word “Commissioner” were substituted.

11. Where the proper officer has reason to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceeding under this Act or the rules made thereunder for prosecution.

12. The Commissioner or an officer authorized by him may cause purchase of any goods or services or both by any person authorized by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier

67.1 Analysis

(i) When the proper officer not below rank of Joint Commissioner 'has reason to believe' that the taxable person has suppressed any transaction of supply of goods or services or both or information relating to stock in hand or claimed excess input tax credit or has contravened any of the statutory provisions, with an intent to evade taxes, the action is initiated under this section.

The phrase 'reason to believe' has been interpreted by various courts distinguishing it from 'reason to suspect'. In the case of Crompton Greaves Ltd. vs. State of Gujarat, 120 STC 510 the Court observed that, *"these words suggest that belief must be that of honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence not on mere suspicion, gossip or rumor. The powers under the present section are wide but not plenary; the words of the section are 'reason to believe' and not 'reason to suspect'."*

(ii) The power can also be exercised when there is a reason to believe that any person engaged in the business of transportation of goods or an owner or operator of a warehouse or godown or any other place is storing goods, which have escaped tax payment or has kept his accounts or goods in a manner likely to cause tax evasion.

(iii) Under such circumstances, he can authorize another officer in writing to:

(a) Inspect any place of business of the taxable person who has evaded tax or of the transporter who transported such tax evading goods or godown/warehouse in which such tax evaded goods or accounts relating thereto have been stored.

(b) Search and seize the goods or any documents or books or things which are liable for confiscation including anything concealed and which will be useful or relevant in the proceedings under this Act.

(c) Seal or break open the door of any premises, storage, box, electronic device or receptacle where goods, books of accounts etc. are concealed and when access to the same is denied to the officer.

(d) If it is not practicable to seize the goods, then the Officer may serve an order on owner or custodian of the goods for not removing, part or deal with the goods without his prior permission.

(e) The said officer shall return the documents, books or things seized or produced by a taxable or any other person on which no reliance has been placed for issuing notice, within a period of 30 days from the issue of notice. However, the documents books or things relied upon while issuing the notice will be retained.

(f) The person from whose custody documents are seized is entitled to take photocopy or extract of such documents in the presence of a GST officer at the place and time as predetermined. Copies or extracts may be denied if he is of the opinion that such an act will prejudicially affect the investigation.

(g) The goods so seized can be released on a provisional basis. In order to release the

goods, the person has to furnish a bond or security or applicable tax, interest and penalty.

(h) If no notice has been issued within 6 months or an extended period of another 6 months, the seized goods/exhibits ought to be returned.

(i) The officer can dispose of certain notified goods immediately after the seizure, if those goods are of perishable or hazardous nature, or would depreciate in value by passage of time or there are constraints of storage space or any other relevant considerations as may be prescribed.

(j) The officer who seizes the goods is liable to maintain the inventory of the said goods.

(k) The provisions of Code of Criminal Procedure, 1973 relating to search and seizure shall be applicable to the GST Laws and in section 165(2) thereof, the word 'Magistrate' should be read as 'Commissioner '.

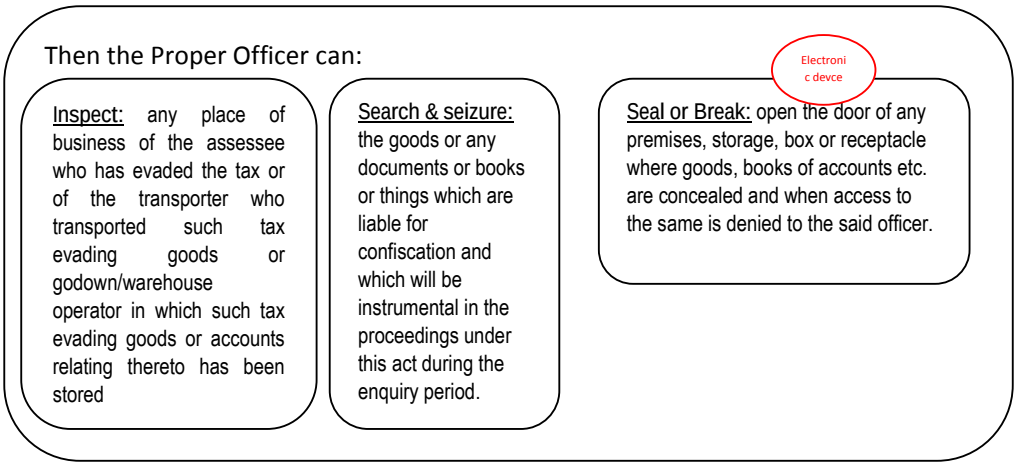
(l) The officer can even seize accounts, registers or documents of any person; in case he has a reason to believe that the said person has evaded or is attempting to evade the taxes. However, he has to record the reasons in writing and also shall grant receipt of such seizure. There is no time limit prescribed for such retention by the officer.

~~(m)~~ The Commissioner or officer authorized by him can authorize any person for purchase of any goods / services to check issue of tax invoices / bills of supply. The goods so purchased by such person through appointed person, if returned, the taxable person from whom the goods were purchased shall refund the amount so paid and cancel the tax invoice. There is no time limit prescribed for return of the goods. It should be noted that this provision deals only with return of goods so purchased and there is no provision of return of services so purchased.

(iv) The analysis of above provision in a pictorial form is summarised as follows:

For initiating the proceedings Joint Commissioner or any superior officer should have a 'reason to believe' that the assesse has done any of the following:

Suppressed any transaction of supply goods or services	Stock in hand	Claim of excess input tax credit	Has contravened any of the statutory provisions of this Act or Rules made thereunder



67.2. Comparative review

(i) Similar powers relating to inspection, search and seizure is present in all the current indirect tax laws viz., Finance Act, 1994 (Service Tax), Central Excise Act, 1944 and in most of the State VAT laws.

(ii) Interestingly, under the CE Act, provision has been made to safeguard the interest of the assessee against harassment by way of irregular search and seizure by the tax officers. Section 22 of the CE Act prescribes fine upto Rs. 2,000/- on an officer who conducts vexatious search, inspection etc. This provision is conspicuously absent in the CGST Act.

67.3. FAQs

Q1. Under what circumstances there can be inspection, search or seizure operations?

Ans. Initiation of action under this section is when the proper officer not below rank of Joint Commissioner 'has reason to believe' that

(a) the taxable person has suppressed any transaction of supply of goods or services or stock in hand or claimed excess input tax credit or has contravened any of the statutory provisions.

(b) any person engaged in the business of transportation of goods or an owner or operator of a warehouse or godown or any other place where goods are stored, which have escaped tax payment or has kept his accounts or goods in a manner likely to cause tax evasion.

Q2. What is the meaning of the phrase 'reason to believe'?

Ans. The phrase 'reason to believe' has been interpreted by various courts distinguishing it from 'reason to suspect'. In the case of Crompton Greaves Ltd. vs. State of Gujarat, 120 STC 510 the Court observed that, *"these words suggest that belief must be that of honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence not on*

mere suspicion, gossip or rumor. The powers under the present section are wide but not plenary; the words of the section are 'reason to believe' and not 'reason to suspect'."

Q3. Whether goods so seized can be released on provisional basis?

Ans. The goods so seized can be released on provisional basis if bond and security as may be prescribed is furnished or upon payment of applicable tax, interest and penalty.

67.4. MCQs

Q1. Initiation of action under this section is by proper officer not below the rank of _____

(a) Superintendent

(b) Inspector

(c) Joint Commissioner

(d) Commissioner

Ans. (c) Joint Commissioner

Q2. In how many days, the officer shall return the seized goods / documents which are not relied upon while issuing notice?

(a) 15 days

(b) 30 days

(c) 60 days

(d) 90 days

Ans. (b) 30 days

Statutory provision

68. Inspection of goods in movement

The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

68.1. Introduction

This provision enables prescription of documents and devices to be carried by the transporter and production for verification thereof.

68.2. Analysis

A. The person in charge of the conveyance carrying any consignment of goods of value exceeding the specified amount shall carry with him such documents and devices as prescribed by Rule 2 of draft electronic way bill rules. As per draft of Electronic Way Bill Rules, person causing movement of goods of consignment value exceeding Rs. 50000/- in value is required to furnish information relating to such goods before commencement of movement in Form GST INS-01 or GST INS-02 electronically on the common portal. An option to generate e-way bill is permissible even if the value of the consignment is lower than Rs. 50000/-.

B. e-Way bill

(i) An unregistered person moving goods in his own or hired conveyance can at his potion generate an e-Way bill in FORM GST INS-01, the recipient will be informed electronically on his mobile or email.

(ii) If the movement is caused by an unregistered supplier to a registered recipient (known at the time of movement) then the movement is deemed to have caused by a registered recipient.

(iii) A transporter shifting goods from one vehicle to another while the goods are in movement is required to generate a new e-Way bill in FORM GST INS-01.

(iv) If a transporter transports multiple consignments in one vehicle then he is required to indicate the serial no. of each e-Way bill in FORM GST INS-02 prior to the movement of goods.

(v) If for any reason the Consignor does not generate an e-Way bill, the transporter can generate an e-Way bill based on Tax Invoice/Bill of Supply/Delivery Challan or any other document in FORM GST INS-01 and also a consolidated e-Way bill in GST INS-02 prior to movement of goods.

(vi) The information in FORM GST INS-01 will be made available to the registered supplier on the portal who can utilize such information for filing his return in FORM GSTR-1.

(vii) Any e-way bill generated incorrectly or after generation the goods are not transported, such e-Way bill must be electronically cancelled within 24 hours of its generation.

(viii) No e-way bill can be cancelled if it is verified in transit.

(ix) An e-way bill or Consolidated e-way bill generated shall be valid for the relevant date/time as follows.

Sl No.	Distance	Validity period
1	Less than 100 Kms.	1 day
2	>100 Kms < 300 Kms	3 days
3	>300 Kms < 500 Kms	5 days
4	>500 Kms < 1000 Kms	10 days
5	>1000 Kms	15 days

The Commissioner is empowered to extend the validity period in case of notified goods.

(x) A registered recipient of goods must confirm his acceptance of the e-way bill generated within 72 hours and if he does not do so, it is deemed to have been accepted.

C. Documents & Delivery

(i) The person in charge of transportation is mandated to carry with him:

(a) An invoice/Bill of Supply or Delivery Challan.

(b) A copy of e-Way bill or e-Way bill no.

(ii) The Commissioner is empowered to notify a specified class of transports to embed a Radio Frequency Identification Device on the vehicle to enable mapping of the e-Way bills.

(iii) A registered person can upload the tax invoice in FORM GST INV-1 and obtain a Invoice Reference No. which can be produced for verification in lieu of an invoice.

D. An officer is empowered to physically inspect the documents, vehicle or goods while in transit.

E. On interception of the conveyance by the proper officer, the said person shall produce such documents and devices for verification and also allow inspection of goods. As per rule 5 of per draft of Electronic Way Bill Rules where a vehicle has been intercepted and detained for a period exceeding 30 minutes the transporter may upload the said information in Form GST INS-04 on the common portal.

68.3. Comparative review

There is a similar provision conferring power to stop and search any conveyance carrying excisable goods in rule 23 of the CE Rules, 2002. VAT legislations provide extensive powers to officers and also permit them to establish 'check posts' to inspect and verify the documents compulsorily and the officer has power to seize the conveyance, if the documents are not proper or available.

68.4. FAQs

Q1. What needs to be carried by a person in charge of a conveyance carrying goods?

Ans. He should carry the documents and devices as per provisions of Rule 2 of Draft Electronic Way Bill

Q2. Does the officer have powers to inspect the documents carried in a conveyance?

Ans. In terms of section 68(2), the officer is conferred powers to inspect and validate such documents.

68.5. MCQs

Q1. The person in charge of the conveyance carrying any consignment of goods exceeding the value of _____, shall carry prescribed documents.

(a) Rs. 50,000

(b) Rs. 15,000

(c) Rs. 10,000

(d) Rs. 25000.

Ans. (a) Rs.50, 000/- as per draft electronic way bill rules

Statutory provision

69. Power to arrest

(1) Where the Commissioner has reasons to believe that any person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or under sub-section (2) of the said section, he may, by order, authorize any officer of the central tax to arrest such person.

(2) Where a person is arrested under sub-section(1) for an offence specified under sub-section (5) of section 132, the officer authorized to arrest the person shall inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.

(3) Subject to the provisions of the Code of Criminal Procedure, 1973,––

(a) where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;

(b) in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

69.1. Introduction

This section deals with power of arrest when one commits any of the following offences which is punishable under clause (i) or (ii) of sub-section (1), or under sub-section (2) of sec 132 of CGST Act.

(a) Supplies any goods or services or both without issue of invoice with the intention to evade tax

(b) Issues any invoice or bill without supplies leading to wrongful availment or utilisation of input tax credit or refund of tax

(c) Avails input tax credit using invoice or bill referred to in b) above

(d) Collects any amount as tax but fails to pay the same beyond the period of 3 months from the due date

69.2. Analysis

The Commissioner is vested with the power to authorise, by an order, any Officer to arrest a person, where there is a reason to believe that such person has committed the specified offences.

The person committing any offence under clauses (a) or (b) or (c) or (d) u/s 132(1) cited supra

and punishable under Section 132(1)(i) or 132(1)(ii) or 132(2) can be arrested by the authorised officer.

Section 132(1) clause (i) tax evasion above Rs 500 Lakhs attracting imprisonment for a term upto 5 years and fine, or clause (ii) tax evasion above Rs 200 Lakhs attracting imprisonment upto 3 years and fine or offence or section 132(2) [repeated offence – second and subsequent offence attracting imprisonment upto 5 years with fine]

Such person is required to be informed about the grounds of arrest and be produced before the Magistrate within 24 hours in case of cognizable offences and in case of non-cognizable and bailable offences the Assistant/Deputy Commissioner can grant the bail and is conferred powers of an officer-in-charge of a police station subject to the provisions of Code Of Criminal Procedure, 1973.

All arrests should be made as per the provisions of Code of Criminal Procedure, 1973.

69.3. Comparative review

Similar power of arrest of tax evaders by officer is present in most of the indirect tax legislations.

However under the Finance Act, 1994 the power to arrest can be exercised only in cases where taxes collected and not deposited for an amount exceeding Rs. 200 lakhs.

69.4. Gist of Related provisions of Section 132 for ready reference for which person can be arrested

Section	Description
132(1)(a)	Whoever supplies any goods or services or both without issue of invoice with the intention to evade tax
132(1)(b)	Whoever issues any invoice or bill without supplies leading to wrongful availment or utilisation of input tax credit or refund of tax
132(1)(c)	whoever avails input tax credit using invoice or bill referred to in b) above
132(1)(d)	whoever collects any amount as tax but fails to pay the same beyond the period of 3 months from the due date
132(1)(i)	Prosecution where tax evaded exceeds Rs 500 lakhs. Imprisonment upto 5 years with fine
132(1)(ii)	Prosecution where tax evaded exceeds Rs 200 lakhs. Imprisonment upto 3 years with fine
132(2)	Second or subsequent offence. Imprisonment upto 5 years with fine

69.5. FAQs

Q1. Power of arrest could be exercised by whom?

Ans. The Commissioner can authorise (by an order) any officer to arrest a person, who has committed specified offences. The Commissioner should have reason to believe that such person has committed the specified offences.

Q2. Who can be arrested?

Ans. The person committing an offence (tax evasion) as specified in –

Section 132(1) clause (i) tax evasion above Rs 500 Lakhs attracting imprisonment for a term upto 5 years and fine, or clause (ii) tax evasion above Rs 200 Lakhs attracting imprisonment upto 3 years and fine or offence or section 132(2) [repeated offence – second and subsequent offence attracting imprisonment upto 5 years with fine] can be arrested by authorised officer.

Q3. What is the procedure to be followed for arrest?

Ans. (i) The person arrested should be informed about the grounds of arrest and be produced before the Magistrate within 24 hours in case of cognizable offences

(ii) In case of non-cognizable and bailable offences the Assistant/Deputy Commissioner can grant the bail and is conferred powers of an officer-in-charge of a police station subject to the provisions of Code of Criminal Procedure, 1973.

(iii) All arrests should be made as per the provisions of Code of Criminal Procedure, 1973.

69.6. MCQs

Q1. All arrests should be made as per the provisions of _____

(a) Code of Criminal Procedure, 1973

(b) Civil Procedure Code

(c) Foreign Exchange Management Act

(d) Indian Penal Code

Ans. (a) CRPC

Statutory provision

70. Power to summon persons to give evidence and produce documents
(1) The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as Provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.
(*2*) Every such inquiry referred to in sub-section (*1*) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code

70.1. Introduction

This provision deals with exercise of powers to issue summons for giving evidence and for production of documents

70.2. Analysis

In any inquiry which such officer is making for any of the purposes of this Act, the Proper officer shall have power to summon any person, whose attendance is considered necessary, either to give evidence or to produce a document or any other thing.

Every such inquiry referred to in sub-section (*1*) shall be deemed to be a "judicial proceedings" within the meaning of section 193 and section 228 of the Indian Penal Code

Scope of word "Summon" under Sec 70 is for "Any Enquiry". Authorised Officer is not empowered under Sec 70 to retain the documents for which summon were issued. It has been held by high court in T.T.V Dinkaran v. Enforcement Officer 1995 (80) E.L.T. 745 that where summon did not mention the nature of investigation therein, it will be valid since mentioning the details about investigation may alter the person concerned to manipulate his record.

70.3. Comparative review

Name of Statute	Central Excise Act 1944	Finance Act 1994	Custom Act 1962	State Vat Laws
Section Reference	Sec 14	Sec 14 of Central Excise Act read with Sec 83 of Finance Act 1994	Sec 108	Similar powers are conferred under the State Vat laws.

70.4. FAQs

Q1. Who can issue summons and for what purpose?

Ans. Proper officer under this Act can summon to any person whose attendance is considered necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of the GST Law.

Statutory provision

71. Access to business premises

(1) Any officer under this Act, authorized by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(2) Every person in charge of place referred to in sub-section (*1*) shall, on demand, make available to the officer authorised under sub-section (*1*) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section

66—, -

(i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;

(ii) trial balance or its equivalent;

(iii) Statements of annual financial accounts, duly audited, wherever required;

(iv) cost audit report, if any, under section 148 of the Companies Act, 2013 (18 of 2013);

(v) the income-tax audit report, if any, under section 44AB of the Income-tax Act,1961 (43 of 1961); and

(vi) any other relevant record,

for the scrutiny of the officer or audit party or the cost accountant or chartered accountant, as the case may be, within a reasonable time, not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the cost accountant or chartered accountant.

71.1. Introduction

This provision empowers any officer authorised by the officer not below the rank of Joint Commissioner to have access to any place of business of a registered person to inspect books of account, documents, computers, computer programmes, computer software and such other things as may be required and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

71.2. Analysis

For this purpose, the officer should be authorized by the officer not below the rank of Joint Commissioner.

Such an authorized officer shall have access to any place of business of registered person to inspect books of account, documents, computers, computer programs, computer software (whether installed in a computer or otherwise) and such other things as he may require as available at such premises.

The object is to carry out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

The person in charge of the premises should make available the following :

1. Records maintained by the registered person and declared to proper officer;
2. Trial balance;
3. Audited financial statements wherever required;
4. Cost audit report, if any;
5. Income Tax audit report, if any;

6. Other relevant records.

The documents/records should be made available within 15 working days or such extended period as may be allowed.

The documents/records can be called for by the Audit officer or Chartered Accountant or Cost Accountant nominated by the department.

71.3. Comparative review

In the current indirect tax laws, and even in various State VAT laws similar provisions exist.

71.4. Related provisions

Section	Description	Remarks
Section 65	Audit by tax authorities	For such purpose access to business premises is permitted under section 71
Section 66	Special Audit	-do-

71.5. FAQs

Q1. What are the documents or records that a person in charge of a place of business shall make available in terms of Provisions of section 71?

Ans. The person in charge of a place of business shall, on demand, make available:

- Records maintained by the registered person and declared to proper officer;
- Trial balance;
- Audited financial statements wherever required;
- Cost audit report, if any;
- Income Tax audit report, if any
- Other relevant records

Q2. Who are the persons empowered to call for documents/records for audit, verification, checks and scrutiny?

Ans. Audit Party deputed by the Proper Officer or a Chartered Accountant or a Cost Accountant nominated u/s 66 by the department for conducting the audit are the persons empowered to call for documents/records for audit, verification, checks and scrutiny.

71.6. MCQs

Q1. The documents called for should be Provided within _____

(a) 20 working days

(b) 15 working days

(c) 60 days

(d) 30 days

Ans. (b) 15 working days

Q2. Who is liable to furnish information to empowered officers?

(a) Director

(b) Accountant

(c) CEO

(d) Person in charge of Place of Business

Ans. (d) Person in charge of Place of Business

Q3. What empowered officers can do with the information furnished to them?

(a) Audit

(b) Scrutiny

(c) Verification and Checks

(d) All of the above

Ans. (d) All of the Above

Statutory provision:

72. Officers to assist proper officers

(1) All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act

(2) The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner

72.1. Introduction

The provision requires all officers of Police, Railways, Customs and those officers engaged in the collection of land revenue including village officers, officers of state and union territory tax to assist the proper officers in the implementation of this Act.

72.2. Analysis

Below officers are empowered and required when called upon, to assist the proper officer in execution of this act:

- All officers of Police,
- Railway Officer,
- Customs Officer
- Officer of State & Union Territory tax.
- Officers engaged in the collection of land revenue including village officers,

Even the Government may issue notification empowering and requiring any other class of officer to assist the proper officers, if required by the Commissioner.

72.3. Comparative review

Name of Statue	Central Excise Act 1944	Finance Act 1944
Section Reference	Sec 15	Sec 14 of Central Excise Act read with Sec 83 of Finance Act 1944

72.4. FAQs

Q1. Which are the officers empowered under an obligation to assist the CGST officers in the implementation of the Act?

Ans. All officers of Police, Railway, Custom, State/Central officer engaged in collection of GST and Land Revenue, Village officers, are empowered and are required to assist the proper officers to carry out the provisions of the Act.

Q2. Can the Commissioner call upon any other officer for assistance?

Ans. In terms of section 72(2) of the Act, the Government may issue notification empowering or requiring any other class of officer to assist the proper officers under this act, if required by the Commissioner.

72.5. MCQs

Q1. The _____ officer is empowered to assist the proper officer.

(a) Registrar of Companies

(b) Health

(c) CBI

(d) Railway

Ans. (d) Railway

Q2. _____ Officer is not empowered to assist the proper officer u/s 72(1) of the Act.

(a) Police

(b) Custom

(c) State Excise

(d) Railway

Ans. (c) State Excise

Chapter– XV
Demands and Recovery

Statutory Provision

73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.

(*1*) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.

(*2*) The proper officer shall issue the notice under sub-section (*1*) at least three months prior to the time limit specified in sub-section (*10*) for issuance of order.

(*3*) Where a notice has been issued for any period under sub-section (*1*), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (*1*), on the person chargeable with tax.

(*4*) The service of such statement shall be deemed to be service of notice on such person under sub-section (*1*), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (*1*) are the same as are mentioned in the earlier notice.

(*5*) The person chargeable with tax may, before service of notice under sub-section (*1*) or, as the case may be, the statement under sub-section (*3*), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(*6*) The proper officer, on receipt of such information, shall not serve any notice under sub-section (*1*) or, as the case may be, the statement under sub-section (*3*), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(*7*) Where the proper officer is of the opinion that the amount paid under sub-section (*5*) falls short of the amount actually payable, he shall proceed to issue the notice as Provided for in sub-section (*1*) in respect of such amount which falls short of the amount actually payable.

(*8*)	Where any person chargeable with tax under sub-section (*1*) or sub-section (*3*) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.
(*9*)	The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.
(*10*)	The proper officer shall issue the order under sub-section (*9*) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.
(*11*)	Notwithstanding anything contained in sub-section (*6*) or sub-section (*8*), penalty under sub-section (*9*) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

73.1 Introduction

1. Section 73 deals with determination of tax

- not paid; or
- short paid; or
- tax erroneously refunded; or
- input tax credit wrongly availed or utilised.

This section covers determination under circumstances of cases not involving fraud, wilful misstatement or suppression of facts;

2. This section also covers the time limit within which the proper officer shall issue the Notice and order can be issued for the determination/ recovery of tax payment defaulted by the taxable person. As per the table below, all the proceedings up to the issue of an order requires to be: the time limit for issuance of Notice and order is provided herewith:

Particulars	Time limit for issuing show cause notice.	Time limit for issuing order.
Cases involving other than fraud, wilful misstatement or suppression of facts	At least 3 months prior to the time limit specified under sub-section (10) for issuance of order.	3 years from the due date of filing annual returns/3 years from the date of erroneous refund.

Section 73 also applies for recovery of interest payable which is not paid or partly paid or interest erroneously refunded.

73.2 Analysis

Section 73 is applicable under the cases other than fraud, or wilful misstatement or suppression of facts with an intention to evade payment of tax.

1. The provision provides for –
   (a) Service of notice by proper officer[1];
   (b) Notice shall be served on the person who is chargeable with tax, who has –
      — Not paid or short paid the tax;
      — Received the erroneous refund;
      — Wrongly availed or utilized input tax credit;
   (c) Such amounts as mentioned above shall be required to be determined along with the applicable interest as per Section 50 and penalty as specified.
   (d) The notice has to be issued at least three months prior to the time limit of three years for issuance of order
2. Where no notice is required to be issued for demand: In case proper officer has already issued an notice on the person for the period specified under section 73(1), subsequently if such officer finds similar issue for any subsequent period, then in such case instead of issuing a detailed notice for such subsequent period, proper officer may issue a statement for for recovering the amount from such person and such statement shall be deemed to be a notice as per Section 73(1) on the condition that the grounds relied upon are the same for the earlier notice issued for previous period.
3. Voluntary payment of tax and interest before issue of notice/statement: Voluntary payment of tax and interest as per Section 50 before issue of notice/statement can be done either
   - As per the ascertainment of the notice or;
   - As per the ascertainment of the proper officer;

   and the same shall be intimated to the proper officer after receipt of which the officer shall not serve any notice / statement to the extent of such payment. There can be no further proceedings with regard to tax and penalty so paid.
4. When the amount paid as per the ascertainment of the assessee falls short, the proper officer shall issue a notice for the amount of shortfall.
5. Where the assessee makes the payment of tax along with interest within 30 days of issuance of Notice / Statement, then in such case no penalty shall be payable and it shall be deemed that all the proceedings have been concluded.
6. After considering the representations of the person, the proper officer shall issue an order consisting the amount of tax, interest and penalty. tax + interest + penalty. The

[1] In terms of section 2(79) of Model GST "proper officer" in relation to any function to be performed under this Act, means the officer of goods and services tax who is assigned that function by the Board/Commissioner of SGST;

amount of penalty of shall be higher of 10% of tax or ₹ 10,000/-, whichever higher.

7. The proper officer shall pass an order within a period of 3 years from the

- due date for filing of Annual return for the year to which the short payment or non-payment or input tax credit wrongly availed or utilised relates
- date of erroneous refund

Penalty implications, in summary:

If tax, interest and penalty (as indicated below is paid), it is Provided that further proceedings should not be continued to that extent:

Pay tax plus interest	Amount of penalty
Before issuance of show cause notice	No penalty
Within 30 days after the issuance of show cause notice	No penalty
In any other case	10% of the tax or Rs. 10,000 whichever is higher.

Statutory Provision

74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.

(*1*) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.

(*2*) The proper officer shall issue the notice under sub-section (*1*) at least six months prior to the time limit specified in sub-section (*10*) for issuance of order.

(*3*) Where a notice has been issued for any period under sub-section (*1*), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (*1*), on the person chargeable with tax.

(*4*) The service of statement under sub-section (*3*) shall be deemed to be service of notice under sub-section (*1*) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (*1*) are the same as are mentioned in the earlier notice.

(*5*) The person chargeable with tax may, before service of notice under sub-section (*1*), pay

the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.

(*6*) The proper officer, on receipt of such information, shall not serve any notice under sub-section (*1*), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

(*7*) Where the proper officer is of the opinion that the amount paid under sub-section (*5*) falls short of the amount actually payable, he shall proceed to issue the notice as Provided for in sub-section (*1*) in respect of such amount which falls short of the amount actually payable.

(*8*) Where any person chargeable with tax under sub-section (*1*) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.

(*9*) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(*10*) The proper officer shall issue the order under sub-section (*9*) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

(*11*) Where any person served with an order issued under sub-section (*9*) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.

Explanation 1.— For the purposes of section 73 and this section,—

(*i*) the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;

(*ii*) where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.

Explanation 2.—For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer

Section 74.1 Analysis

The section covers determination of tax in cases of fraud, or any kind of wilful mis-statement or suppression of facts to evade payment of tax.

1. Whenever the tax is
   - not paid or
   - short paid or
   - credit wrongly availed or utilized or
   - erroneously refunded

   On account of the following to evade tax,
   - Fraud;
   - Willful misstatement;
   - Suppression of facts;

   the proper officer shall issue a notice for such amount along with interest as per Section 50 and penalty which shall be equivalent to amount of tax specified in notice.

2. This section covers the time limit within which the proper officer shall issue the Notice and order for the determination/ recovery of tax payment defaulted by the taxable person. As per the table below, the time limit for issuance of Notice and Order is provided herewith:

Particulars	Time limit for issuing show cause notice	Time limit for issuing order.
Cases involving fraud, wilful mis-statement or suppression of facts to evade tax	At least 6 months prior to the time limit specified under sub-section (10) for issuance of order.	5 years from the due date of filing annual returns/5 years from the date of erroneous refund.

3. Where no notice is required to be issued: Similar to the provisions under 73 explained earlier, this section also provides that a statement of demand may be issued instead of a detailed notice for the period other than the ones covered in the notice issued as per Sec 74(1) on similar issue and shall be deemed to be a notice as per Section 74(1) on the condition that the grounds relied upon are same as the notice for previous period.

4. The proper officer shall not serve any notice on the assessee in case of voluntary payment of tax and interest along with penalty @ 15% of tax either
   - As per the ascertainment of the notice or;
   - As per the ascertainment of the proper officer;

   Assessee shall intimate the same to the proper officer.

5. In case there exists some shortfall between the amount paid by assessee on his own

ascertainment and the actual amount liable to be , the Proper Office shall issue a notice for the tax that remains unpaid

6. Where the assessee makes the payment of tax and interest along with penalty @ 25 % of tax within 30 days of issuance of Notice / Statement, then in such case it shall be deemed that all the proceedings have been concluded.

7. After considering the representations of the person, the proper officer shall issue an order consisting the amount of tax, interest and penalty. The proper officer shall issue an order after considering the representation made by the person chargeable with tax and the amount determined shall comprise of tax along with interest and penalty as stated above

8. The proper officer shall pass an order within a period of 5 years from the due date for filing of Annual return for the year to which the short payment or non-payment or input tax credit wrongly availed or utilised relates date of erroneous refund

9. Where the assessee makes the payment of tax and interest along with penalty @ 50 % of tax within 30 days of communication of Order, then in such case it shall be deemed that all the proceedings have been concluded.

10. The term "suppression" is specifically explained to mean

- non-declaration of facts or information which a taxable person is statutorily required to declare in the return, statement, report or any other document furnished under the Act or the rules made thereunder, or
- failure to furnish any information on being asked for, in writing, by the proper officer

Penalty implications, in summary:

If tax, interest and penalty (as indicated below is paid), it is Provided that further proceedings should not be continued to that extent.

Payment of Tax, Interest & Penalty	Amount of Penalty
Before issuance of show cause notice	15% of the tax amount
Within 30 days after the issuance of show cause notice	25% of the tax amount
Within 30 days from the communication of order	50% of the tax amount
In any other case	100% of the tax amount (equivalent to tax)

Statutory Provision

75 General provisions relating to determination of tax

(1) Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.

(2) Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.

(3) Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.

(4) An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.

(5) The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.

(6) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(7) The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.

(9) The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

(10) The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as Provided for in sub-section (10) of section 73 or within five years as Provided for in sub-section (10) of section 74.

(11) An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other

proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.

(12) Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.

(13) Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.

75.1 Analysis

These provisions are general provisions for determination of tax and are applicable irrespective of whether the notice invokes the extended period or not

1. If an order of court or Appellate Tribunal stays the service of notice or issuance of order then, the period of such stay will get excluded from the period of issuance of order i. e. 3 years or 5 years as the case may be.
2. When a notice has been issued considering the case to be for fraud or for willful representation or for suppression of facts, and whereas the charges of fraud, suppression and misstatement of facts were not sustainable or not established by an order of Appellate Authority or Appellate Tribunal, then in such case the officer shall determine the tax as if the notice is issued for the normal period of 3 years.
3. An order required to be issued in pursuance of the direction of the Tribunal or a Court shall be issued within two years from the date of communication of the said direction.
4. Opportunity of personal hearing has to be granted when requested for in writing by the person chargeable with tax or where any adverse decision is proposed to be taken against the person.
5. Personal hearing can be adjourned when sufficient cause is shown in writing. However, such adjournment can be granted for a maximum of 3 times.
6. The relevant facts and basis of the decision shall be set out in the order, which means a speaking order needs to be placed.
7. The amount of tax along with interest and penalty should not exceed the amount mentioned in the notice and the grounds shall not go beyond what is mentioned in the notice.

8. When the decision of Tribunal/ Court/ Appellate authority modifies the amount of tax, correspondingly interest and penalty shall also be modified to that extent by the proper officer..

9. Interest shall be payable in all cases whether specifically mentioned or not.

10. If the order is not issued within the time limits as prescribed in sub-section (10) of section 73 or (10) of section 74, i.e., 5 years in case of fraud, misstatement or suppression and 3 years in any other case, the adjudication proceedings shall be deemed to be concluded.

11. An issue on which

- A first appellate authority or Tribunal or High Court has given its decision which is prejudicial to the interest of the revenue and an appeal to the Appellate Tribunal or High Court or Supreme Court against such decision is pending, then the period spent between the two dates of decision shall be excluded in computing the period of 3 years or 5 years respectively, for issue of order.

12. Any amount of self-assessed tax or intent payable, whether wholly or in part in accordance with a return furnished under section 39 shall be recovered under the provisions of section 79.

13. It is also Provided that when the penalty is imposed under Section 73 & 74 that no penalties shall be imposed under any other provisions of this Act for the same act or omission.

75.2 Comparative Review

These provisions of Section 73,74, and 75 are much broader than the provisions contained in existing Central Indirect Tax laws.

Presently in Central Excise and Service Tax laws, the demand of tax can be made up to a maximum of 5 years. The normal period for which the notice could be issued is 2 years in Central Excise Law and 30 months in Service Tax Law. The VAT law seems to be quite different from the central excise and service tax provisions.

However, the conditions for such extended period are the same as in the existing Indirect Tax Laws. The meanings of fraud, misstatement or suppression are still to be understood in the same way as in the present law i.e., deliberate intent to avoid tax requires to be established and sustained.

Unlike the current law, the time limit of 3 years and 5 years under the GST law is for issue of orders and not for serving of show cause notice.

75.3 Related Provisions

Section	Description
Section 50	Interest
Section 21	Manner of recovery of credit distributed in excess
Section 61	Scrutiny of records

Section	Description
Section 62	Assessment of non-filers of returns
Section 83	Provisional attachment to protect revenue in certain cases

75.4 FAQ's

Q1. Who has the power to issue a notice/ order?

Ans. "Proper officer" as defined under Sec 2(91) of the Act.

Q2. When can proceedings be initiated under Section 73/74/75?

Ans. The proceedings can be initiated when there is

- Short payment of tax
- Nonpayment of tax
- Wrong input credit availed
- Wrong input credit utilized
- Erroneous refund

Q3. Is notice for a period of 5 years valid even if charge of suppression, fraud and misstatement are not sustained?

Ans. No, when the allegations of fraud, suppression or misstatement are not established, the notice issued under section 74 would get covered under section 73 and 3 years time would be applicable for issue of order.

Q4. What is the condition for giving a repeat notice for a different period?

Ans. The condition is that the grounds relied upon should be exactly the same thing as in the notice issued previously. In such cases, it is not essential to issue a detailed notice. It would suffice, if a statement giving the details of alleged amounts is issued.

Q5. Whether there is any time limit to issue notice?

Ans. The time limit to issue notice is at least 3 months/ 6 months (in case of extended period) prior to the last day to pass the order i.e. 3 years or 5 years as the case may be.

Q6. Is interest applicable in all cases, even if not specifically mentioned?

Yes, interest is applicable whenever the tax is payable whether or not it is specifically mentioned..

Can the assessee pay tax after the issue of notice or/ and order? What is the benefit from such voluntary payments under different cases?

Ans. Yes. The assessee is given the benefit to pay the tax before issue of notice/order as follows:

In cases other than fraud, misstatement and suppression	
When the assessee pays the amount payable after the issue of notice but within 30 days from the issue of SCN	Tax+ interest to be paid in full and complete waiver of penalty

In cases of fraud, misstatement and suppression	
When the assessee pays the amount payable after the issue of notice but within 30 days from the issue of SCN	Tax and+ interest to be paid in full+ along with penalty @ 25% of tax
When the assessee pays the amount payable after the issue of notice but within 30 days from the issue of order	Tax and interest to be paid in full along with penalty @ 50% of tax

75.5 MCQ

1. What is the time limit for issue of order in case of fraud, misstatement or suppression?
   (a) 30 months
   (b) 18 months
   (c) 5 years
   (d) 3 years

Ans. (c) 5 years

2. What is the time limit for issue of order in case of other than fraud, misstatement or suppression?
   (a) 30 months
   (b) 18 months
   (c) 5 years
   (d) 3 years

Ans. (d) 3 years

3. The officer can issue the order under Sec 73 with a maximum demand up to?
   (a) amount of tax + interest + penalty 10% of tax
   (b) amount of tax + interest + penalty 10% of tax or ₹ 10,000/- whichever higher
   (c) ₹ 10,000/-
   (d) tax + interest+ 25% penalty

Ans. (b) amount of tax + interest + penalty 10% of tax or 10,000/- whichever higher

4. The maximum number of times the hearing can be adjourned?
   (a) 1
   (b) 3
   (c) 5
   (d) none

Ans. (b) 3

Statutory provision:

76. Tax collected but not paid to the Government

(*1*) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made there under or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

(*2*) Where any amount is required to be paid to the Government under sub-section (*1*), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

(*3*) The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (*2*), determine the amount due from such person and thereupon such person shall pay the amount so determined.

(*4*) The person referred to in sub-section (*1*) shall in addition to paying the amount referred to in sub-section (*1*) or sub-section (*3*) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.

(*5*) An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.

(*6*) The proper officer shall issue an order within one year from the date of issue of the notice.

(*7*) Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.

(*8*) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

(*9*) The amount paid to the Government under sub-section (*1*) or sub-section (*3*) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (*1*).

(*10*) Where any surplus is left after the adjustment under sub-section (*9*), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.

(*11*) The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54

76.0 Introduction

This provision deals with payment of any amount collected as tax but not remitted to the Central/State Government or Union Territory. This section requires him to make the payment forthwith regardless of whether the related supplies are taxable or not.

76.1 Analysis

(i) This section makes it obligatory on every person who has collected from any other person any amount representing "tax under this Act", to pay the said amount to the credit of the Central or a State Government regardless of whether the supplies in respect of which the amount was collected are taxable or not.

(ii) Before effecting recovery the Proper Officer has to serve a notice on to any person who has collected any amount representing as tax requiring to show cause as to why –

- the said amount should not be paid by him to the Government;
- penalty equivalent to such amount specified in the notice should not be imposed on him.

(iii) The person is permitted to make representation against the notice served on to him. The person ought to be given an opportunity of being heard where a request is made by the Notice in writing.

(iv) After considering such representation made by the person, the Proper Officer shall determine the amount due from the person and pass an order within one year from the date of issue of notice. Where the service of notice is stayed by order of the Court or Tribunal, the period covered by the stay shall stand excluded for the purpose of computing the time limit.

(v) The Proper Officer must pass a speaking order.

(vi) Upon such determination, the Person has to pay such amount determined.

(vii) Interest at the rate specified under section 50 shall be paid on the amount collected as representing tax (either paid voluntarily or on determination by the Proper Officer). Interest shall be calculated from the date of collection of amount till the date of deposit of amount.

(viii) The amount paid by such person to the credit of the Central Government or a State Government shall be adjusted against the tax payable by the person.

(ix) If any surplus is left after adjustment against the tax liability, it will be

- Credited to consumer welfare fund; or
- Refunded to the person who has borne the incidence of such amount.

(x) The person claiming such refund shall follow the conditions and procedure contained in section 54 of CGST Act.

(xi) There appears to be no time limit to commence proceedings under this section.

76.2 Comparative analysis

Under the present tax laws, similar provision exists in Central Excise Law[2], Customs Law[3] as well as Service Tax Law[4].

Also, similar provision also exists in all most all the State VAT laws as well.

76.3 Related provisions

Section	Description	Remarks
Section 50	Interest on delayed payment of tax.	Prescribes the provisions relating to the payment of interest not exceeding 18% in case of delay in payment of tax
Section 54	Refund of tax.	Provision for claiming refund of tax

76.4 FAQ

Q1. What is the interest rate applicable on delayed payment of amount collected representing it as tax?

Ans. The interest rate is not yet However according to Section 50, the rate of interest cannot exceed 18%.

Q2. How is the amount of surplus left after adjustment with tax payable dealt with?

Ans. Where any surplus is left after the adjustment against the tax payable, the amount of such surplus shall either be credited to the Consumer Welfare Fund or, as the case may be, refunded to the person who has borne the incidence of such amount.

Q3. What is the procedure to be followed by the person on receipt of determination of demand of tax collected but not deposited with the Central or a State Government from the proper officer?

Ans. The person will be given an opportunity of being heard and after that if any demand arises, then tax, interest and penalty has to be paid accordingly.

76.5 MCQ

1 Any amount of tax collected shall be deposited to the credit of the Central or a State Government,

(a) Only when the supplies are taxable

(b) Regardless of whether the supplies in respect of which such amount was collected are taxable or not.

(c) Only when the supplies are not taxable

(d) None of the above.

[2] Section 11D of Central Excise Act, 1944
[3] Section 28B of Customs Act, 1962

Ans. (b) Regardless of whether the supplies in respect of which such amount was collected are taxable or not.

2 Within how many years should the proper office issue an order from the date of notice?

(a) 1 year

(b) 2 years

(c) 3 years

(d) 4 years

Ans. (a) 1 year

77. Tax wrongfully collected and paid to the Central or a State Government

Statutory Provision

(*1*) A registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

(*2*) A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the central tax and the Union territory tax payable.

77.1 Introduction

This provision deals with a situation when CGST/SGST or CGST/UTGST is paid on any inter-state supply. Further also it covers interest implication a situation where IGST is paid on transaction of intra-state supply.

77.2 Analysis

(i) This provision deals with a situation when, if a taxable person wrongly pays CGST/SGST or CGST/UTGST on the transaction treating it as intra-state supply, but which is subsequently held to be inter-state supply. Upon payment of IGST on such transaction, the CGST/SGST or CGST/UTGST will to be refunded in such manner and subject to prescribed conditions.

(ii) The refund of such CGST/SGST or CGST/UTGST would be granted subject to such conditions as may be prescribed in this regard.

(iii) If a taxable person wrongly pays IGST by treating a supply as inter-state supply, which is subsequently held to be intra-state supply, interest is not required to be paid on the CGST/SGST or CGST/UTGST payable.

77.3 Related provisions

Section	Description	Remarks
Section 54	Refund of tax	Provision for claiming refund of tax.
Section 70	Tax wrongfully collected and deposited with the Central or a State Government	This section deals with refund of CGST/SGST paid mistakenly on inter-state supply considering it to be an intra-state supply.

77.4 FAQs

Q1. What is the remedy available when tax is paid wrongly as CGST/SGST when subsequently the supply is considered as inter-state supply attracting IGST?

Ans. Refund can be claimed by the taxable person who has paid CGST/SGST or CGST/UTGST on payment of IGST subject to such conditions as may be prescribed.

Q2. Is interest payable on CGST/SGST or CGST/UTGST, when IGST was wrongly paid on the transaction of intra-state supply?

Ans. When IGST was wrongly paid on intra-state supply, it is not required to pay any interest on the amount so paid when CGST/SGST or CGST/UTGST becomes payable.

77.5 MCQ

Q1. Which section deals with tax wrongly collected and deposited with Central or State Government?

(a) Section 57

(b) Section 58

(c) Section 77

(d) Section 79

Ans. (c) Section 77

Q2. If CGST/SGST is wrongly remitted instead of IGST, the tax payer can_____

(a) seek refund

(b) adjust against future liability

(c) take re-credit

(d) file a civil suit for recovery

Ans. (a) seek refund

Statutory provision

78. Initiation of recovery proceedings

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

78.1. Introduction

This provision empowers the proper officer to collect any amount which is payable by a taxable person in pursuance of an order passed under the Act

78.2 Analysis

(a) This section enables initiation of proceedings for recovery of amount from taxable person.

(b) The amount shall be paid by taxable person within a period of 3 months of the service of order, failing which the proper officer shall initiate the recovery proceedings.

(c) If it is in the interest of revenue, the proper officer after recording the reasons in writing, may initiate the recovery proceedings even before the completion of the said period of 3 months However it empowers the proper officer in the interest of revenue after recording the reasons to initiate recovery proceedings even before the said completion of 3 months.

78.3 Comparative review

There is no similar provision under present Central Indirect Tax laws.

78.4 Related provisions

Section	Description	Remarks
Section 79	Recovery of tax	Provision for recovering the tax dues from a person
Section 84	Continuation and validation of certain recovery proceedings	Provisions for continuing the recovery proceedings on a taxable person

78.5 FAQs

1. When shall amount be payable by a taxable person in pursuance of order passed under this Act?

   In normal course, any amount payable by a taxable person in pursuance of an order passed under the Act shall be paid by such person within 3 months from the date of service of such order.

2. When can proper officer require the taxable person, to make payment of payable amount within such shorter period as may be specified by him?

When the proper officer considers it necessary in the interest of revenue, he may, after recording reasons in writing, ask the said taxable person, to make such payment within such shorter period as may be specified by him.

78.6 MCQ's

Q1. When can recovery proceedings be initiated?

(a) To recover any amount payable by a taxable person in pursuance of an order passed under the Act

(b) To recover any input tax credit availed by taxable person

(c) None of the above

(d) All of the above

Ans. (a) To recover any amount payable by a taxable person in pursuance of an order passed under the Act

Q2. What is the time limit for recovery of any amount payable by a taxable person in pursuance of an order passed under the Act?

(a) 6 months

(b) 3 months

(c) 1 year

(d) 2 years

Ans. (b) 3 months.

Q3. When can proper officer require the taxable person, to make payment within shorter period as may be specified?

(a) It is necessary in the interest of revenue

(b) When amount payable exceeds Rs. 10 Lakhs

(c) Both of the above

(d) None of the above

Ans. (a) It is necessary in interest of revenue

Statutory Provision

79. Recovery of Tax

(*1*) Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely:—

(*a*) the proper officer may deduct or may require any other specified officer to deduct the

amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;

(*b*) the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;

(*c*) (*i*) the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;

(*ii*) every person to whom the notice is issued under sub-clause (*i*) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made before payment is made, notwithstanding any rule, practice or requirement to the contrary;

(*iii*) in case the person to whom a notice under sub-clause (*i*) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;

(*iv*) the officer issuing a notice under sub-clause (*i*) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;

(*v*) any person making any payment in compliance with a notice issued under sub-clause (*i*) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;

(*vi*) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;

(vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to

become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;

(d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;

(*e*) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

(*f*) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.

(*2*) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (*1*), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.

(*3*) Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.

(*4*) Where the amount recovered under sub-section (*3*) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government

79.1 Introduction

The section empowers the departmental officers to collect/recover any amount which is payable under GST Act. Section 79 provides for the manner in which the recovery proceedings can be carried out.

79.2 Analysis

(i) When any amount that is payable by any person *(hereinafter referred to as **defaulter**)* to Government is not paid, the officer can adopt one or more of the methods set out in section 79 for recovery of amounts payable. The methods are :

(a) Deduction out of any money owing to defaulter:

- There should be some money which is being owed by the Government to defaulter;
- The amount payable can be deducted out of the said amount due to defaulter;
- The deduction can be done by the proper officer himself or he may ask any other specified officer to do so.

(b) By detaining and selling the goods belonging to defaulter:

- There should be goods which are under the control of the proper officer or other specified officer;
- Such goods should belong to the person who is liable to pay any amount.
- The goods may be detained and sold by the proper officer or such other specified officer on request by the proper officer;
- Out of the realisation, the amount payable by defaulter shall be recovered.

(c) Recovery from any other person who owes money to defaulter.

- This applies when any other person -
  - has become due to pay money to the defaulter;
  - is likely to become due to pay money to the defaulter;
  - holds money for or on account of the defaulter;
  - may subsequently hold money for or on account of the defaulter.
- In such cases the proper officer may issue notice to such other person to pay to the credit of the Government –
  - forthwith
    - upon the money becoming due or
    - being held, or
  - at or within the time specified in the notice not being before the money becomes due or is held.
- The amount directed to be paid in the notice shall be –
  - Where the amount due/held by such other person is more than amount due by the defaulter – to the extent of amount due by the defaulter;

- Where the amount due/held by such other person is equal to or less than amount due by defaulter - whole of money due/held.

— Such other person to whom such notice is issued is bound to comply with the same.

— In cases where such notice is issued to a post office, banking company or an insurer, they are required to comply with the same without insisting on production of any passbook, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like, though that might be the normal practice.

— If such person to whom such notice is issued, fails to comply, he shall be treated as defaulter to the extent of the amount mentioned in the notice and all other consequences under the law shall follow;

— The notice so issued may be amended or revoked or time may be extended for making any payment;

— The payment made by Such other person in accordance with the notice issued, shall be deemed to have made the payment on behalf of such defaulter and the amount credited to the government shall be deemed to constitute the discharge of liability of such defaulter to the extent of the payment made.. Consequently no civil suit or other proceedings could be filed or initiated by the defaulter on the notice, who has complied with this provision.

— Instead of crediting the amount to the government, if such person makes the payment to defaulter, then such other person shall be personally liable to the Government to the extent of the amount due by the defaulter or amount discharged to the defaulter whichever is lower.

— However such person shall not be personally liable, if he proves to the officer issuing the notice that

- the money demanded or any part thereof was not due to the person in default or
- at the time of service of the notice he did not hold any money for or on account of the person in default,
- the money was not demanded from him; or
- any part of the money demanded is not likely to become due to such other person or
- any part of the money will not likely be held for or on account of such person.

(d) Collection by detention of any movable or immovable property.

— On authorisation by competent authority, proper officer in accordance with the rules framed for this purpose,

- Detain any movable or immovable property belonging to defaulter;
- After which detain such property till the amount payable is paid.

— If any part of the amount payable or cost of distress or keeping the property is not paid within 30 days from such distress, the proper officer may sell the property and with the proceeds he may adjust towards

- amount payable;
- costs including the cost of sale remaining unpaid;

— After such adjustment, the remaining surplus shall be returned to the defaulter.

(e) Recovery through District Collector:

— Proper officer may prepare a certificate signed by him specifying the amount due from the defaulter.

— Such certificate will be sent to the Collector of the District in which the defaulter

- owns any property; or
- resides; or
- carries on his business

— The DC on receipt of such certificate shall proceed to recover from such defaulter the amount specified in the certificate as if such amount is arrears of land revenue.

(f) Recovery through Magistrate:

— This provision has overriding effect over Code of Criminal Procedure;

— In this case the proper officer may file an application to the appropriate Magistrate;

— The Magistrate to whom application is made shall proceed to recover from the defaulter the amount specified in the application as if it is fine imposed by such Magistrate.

(ii) Under the GST Act, rules or regulations there would be requirement to execute bond or other instruments. If such bond/instrument provides that the amount becoming due shall be recovered in terms of Section 79(1), then the recovery shall be effected as discussed above irrespective of whether other mode of recovery exists or not.

(iii) Further it is also Provided that if either SGST Officer/ UTGST Officer while recovering SGST/UTGST arrears may also recover any amount due from the defaulter the amount due by him under CGST Act as if it is SGST/UTGST and later pass it on to the Central Government.

(iv) Similar provision also exists in SGST/UTGST Act for recovery of any amount due under SGST Act/UTGST Act to be recovered by CGST officers while recovering arrears of

CGST as though the amount due was CGST and later pass it on to the concerned State Government/Union Territory.

(v) It is also Provided that in case where the SGST officer/UTGST officer also collects CGST in the course of collection of SGST/UTGST or viceversa, where the amount recovered is not fully covering both the liabilities, the amount collected has to be apportioned between Centre and State/Union Territory in the same proportion of the amounts due.

79.3 Comparative Review

Under the present tax laws, similar provision exists in Central Excise Law[5], Customs Law[6] as well as Service Tax Law[7]. In the context of section 87 of the Finance Act, 1994, the Karnataka High Court in UOI Vs Prashanthi, 2016-TIOL-1127-HC-KAR-ST held that such recovery cannot be effected before determination of liability under section 73.

Also, similar provision also exists in all most all the State VAT laws as well.

79.4 FAQ

Q1. What are the methods of recovery as prescribed in Section 79?

Ans. — Deduction out of any money owing to defaulter.

— By detaining and selling the goods belonging to defaulter.

— Recovery from any other person who owes money to defaulter.

— Collection by detention of any movable or immovable property.

— Recovery through District Collector.

— Recovery through Magistrate.

Q2. Can the authorities use more than one of the methods for the recovery proceedings?

Ans. Yes, they can use one or more methods at the option and choice of the proper officer.

Q3. In case of recovery of SGST/UTGST by CGST officer in the course of recovery of CGST, where the total amount recovered is ₹ 2 Crore whereas the amounts due were 2 Crores of CGST and 3 Crore of SGST/UTGST, to which account, the amount recovered would be allocated?

Ans. 2 Crores recovered will be allocated between Centre and State/Union Territory in the proportion of 2:3.

79.5 MCQ

Q1. Recovery of amount payable by a defaulter can be made from _____

(a) customer

(b) bank

[5]Section 11D of Central Excise Act, 1944
[6]Section 28B of Customs Act, 1962

(c) post office

(d) all the above.

Ans. (d) all the above.

Q2. Recovery of amount payable by a defaulter can be made _____

(a) after determination of liability under section 73 or 74

(b) even before issue of notice under section 73 or 74

(c) any time

(d) at the discretion of the proper officer.

Ans. (a) after determination of liability under section 73 or 74

Q3. After how many days, the proper officer may cause the sale of distressed property?

(a) 30 days

(b) 60 days

(c) 90 days

(d) 120 days

Ans. (a) 30 days

Statutory Provision

80. Payment of tax and other amount in installments

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery

80.1 Introduction

This section permits a taxable person to make payment of an amount due on installment basis, other than the amount due as per self-assessed return. The term 'installments' in general parlance would mean equated periodical payments (money due) spread over an agreed period of time. This provision happens to be beneficial piece of law to the tax payers to pay the demand in installments along with interest.

80.2 Analysis

(i) This section empowers the Commissioner to grant permission only to the taxable

person to make payment of any amount due on instalment basis, on an application in writing.

(ii) The Commissioner would either extend the time or allow payment of any amount due under the Act on instalment basis for reasons to be recorded in writing.

(iii) This section applies to amounts due other than the self-assessed liability shown in any return.

(iv) The instalment period shall not exceed 24 months.

(v) The taxable person shall also be liable to pay prescribed interest on the amount due from the first day such tax was due to be payable till the date tax is paid.

(vi) If default occurs in payment of any one instalment the taxable person would be required to pay the whole outstanding balance payable on such date of default itself without further notice.

80.3 Comparative review

These provisions are broadly similar to the provisions contained in existing KVAT Rules (Rule 53 of the KVAT rules, 2005). However, KVAT law specifies the time frame for interest payments to be the period upto the month the last instalment is due. Further, the above provision is replicated in the GST act, from the KVAT law. In Central Indirect Taxes, it was allowed by the Department in exceptional cases although express provisions were not there.

80.4 Related provisions

Section	Description
50	Interest on delayed payment of tax

80.5 FAQs

Q1. Whether application is to be made to pay the amount due in installments?

Ans. Yes, an application should be made by a taxable person to the commissioner stating the reasons for his/her request to make payment through installments.

Q2. Can an unregistered person be covered under the said provisions?

Ans. A taxable person is covered by the provision, While Section 2(107) defines taxable person as "a person who is registered or liable to be registered under Section 22 or Section 24. Hence unregistered person cannot opt the benefit of this provision.

Q3. From which date does the interest liability arise.

The interest is liable to be paid from the date on which the said amount of tax became due to be paid till the actual payment of tax i.e., last instalment.

Example: 'A' requested the Commissioner to provide the benefit to pay ₹ 5,00,000/- under installments. Commissioner directs 'A' to make the payment in five monthly installments. How to pay the interest?

Ans. It is assumed that the actual date on which the tax was required to be paid as

06.06.2015. Benefit of instalment was granted by Commissioner on 25.06.2016 to be paid w.e.f 02.06.2016 onwards over 5 installments

Payment date	Interest to be paid as per section 45 – No of days	Amount on which interest to be paid
1st Instalment – 02.06.2016	06.06.2015 to 01.06.2016 = 361 days	₹ 1,00,000/-
2nd Instalment – 02.07.2016	06.06.2015 to 01.07.2016 = 391 days	₹ 1,00,000/-
3rd Instalment – 02.08.2016	06.06.2015 to 01.08.2016 = 422 days	₹ 1,00,000/-
4th Instalment - 02.09.2016	06.06.2015 to 01.09.2016 = 453 days	₹ 1,00,000/-
5th Instalment – 02.10.2016	06.06.2015 to 01.10.2016 = 483 days	₹ 1,00,000/-

Q3. What will happen if the taxable person fails to pay any one instalment on its due date?

Ans. In such a case, the entire outstanding balance payable as on the said due date shall forthwith become due and payable without any further notice and be liable for recovery.

80.6 MCQ

Q1. The following amounts due cannot be paid through installments,

(a) Self-assessed tax shown in return

(b) Arrears of tax

(c) Short paid tax for which notice has been issued

(d) Concealed liability

Ans. (a) Self-assessed tax shown in return

Q2. Maximum number of installments permissible under section 55

(a) 36

(b) 12

(c) 48

(d) 24

Ans. (d) 24

Q3. Which officer/s has the power to grant permission for payment of tax through instalment?

(a) Commissioner

(b) Assistant Commissioner

(c) Chief Commissioner

(d) both (a) and (b)

Ans. (d) Commissioner

Statutory Provision

81. Transfer of property to be void in certain cases

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer..

81.1 Introduction

This provision is for protecting the Government revenue by avoiding transfer of property by a taxable person to another person. This would prevent any attempt to defraud the revenue by alienating the properties.

81.2 Analysis

(i) The said provision would be applicable only when any tax has become due.

(ii) The following acts done by a person, in favour of any another person, after the tax becomes due, would be void

Situations / cases – Void	Situations / cases – valid
• Creates a charge on; or • Parts with the property • Belonging to him; or • In his possession By way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties.	Made for adequate consideration and • without notice of the pendency of proceeding • Without notice of such tax or other sum payable by the said person, • With previous permission of the proper officer.

(iii) The transfer will be void, when it is or was with an intention of defrauding the Government revenue.

Illustrations:

1. Mr. Defrauder was served with a notice of demand for Rs. 20 Lakhs on 10th June 2018. He filed a reply for the said notice on 20th June 2018, stating that he was unable to deposit tax dues as he was financially stressed. On 15th June 2018, Mr. Defrauder transferred all the property worthRs.35 Lakhs under his name to the name of his wife for a consideration of Rs.10,000/-. Is this act of Mr. Defrauder valid?

   As per section 81, the said transfer would be void and the property worthRs.35 Lakhs would be considered still to be in the hands of Mr. Defrauders.

2. In the above illustration, if transfer of property was for a consideration of Rs. 42 Lakhs to Mr. X who is unaware of the pending proceedings of Mr. Defrauder. The transfer took place on 15th June 2018. Is the act of Mr. Defrauder valid?

   In this case the transaction would be a valid act, since the transfer was made for adequate consideration and also without notice of the pendency of proceeding.

3. On Mr. Perfect, notice was issued on 10th June 2018; however the same was received by Mr. Perfect on 20th June, 2018. Meanwhile the property of Mr. Perfect was sold to Mr. Perfectionist for Rs. 35 Crore. Is the sale void or valid?

   The sale is valid since on the date of sale there was no pending proceeding on Mr. Perfect.

81.3 Comparative review

This provision is new to Indirect Tax law. It is a concept borrowed from the Income-Tax law to safeguard the revenue. According to the Income Tax (I-T) Act, certain transfers can be considered void without a tax-clearance certificate (Section 281B). "This can be transfer of immovable property, that is, sale or mortgage of housing property, any gift, or exchange,"

81.4 Related provisions

All the provisions which are in relation to assessment and determination of tax would be applicable. The same is Provided below:

Section	Description
62	Assessment of non-filers of returns
63	Assessment of unregistered persons
64	Summary assessment in certain special cases
73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts

74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts

81.5 FAQs

Q1. When the transaction in property is void as per section 81?

Ans. During the pendency of proceeding under GST Act, if the taxable person transfers the property of his to another person with an intent of defrauding the Government revenue, then such transfer would be considered as void.

81.6 MCQ

Q1. Charge on which of the following is void during pending of proceedings,

(a) Parts with the property belonging to him

(b) Creates a charge on Property

(c) Parts with the property in his possession

(d) both (a) and (b)

Ans. (d) both (a) and (b)

Q2. What all modes of transfers are covered under section 81?

(a) Sale

(b) Exchange

(c) Mortgage

(d) All of the above

Ans. (d) All of the above

Q3. When the transfer of property would be considered as void ……..

(a) Transaction is done to defraud the Govt. revenue

(b) Transaction is done without intention to defraud the Govt. revenue

(c) Any of the above

Ans. Transaction is done to defraud the Govt. revenue

82. Tax to be first charge on property

Statutory Provision

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise Provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

82.1 Introduction

Other than as provided under Insolvency and Bankruptcy Code, 2016,this provision shall have an overriding effect over the other provisions contained in any law for the time being in force . This provision provides that if any dues are payable by a taxable person or any other person to the government, then it would have first charge on the property of such taxable or other person.

82.2 Analysis

(i) The provisions of this section would apply to a taxable person or any other person who is liable to pay tax, interest or penalty to Government.

(ii) Any liability to be paid to the Government would be given priority in the matter of effecting recovery by placing a first charge on the property of the taxable person or any other person.

(iii) This provision also covers any other person since there are many provisions in the Act, which provide for creating a liability or recovery from a person other than the taxable person like a legal representative, member of partitioned HUF etc.

82.3 Comparative review

These provisions are broadly similar to the provisions contained,

1. Section 142A – Customs Act, 1962
2. Section 11E – Central Excise Act, 1944
3. Section 48 – Karnataka VAT Act, 2003
4. Section 88 – Finance Act, 1994
5. Section

82.4 Related provisions

Section	Description	Remarks
Section 76	Tax to be first charge on property	This section is an overriding section and states that any tax, interest and penalty payable to the Central or a State Government shall be the first charge on the property of the taxable or any other person who is liable to make such payment.

82.5 FAQ

Q1. When can the charge on property of taxable person be created?

Ans. The charge can be created only when taxable person or any other person is liable to pay tax or interest or penalty to Government.

Q2. Are unregistered persons covered under the said provision?

Ans. The section refers to both taxable person and any other person, on whose property first charge could be created. Hence, all persons as defined under Section 2(73) of the CGST Act would be covered, whether he is a taxable person or not.

82.6 MCQ

Q1. What liabilities can be recovered under this section?

(a) Interest

(b) Tax

(c) Penalty

(d) All of the above

Ans. (d) All of the above

Q2. Mr. Richie Poor, has the following properties, which of the below would be treated as attracting first charge.

(a) Richie Nilaya, a mansion in the name of Mr. Richie

(b) Mrs. Richie's fixed deposit

(c) Richie's neighbour, Mrs. Y's Jewellery

(d) None of the above

Ans. (a) Richie Nilaya, a mansion in the name of Mr. Richie

Statutory Provision

83. Provisional attachment to protect revenue in certain cases

(*1*) Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.

(*2*) Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (*1*).

83.1 Introduction

This section confers power to provisionally attach the property of the taxable person in certain situations to protect the interest of the Government.

83.2 Analysis

(i) This section applies only during the pendency of any proceedings under

(a) Section 62 – Assessment of non-filers of returns.

(b) Section 63 – Assessment of unregistered persons.

(c) Section 64 – Summary assessment in certain special cases.

(d) Section 67 – Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts.

(e) Section 73- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts.

(f) Section 74- Power of inspection, search and seizure

(ii) The provisional attachment of property of taxable person shall be executed by the Commissioner.

(iii) The only condition is that the Commissioner should be of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary to provisionally attachment the property. The commissioner may seize bank accounts of such persons if it is in the interest of revenue.

(iv) Such provisional attachment would be valid for one year from the date of the order made by the Commissioner.

83.3 Comparative review

These provisions are broadly similar to the provisions contained in existing

— Finance Act, 1994 (Section 73C)

— Central Excise Act, 1944 (Section 11DDA)

— Customs Act, 1962 (Section 28BA)

— Delhi VAT Act, 2004 (Section 46A)

83.4 Related provisions

Section	Description
62	Assessment of non-filers of returns.
63	Assessment of unregistered persons.
64	Summary assessment in certain special cases.
67	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts.
73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts.
74	Power of inspection, search and seizure.

83.5 FAQs

Q1. Provisional attachment shall be applicable to which proceedings?

Ans. Provisional attachment shall be applicable for the following pending proceedings of a taxable person,

1. Assessment of non-filers of returns.
2. Assessment of unregistered persons.
3. Summary assessment in certain special cases.
4. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts.
5. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts.

Q2. What is the condition for provisionally attaching the property of a taxable person?

Ans. The Commissioner should be of the opinion that for the purpose of protecting the interest of the Government revenue it is necessary to do so.

Q3. Why attachment to be done before conclusion of proceedings?

Ans. Attachment to be done before conclusion of proceedings, if Commissioner is of the opinion that there is risk of recovery and to protect interest of revenue.

83.6 MCQ

1. Till what period does the order passed for provisional attachment is valid?
   (a) Infinite period
   (b) One year
   (c) Ten years
   (d) till the end of the such proceedings

Ans. (c) One year

2. Who is the competent authority for passing an order for provisional attachment?
   (a) The Deputy Commissioner
   (b) The GST Council
   (c) The Commissioner
   (d) The Assistant Commissioner

Ans. (b) The Commissioner

3. Attachment can be done under section 83:
   (a) Before completion of proceedings.
   (b) After completion of proceedings.

(c) After 3 attempts to recover dues.

(d) Only if there is risk of delinquency in payment of dues.

Ans. (a) Before completion of proceedings.

Statutory Provision

84. Continuation and validation of certain recovery proceedings

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then––

(*a*) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;

(*b*) where such Government dues are reduced in such appeal, revision or in other proceedings–

(*i*) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;

(*ii*) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;

(*iii*) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings maybe continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

84.1 Introduction

This section deals with continuation of proceedings, where a notice is already served for recovery of government dues upon a taxable person and upon any appeal, revision application there is reduction or enhancement of such Government dues.

84.2 Analysis

(i) The section refers to –

— any notice of demand in respect of Government dues (tax, interest and penalty) served on taxable person or any other person; and

— any appeal, revision application is filed or other proceedings are initiated in respect of such Government dues.

Further–

(a) such Government dues may be enhanced; or

(b) reduced in such appeal, revision or in other proceedings

(ii) In such cases, the Commissioner shall –

— Serve another notice on the taxable person, in respect of the enhanced amount.

— If notice of demand is already served on taxable person before such appeal, revision or any other proceedings, then recovery of enhanced amount would be continued from the stage at which the initial proceedings stood. There is no need to issue a fresh notice of demand to the extent already covered by earlier notice.

— In case the Government dues are reduced in such appeal, revision or in other proceedings – the Commissioner

- Is not required to serve fresh notice of demand upon the taxable person;
- Shall intimate such reduction to taxable person and also to appropriate authority with whom recovery proceedings are pending;

Any recovery proceedings are initiated prior to the disposal of such appeal, revision application or other proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

84.3 Comparative review

The provisions under this section of GST are in line with the provisions of section 45 of Delhi Value Added Tax Act, 2004.

84.4 Related provisions

Section	Description
Section 73	Recovery of tax

84.5 FAQs

Q1. How should the recovery proceedings of enhanced demand under an appeal, revision of application or other proceedings to be continued?

Ans. In case of enhanced demand consequent to appeal, revision of application or other proceedings, then

— the Commissioner is required to issue fresh notice of demand only for enhance demand.

— If already recovery proceedings of Govt. dues is served on taxable person before disposal of appeal, revision of application or other proceedings, then the enhanced demand would be merged with the first recovery proceedings.

Q2. Under what circumstances issue of fresh notice is not necessary ?

Ans. When a notice is already served for recovery on taxable person or any other person, before disposal of appeal, revision application or other proceedings, then issue of fresh

notice is not required to the extent of amount covered in the notice in case of increase in demand and when there is reduction also there is no need to issue fresh notice.

Q3. What will the fate of the recovery proceedings initiated prior to disposal of such appeal, revision or other proceedings, where Government dues are reduced?

Ans. *Where such Government dues are enhanced :*

Any recovery proceedings initiated prior to disposal of such appeal, revision or other proceedings may be continued in respect of the Government dues covered by the notice of demand served to him earlier from the stage at which it stood immediately prior to such disposal.

Where such Government dues are reduced:

Any recovery proceedings initiated prior to disposal of such appeal, revision or other proceedings may be continued in relation to the reduced amount from the stage at which it stood immediately prior to such disposal.

84.6 MCQ

Q1. When Commissioner can issue a fresh notice to recover the Government dues?

(a) Demand amount is enhanced

(b) Demand amount is reduced

(c) both (a) and (b)

Ans. (a) Demand amount is enhanced

Q2. When Commissioner is not required to serve fresh notice to recover the Government dues:

(a) Demand amount is reduced

(b) Already proceedings of recovery of Government dues is served before disposal of appeal, revision of application or other proceedings

(c) Demand amount is enhanced

(d) Both (a) and (b)

Ans. (d) Both (a) and (b)

Q3. Who can issue notice for enhanced demand by appeal, revision of application or other proceedings:

(a) Commissioner

(b) Assistant Commissioner

(c) Joint Commissioner

(d) Any of above

Ans. (a) Commissioner

Chapter-XVI
Liability to pay in certain cases

Statutory Provision:

85. Liability in case of Transfer of Business

(1) Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or, , to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person up to the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.

(2) Where the transferee of a business referred to in subsection (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act,, apply within the prescribed time for amendment of his certificate of registration.

85.1 Introduction

This section deals with tax liability that may arise in case of transfer of business. It deals with the following situations:

- Liability arising before the transfer of business as a whole or in part; and
- Liability arising post transfer of business as a whole or in part.
- Such liability may arise on account of sale, gift, lease, leave and license, hire or in any other manner.

85.2 Analysis

(i) Liability arising prior to transfer:

- The provision applies when a taxable person who is liable to pay tax transfer his business either wholly or in part, which could be by way of:
  - Sale
  - Gift
  - Lease
  - Leave and license
  - Hire or
  - In any other manner

Tax liability: Both transferor and transferee will be jointly and severally liable for payment of taxes, interest and / penalty due upto the time of transfer of business (wholly or partly).

The joint and several liability will remain even if such amounts were determined and due before the transfer of business.

Interestingly even penal liability, which is quasi-criminal in nature, is sought to be fastened on the transferee, although he would not have been responsible for the non-payment of tax liability by the transferor prior to transfer of business

(ii) Liability arising post transfer

The tax, interest and / or penalty which is determined and which relates to the period, post transfer of business will clearly be the liability of the transferee of business.

It will remain the liability of the transferee whether or not the business is continued in the same name or otherwise.

As a process, in case the transferee is already an existing taxable person, he needs to apply for amendment of his registration certificate within the prescribed time incorporating the changes as to the acquisition of the business (whole or part).

85.3 Comparative analysis with the present regime

The liability in respect of transactions, post the date of transfer of business, viz., where the liability is fastened on the transferee is comparable to the current indirect tax provisions. However, in respect of joint and several liability of both, the transferor and transferee, for liabilities upto the date of transfer is comparable to certain State level VAT laws.

85.4 FAQs

Q1. In case of transfer of business, who is liable to pay tax in respect of business transactions prior to such transfer?

Ans. Both the transferor and transferee of business (either wholly or partly) are jointly and severally liable to pay tax.

Q2. Whether such liability as mentioned above is applicable only for tax?

Ans. Such liability is applicable to interest and penalty also in addition to tax.

Q3. What are the types of business transfers covered in Section 85?

Ans. Following types of business transfers are covered in the subject provision:

(a) Sale;

(b) Gift;

(c) Lease;

(d) Leave and license;

(e) Hire; or

(f) In any other manner

Q4. To what extent the transferor of business is liable to pay tax / interest / penalties?

Ans. The transferor of business is wholly liable to pay tax / interest / penalties arisen (whether determined prior to transfer or post transfer) upto the date of transfer of business.

Q5. Who is liable to pay tax in respect of supplies made after the date of transfer of business?

Ans. The transferee of business is liable to pay tax after the date of transfer of business.

Q6. If the transferee carries on an existing business, what are the actions to be taken on transfer?

Ans. The transferee is required to make amendments in his registration to give effect to the business transfer

85.5 MCQ:

Q1. Transfer of business includes ……

(a) Sale

(b) Lease

(c) Leave & License

(d) All the above

Ans: d) All the above

Q2. Who is liable to pay the tax in case of transfer of business?

(a) Transferor

(b) Transferee

(c) Both jointly or severally

(d) jointly

Ans: c) Both jointly or severally

Statutory Provision

86. Liability of Agent and Principal

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall , jointly and severally, be liable to pay the tax payable on such goods under this Act.

86.1 Introduction

This section casts the liability on a principal, in addition to the liability of agent who effects the supply of taxable goods on behalf of principal or procures taxable goods on behalf of his principal.

86.2 Analysis

Under the GST law, in cases where –

— Taxable Goods are supplied by agent on behalf of principal; or

— Taxable Goods are procured by agent on behalf of principal;

the agent is primarily liable for tax. However, by virtue of this provision, both agent and principal, will be jointly and severally made liable for tax payable on such supplies.

86.3 FAQs

Q1. Whether the principal is also liable for tax payable on the goods supplied by the Agent?

Ans. Yes, the principal will also be jointly and severally liable to pay tax on such supplies, along with the agent.

86.4 MCQ:

Q1. Agent and Principal, both are liable to pay tax on supply or receipt of ……

(a) Taxable Goods only

(b) Services only

(c) Goods along with service

(d) None of the above

Ans: (a) Taxable Goods only

Q2. Agent and Principal are liable to pay tax……..

(a) Jointly

(b) Separately

(c) Both jointly and severally

(d) Jointly or Separately

Ans: (c) Both jointly and severally

Statutory Provision:

87. Liability in case of Amalgamation or Merger of companies

(1) When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to tax accordingly.

(2) Notwithstanding anything contained in the said order, for all purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to

the date of the said order and the registration certificates of the said companies shall be cancelled, with effect from the date of the said order.

87.1 Introduction

This section deals with tax liability on transactions between the effective date and date of order (Tribunal/Court) in case of amalgamation or merger of companies.

87.2 Analysis

(i) In cases of amalgamation or merger of two or more companies by virtue of an order passed by Tribunal/Court/otherwise., the following two crucial dates are relevant, -

— Date from which the amalgamation/merger is effective;

— Date of the order pursuant to which the amalgamation/merger takes place;

(ii) Normally, by virtue of the said order the transactions of supply of goods and/or services inter-se the companies merged/amalgamated between two dates would get nullified as they would become one entity from the effective date (and not from the date of the order).

(iii) However, for the purposes of GST, by virtue of this provision, such transactions would continue to be treated as one of supply by one entity and receipt by the other, viz., all provisions of this law would equally apply as if the amalgamation or merger had not taken place and both the entities continue as two different taxable persons. Till the date of order of amalgamation / merger, those companies shall be treated as distinct companies and should discharge their respective tax liabilities.

(iv) Thus, this provision would eclipse the order of the Court/Tribunal and its legal effect for the limited purposes of GST law.

(v) It provides that wherever necessary, the registration certificates of the said companies would stand cancelled with effect from the date of the said order.

87.3 Comparative analysis with the present regime

This is comparable to most of the State level VAT laws, wherein the sale of goods between such entities (between the effective date of merger / amalgamation and the date of the order) will be treated as sale by one entity and purchase by the other. Such transactions will continue to be liable to tax as if the merger or amalgamation had not taken place and both the entities continue as two different entities.

87.4 MCQ:

Q1. When two or more companies are amalgamated, the liability to pay tax on supplies between the effective date of amalgamation order and date of amalgamation order would be on -

(a) Transferee;

(b) Respective companies;

(c) Any one of the companies;

(d) None of the above.

Ans: (d) Respective Companies.

Statutory Provision:

88. Liability in case of company in liquidation

(1) When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company (hereinafter referred to as the "liquidator"), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

(2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.

(3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

88.1 Introduction

This section deals with the tax and other dues of a company in case it is wound up or liquidated.

88.2 Analysis

(i) Every person appointed as receiver / liquidator needs to give intimation of his appointment to the Commissioner within 30 days of his appointment.

(ii) Within 3 months from the date of such intimation, the Commissioner will notify the liquidator to set apart a sum of money that would be sufficient to discharge, in his opinion, the amount of tax, interest and penalty payable by the company after making necessary enquiry or calling of information.

(iii) When a private company is not able to clear its dues, then every person who was the Director at any time during the period, for which tax is due, would be liable jointly and severally to pay the dues.

(iv) However, if any Director proves to the satisfaction of the Commissioner that such non-

recovery is not due to his gross neglect, misfeasance or breach of duty, the liability would not arise in the hands of such Director.

88.3 MCQ:

Q1. Intimation regarding appointment of liquidator should be given to the Commissioner within 30 days of

(a) Liquidation

(b) Cancellation of registration

(c) Appointment of Liquidator

(d) Order of Court

Ans: (c) Appointment of Liquidator

Q2. Commissioner will notify the amount of liability within how many days of intimation

(a) 3 months

(b) 30 days

(c) 60 days

(d) 6 months

Ans: (a) 3 months

Q3. When would a Director not be liable to pay the tax dues, if the company is not able to pay

(a) Liquidator refuses to pay

(b) Auditor refuses to pay

(c) If the non-recovery is not due to gross neglect of the Director

(d) None of the above

Ans: c) If the non-recovery is not due to gross neglect of the Director

Statutory Provision:

89 Liability of directors of Private Company

(1) Notwithstanding anything contained in the Companies Act, 2013 (18 of 2013), where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(2) Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which

such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company.

Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

89.1 Introduction

This section deals with recovery of tax dues interest or penalty from the Directors of a private company, where the private company has not discharged its tax, penalty or interest liability towards the supply of goods or services.

89.2 Analysis

(i) If the tax interest or penalty were not paid by a private company in relation to any supply of goods or services for any period, then every Director of such private company during such period will be liable to pay such dues. The liability of the Director will be relaxed only when, he proves that such non-recovery of dues is not because of his gross negligence, misfeasance or breach of duty in relation to affairs of company.

(ii) This will apply even if that entity is no longer a private limited company (viz., if it was a private limited company during the period to which the tax interest or penalty relate to, but is no longer a private limited company (as on the date on which it is to be recovered)); every director of such company during such period (when the company was a "Private Company") will be liable to pay such dues as explained above.

(iii) However, an exception has been carved out for the above provision – viz., this is not applicable to personal penalty imposed on such director.

89.3 MCQ

Q1. When a private company is converted into public company, the liability of Director of private company before conversion is……

(a) Tax Only

(b) Tax and Interest

(c) Tax, Interest or Penalties

(d) None of the above

Ans. (d) None of the above

Q2. Who is liable to pay the tax?

(a) Additional director

(b) Whole time Director

(c) Managing Director

(d) All of the above

Ans. (d) All of the above

Statutory Provision

90 – Liability of Partners of firm to pay tax

Notwithstanding any contract to the contrary and any other law for time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall jointly and severally, be liable for such payment:

Provided that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date:

Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

90.1 Introduction

This section deals with the liability of a partner of a firm to pay any tax, interest or penalty, that was otherwise payable by the firm.

90.2 Analysis

(i) Where a partnership firm is liable to pay any tax, interest or penalty, all the partners of such firm will be jointly and severally liable to pay such amounts.

(ii) If any of the partners retire, then such partner or the firm shall give intimate the Commissioner by a notice in writing of such retirement within one month from the date of retirement. In such cases, the retiring partner shall be liable to pay tax, interest and penalty, if any upto the date of his retirement (whether determined or not prior to retirement).

(iii) However, where no such intimation is given by the partner to the Commissioner within 1 month from retirement date, the liability of such retired partner will continue till the date on which the intimation is received by the Commissioner.

(iv) The provision will be equally applicable for LLPs.

Every partner who retires from a partnership firm should file an intimation to the jurisdictional Commissioner giving the details of his retirement – viz., the name of the firm, registration number of the firm and the date of his / her retirement.

If the firm is operating in more than one States, such intimation should be filed in all such States.

90.3 FAQs

Q1. Whether the retiring partner is liable to pay tax?

Ans. Retiring partner shall be liable to pay tax, interest and penalty, if any upto the date of his retirement (whether determined or not prior to retirement).

Q2. What are the precautions to be taken by the retiring partner?

Ans. Retiring partner shall intimate the Commissioner by a notice in writing of his retirement within one month from the date of his Retirement.

Q3. Whether partner or firm is liable to intimate to the Commissioner regarding his retirement?

Ans. Either the retiring partner or the firm shall give intimate the Commissioner by a notice in writing of retirement of a partner.

Q4. What is the time limit for the firm or partner to give intimation of retirement of partner?

Ans. The time limit to intimate retirement is within one month from the date of retirement to ensure that the liability is not fastened post retirement date.

Q5. What are the consequences of non-intimation?

Ans. The liability of the retiring partner continues till the date of receipt of intimation by the Commissioner

90.4 MCQ

1. Retiring partner should intimate the retirement to

   (a) Department

   (b) Government

   (c) Commissioner

   (d) All of the above

Ans. (c) Commissioner

2. Intimation to the Commissioner has to be given within……..

   (a) 1 month

   (b) 60 days

   (c) 90 days

   (d) 45 days

Ans. 1 month

3. If the intimation is delayed to the Commissioner then the retiring partner is liable to pay tax dues till:

   (a) the date of intimation to the Commissioner

   (b) till the date of acceptance of intimation by the Department

   (c) till the date of retirement

   (d) till the date of show cause notice

Ans: The date of intimation to the Commissioner

Statutory Provision

91 – Liability of guardians, trustees etc.

Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent, , in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

91.1 Introduction

This section enables collection of tax, interest or penalty from the guardians, trustees or agents of a minor or any other incapacitated person in respect of the business carried on for them.

91.2 Analysis

(a) In respect of business carried on, on behalf of, or for the benefit of a minor or incapacitated person (by the following persons who carry on such business) then such person will be liable to tax:

- Guardian; or
- Trustee; or
- Agent;

(b) The tax, interest, penalty or any other dues which such minor or incompetent person will be liable to, are the amounts which are recoverable from the minor or any such incapacitated person and which are levied, assessed in the hands of guardian, trustee or agent.

(c) The dues are recoverable from the guardian, trustee or agent in respect of business of the minor or other incapacitated person by treating them as major or capacitated person, who is conducting the business for himself.

(d) The deeming fiction is required to overcome the general principle of law, which operates in favour of a minor or incapacitated person to plead minority or incapacity in respect of dues or claims, particularly penal liability.

(e) Interestingly the expression 'incapacitated person' is not defined in the Act. It should refer only to a person who is a person of unsound mind or one who is terminally ill.

91.3 FAQs

Q1. Who is liable for tax dues etc., in case of a business of minor or incapacitated person?

Ans. The Guardian, or the Trustee; or the Agent as the case may be who is conducting the business for the benefit of minor or incapacitated person

Q2. Whether the minor for whom the business is carried out by Guardian can escape liability on the ground of minority of the beneficiary?

Ans. The minor is deemed to be a major for the purposes of collection of any tax/interest/penalties arising out of the business carried out for him. Hence the general principle of law has no application and the Guardian, Trustee or Agent cannot escape each liability.

91.4 MCQ

Q1. In case of business carried on by minor or other incapacitated person through Guardian / Agent who is liable to pay tax?

(a) Guardian

(b) Friend

(c) Business Partner

(d) None

Ans. (a) Guardian

Q2. The dues recoverable under this section includes

(a) Only Interest

(b) Any dues which are recoverable under this Act

(c) Only tax

(d) Only Penalty

Ans. (b) Any dues which are recoverable under this Act

Statutory Provision

92 – Liability of Courts of Wards etc.

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager , in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

92.1 Introduction

This section empowers collection of tax, interest or penalty from Court of Wards, Administrator General, Official Trustee or any receiver or manager, who controls the estate or any portion thereof in respect of the taxable person who owns a business and whose estate is being controlled.

92.2 Analysis

In respect of any tax, interest or penalty relating to a business of the taxable person whose estate or part thereof is under their control of the following, (the same persons (following) will be liable as if they were themselves conducting the business as taxable person/s):

(i) Court of Wards or

(ii) Administrator general or

(iii) Official trustee or

(iv) Any receiver or manager or

(v) Including any person, whatever be his designation , who in fact actually manages the business.

Illustration:- Mr. ABC is appointed as manager of Mr. X, to manage the estate of Mr. X, who owns a garment business. Mr. X is liable to pay Rs. 20,00,000/- of CGST, interest and penalty to the Government. The department can recover such dues from Mr. ABC who is managing the estates of Mr. X., by invoking this provision.

92.3 FAQs

Q1. Who is liable to pay tax dues if the estate of a taxable person is controlled by Court of Wards?

Ans. The dues are recoverable from the Court of Wards as if he is conducting the business for himself.

92.5 MCQs

Q1. If the estate or any portion of the estate of a taxable person is under the control of the Court of Wards, Administrative General etc., the tax due from such taxable person is liable to be paid by -

(a) Court of Wards.

(b) Taxable Person

(c) Legal representative of taxable person

(d) None of the above

Ans. (a) Court of Wards

Q2. The Court of Wards, Administrative General, etc., must be appointed by-

(a) Supreme Court

(b) High Court

(c) Any court

(d) None of the above

Ans: (c) Any Court

Q3. The dues recoverable under this section includes

(a) Only Interest

(b) Any dues which are recoverable under this Act

(c) Only tax

(d) Only Penalty

Ans. (b) Any dues which are recoverable under this Act

Statutory Provision

93. Special Provisions regarding liability to pay tax interest or penalty in certain cases

(1) Save as otherwise Provided in the Insolvency and Bankruptcy Code, 2016 where a person, liable to pay tax, interest and penalty under this Act, dies, then-

(a) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, and

(b) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, penalty or interest due from such person under this Act,-

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

(2) Save as otherwise Provided in the Insolvency and Bankruptcy Code, 2016 where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons, , is partitioned amongst the various members or groups of members, then, each member or group of members shall ,jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act upto the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.

(3) Save as otherwise Provided in the Insolvency and Bankruptcy Code, 2016 where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.

(4) Save as otherwise Provided in the Insolvency and Bankruptcy Code, 2016 where a taxable person liable to pay tax, interest and penalty under this Act,-

(a) is the guardian of a ward on whose behalf the business is carried on by the guardian, or

(b) is a trustee who carries on the business under a trust for a beneficiary.

then if the guardianship or trust is terminated, the ward or, , the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

93.1 Introduction

This section discusses about the person liable to pay taxes, interest and penalty in certain situations viz., death of taxable person, partition of HUF/AOP, termination of guardianship or trust, dissolution of firm.

93.2 Analysis

Death of person (individual)

(i) If a person (an individual) who is liable to pay tax dies: -

(a) In case of continuation of business: the legal representative or the any other person who carries on the business after his death is liable to pay tax, interest, penalty or any other due which is due from the deceased person; or

(b) In case of discontinuation of business before or after his death: only the legal representative is liable to pay the tax, interest, penalty or any other dues to the government.

(ii) The liability of the legal representative in case of discontinued business is only to the extent of property or estate received from such deceased person.

(iii) The legal representative or any other person as the case may be is liable to pay the tax, interest or penalty whether-

(a) It has been determined before his death but has remained unpaid or

(b) It has been determined after his death[8]

Partition of HUF or AOP

(i) In case of a HUF or AOP property is partitioned between the member or group of members then the liability to pay tax, interest or penalty

— Is on each member or group of members (jointly and severally) who got a portion in that property.

— The member or the group of members is/are liable only upto the time of partition whether such

- Tax, interest and penalty has been determined before partition but has remained unpaid or
- is determined after such partition

[8] This is to overcome the Supreme Court decision in Shabina Abraham Vs CCE, 2015 (322) ELT 372 (SC),

Dissolution of firm

(i) In case the firm is dissolved-

— Every person who was a partner upto the time of dissolution is jointly and severally liable to pay the tax, interest or penalty.

— The person who was a partner is liable to pay tax even if it is

- determined before dissolution but not paid or
- determined after dissolution.

— The provision applicable for partnership firm would equally apply for LLP as well.

Termination of Guardianship or Trusteeship

(ii) In case the guardian is carrying on the business on behalf of a guardian of a ward or the trustee who carries the business under the trust on behalf of beneficiary, then on the termination of guardianship or trusteeship,

— The ward or the beneficiary is liable to pay tax, interest or penalty upto the time of such termination.

— The ward or the beneficiary is liable to pay tax, interest or penalty

- determined before the termination of guardianship or trusteeship but not paid or
- determined after such termination

The above provisions are applicable to extent there is no contrary provision in Insolvency and Bankruptcy Code, 2016.

93.3 FAQs

Q1. Can a legal representative be made liable for tax dues payable by a deceased person?

Ans. Yes. Legal representative is made liable for the tax dues of the deceased person even if it is determined after death.

Q2. To what extent tax dues of the deceased person could be recoverable from the legal representative?

Ans. (a) In case of continuation of business: the legal representative or the any other person who carries on the business after his death is liable to pay tax, interest, penalty or any other due which is due from the deceased person; or

(b) In case of discontinuation of business before or after his death : only the legal representative is liable to pay the tax, interest, penalty or any other dues to the government. The liability of the legal representative in case of discontinued business is only to the extent of property or estate received from such deceased person.

Q3. In case of partition of HUF or AOP, what would be the extent of liability of members of the HUF/AOP?

Ans. The member or the group of members is/are liable only upto the time of partition.

Q4. In case of dissolution of a firm, upto which date the partners would be responsible to pay the tax dues?

Ans. Every person who was a partner upto the time of dissolution is jointly and severally liable to pay the tax, interest or penalty

93.4 MCQ

Q1. Who is liable to pay tax if the business of an individual is discontinued before his death-

(a) Board of Directors or Manager

(b) Any member of his person who is willing to pay

(c) Legal representative of taxable person

(d) Employee

Ans. (c) Legal representative of taxable person

Q2. The legal representative or any other person of an individual who is dead is liable to pay tax, only if -

(a) The business has been carried on by the legal representative

(b) The business has been carried by the legal representative or any other person

(c) The business has been carried by any other person

(d) None of the above

Ans. (b) The business has been carried on by the legal representative or any other person

Q3. The dues recoverable under this section includes-

(a) Only Interest

(b) Any dues which are recoverable under this Act

(c) Only tax

(d) Only Penalty

Ans. (b) Any dues which are recoverable under this Act

Q4. As per this section, the member or group of members of HUF or AOP is/are liable to pay tax on taxable supplies -

(a) Even after its partition

(b) Upto the time of partition

(c) Both (a) and (b)

(d) None of the above

Ans. (b) Upto the time of partition

Statutory Provision

94. Liability in other cases

(1) Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business-

(a) the tax ,interest, penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and

(b) every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.

(2) Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest and penalty due from such firm or association for any period before its reconstitution.

(3) The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or, to partition.

Explanation.- For the purpose of this chapter,

(a) a" limited liability partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008) shall also be considered as a firm.

(b) "court" means the District Court, High Court or Supreme Court.

94.1 Introduction

This section discusses the liability of partners of firm or members of AOP or HUF on discontinuation of business.

94.2 Analysis

(i) In case of discontinuance of business, the firm or AOP or HUF the liability of the firm/AOP/HUF shall be determined (upto the date of discontinuance) as if no such discontinuance had taken place.

(ii) Every partner of such firm or member of such AOP or HUF at the time of discontinuance shall be jointly and severally liable for payment of tax, interest and penalty imposed.

(iii) In case of change in the constitution of the firm or association, the partners and members who existed before reconstitution shall be liable jointly and severally to pay tax, interest and penalty for any period upto the date of reconstitution. This will operate even if the retirement was intimated to the commissioner in terms of Section 90.

(iv) Discontinuance includes dissolution of firm or association and partition in case of HUF.

(v) This provision, the way it applies to a partnership firm will apply to an LLP as well.

94.3 FAQs

Q1. In case of discontinuance of business of a firm or AOP or HUF, who would be liable to pay the tax and other dues?

Ans. Every partner of the firm or member of the AOP or HUF at the time of discontinuance shall be jointly and severally liable.

Q2. In case of discontinuance of partnership business to what extent a partner would be liable?

Ans. The partner is liable jointly and severally for liability of the discontinued firm of tax, interest and penalty.

Q3. In case of reconstitution of partnership firm, how and to what extent the partners liability is determined?

— Upto the date of reconstitution, all the partners of the firm prior to the date of reconstitution

— After the date of reconstitution, all partners as they exist after reconstitution

94.4 MCQs

Q1. In case of discontinuance of HUF business, the liability would arise till the date of

(a) Discontinuance

(b) Court verdict

(c) As mutually agreed upon by the HUF members

(d) determination of liability by the Department.

Ans. (a) Discontinuance

Q2. The expression 'firm' would include a _____

(a) company

(b) LLP

(c) HUF

(d) AOP.

Ans. (b) LLP

Chapter– XVII
Advance Ruling

Statutory provision

95. Definition clause – interpretation

In this Chapter, unless the context otherwise requires, -

(a) "advance ruling" means a decision Provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods and/or services or both being undertaken or proposed to be undertaken by the applicant;

(b) "Appellate Authority" means the Appellate Authority for Advance Ruling referred to in section 99.

(c) "applicant" means any person registered or desirous of obtaining registration under the Act.

(d) "application" means an application made to the Authority under sub-section (1) of section 97;

(e) "Authority" means the Authority for Advance Ruling, referred to in section 96;

95.1 Introduction

This Section provides the definitions of the expressions 'advance ruling', 'applicant', 'application', 'authority' and 'appellate authority', for the purpose of the chapter on advance rulings. The meanings of said words assigned by the definitions have to be applied unless the context otherwise requires.

95.2 Analysis

(i) The expression 'advance ruling' would mean the decision taken in writing from the AAR (including appellate authority) only on the questions raised by the Applicant relating to several matters specified in Section 97(2) or in Section 100(1) i.e., with respect to an order given u/s 98(4), with respect to supply of goods and / or services proposed to be undertaken or already being undertaken.

(ii) The word "applicant" refers to any person already registered or one who desires to get registered under the Act.

(iii) The term "application" refers to the application made for advance ruling under section 97(1), in FORM GST ARA-1.

(iv) The word "authority" refers to the AAR constituted under section 96 in each State or Union territory.

(v) The expression "Appellate Authority" refers to the Appellate Authority for Advance Ruling constituted under section 99 in each State or Union territory.

(vi) Advance ruling decision can only be in respect of matters or questions specified in section 97(2) or section 100(1) of the Act in relation to the supply of goods and/or services, which is either proposed to be undertaken or is being undertaken by the applicant and cannot travel beyond that. Thus, an application can be made even before the applicant has undertaken an activity of supplying goods and/or services.

(vii) Applicant under the GST law may be a person who is already registered under the GST Act or who wishes to obtain a registration. Therefore, registration at the time of making the application is not necessary. One can make an application to the authority under section 97(1) stating the question on which he seeks advance ruling. The term 'Person' has been defined in section 2(84) of the Act. The scope of persons eligible for making applications has been widened as compared to the list of persons as per current tax regime under Central Excise, Customs and Service Tax.

(viii) Under current laws, while the advance ruling can be sought on specified question of law or fact, under the GST law, several situations are covered in section 97(2) of the Act.

(ix) Under current laws, advance ruling can be sought by an applicant on an activity of production or manufacture of goods or import or export of goods proposed to be undertaken or a service proposed to be Provided by him. However, under the GST laws, advance ruling can also be sought on a present activity of supply of goods and or services being undertaken by the applicant.

95.3 Comparative review

For the first time an appellate authority for advance ruling has been prescribed. This is a marked departure from the pre-GST regime, which did not provide for an appellate remedy against rulings given by AAR.

95.4 Related Provisions

Section / Rule/ Form	Description	Remarks
Section 95	Definitions	Contains definition of various terms like Advance Ruling, Applicant, Application, Authority and Appellate Authority.
Section 2(84)	Person	Contains an inclusive list of 14 different types of persons.
Section 97(2)	Question on advance ruling	Provides a list of questions on which advance ruling can be sought by the applicant.
Section 100(1)	Appeal to the Appellate authority	Prescribed or jurisdictional CGST/SGST officer or an applicant can appeal to the appellate authority, if aggrieved by the advance ruling pronouncement of the authority.

95.5 FAQs

Q1. Can advance ruling be given orally?

Ans. No. Advance ruling cannot be given orally in view of section 98(6) and 98(7).

Q2. Can Advance Ruling be applied for after supply of goods and/or services?

Ans. Yes, as per section 95(a) of the Act, application can be made for Advance Ruling in relation to the supply of goods and/ or services being undertaken by the applicant.

Q3. Who can make an application for advance ruling?

Ans. An application for advance ruling can be made by any person who is registered or is desirous of obtaining a registration under the GST.

Legend

(i) AAR: Authority for Advance Rulings

(ii) AAAR: Appellate Authority for Advance Ruling

(iii) AA: Appellate Authority

(iv) UT: Union Territory

Statutory provision:

96. Authority for advance ruling

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory

96.1 Introduction

The Authority for advance ruling constituted under provisions of a State GST Act or UTGST Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory. .

96.2 Analysis

The AAR shall be located in each State/UT.

96.3 Comparative review

Under current laws, there is one AAR for three Central indirect tax laws i.e. Central Excise, Customs and Service Tax constituted by the Central Government under section 28F of the Customs Act, 1962 having its office in Delhi. Under the GST law, there will be one AAR in each State or Union Territory because the concept of advance ruling is being made applicable to SGST laws/ UTGST laws as well.

96.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 95 (e)	Authority	Defines the meaning of 'Authority'.
Section 95 (a)	Advance Ruling	Defines 'Advance Ruling' as a written decision on matters or questions specified in section 97(2) or section 100(1).

96.5 FAQs

Q1. Where will the office of AAR be situated?

Ans. The office of the AAR will be situated in each state/UT.

Statutory provision:

97. Application for Advance Ruling

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought under this Act shall be in respect of,

(a) classification of any goods and/or services or both;

(b) applicability of a notification issued under provisions of this Act;

(c) determination of time and value of the goods or services or both;

(d) admissibility of input tax credit of tax paid or deemed to have been paid;

(e) determination of the liability to pay tax on any goods or services or both;

(f) whether applicant is required to be registered;

(g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

97.1 Introduction

This section specifies the questions on which an advance ruling can be sought by way of an application which may be in such form and manner duly accompanied with the fee as may be prescribed.

97.2 Analysis

(i) An applicant who seeks an advance ruling should make an application in the prescribed FORM GST ARA-1 together with a fee of Rs. 5000/- and should state the question on which such a ruling is sought.

(ii) The question raised is limited to the following:

- Classification of goods and / or services or both;
- Applicability of notification issued under the Act.
- determining the time and value of goods or services or both;
- Input credit admissibility of tax paid or deemed to be paid;
- Determination of liability to tax on goods or services or both;
- Registration requirement of an applicant;
- Whether any particular thing done by the applicant amounts to or results in supply of goods or services or both.

97.3 Comparative review

The questions on which AAR can be sought is quite comprehensive as compared to the existing indirect tax regime.

Under the current laws, the applicant may withdraw the application within 30 days from the date of application. However, there is no such withdrawal provision under GST laws.

97.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 95(d)	Application	This section states that 'application' means an application made to the Authority under section 97(1).
Section 95(c)	Applicant	Defines applicant as a person who is registered or is desirous of obtaining registration under the GST Act.
Section 95(a)	Advance Ruling	Defines 'Advance Ruling' as a decision on matters or questions specified in section 97(2) or section 100(1).

97.5 FAQs

Q1. Who can make an application to the AAR?

Ans. An applicant desirous of obtaining an advance ruling (whether registered or not) can make an application to AAR.

Q2. Can a question relating to classification of services or goods be referred to AAR?

Ans. Yes, a question on classification of services or goods can be referred to AAR.

Q3. Can the issue relating to admissibility of input credit be raised in an application for advance ruling?

Ans. Yes, an issue in relation to admissibility of input tax credit of tax paid or which is deemed to have been paid can be raised in an application for advance ruling.

Q4. Can the issue relating to notification having a bearing on tax rate, be raised before the AAR?

Ans. Yes, an issue relating to applicability of any notification issued under act can be raised before the AAR

Q5. Can the application made to the authority be withdrawn at any time?

Ans. It appears that there is no such provision under GST law..

Statutory provision

98. Procedure on receipt of application

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officers.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, reasons for such rejection shall be specified in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.

(4) Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorized representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.

(5) Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.

(6) The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.

(7) A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.

98.1 Introduction

This section sets out the procedure to be followed by the Authority for Advance Ruling (AAR) on receipt of an application for advance ruling by an applicant.

98.2 Analysis

Receipt of Application

(i) On receipt of an application in FORM GST ARA -1, the AAR shall forward a copy to the concerned officer and, if necessary, direct him to furnish the relevant records.

(ii) The records so called for by the AAR should be returned as soon as possible to the concerned officer.

(iii) The AAR, at its discretion, would examine the application and the records called for, and after hearing the applicant or his authorized representative and concerned officer or his authorised representative pass an order, either admitting or rejecting the application:

(iv) The AAR shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

(v) Before rejecting the application, the applicant ought to be given an opportunity of being heard.

(vi) Where the application is finally rejected, the reasons for such rejection shall be stated in the order.

(vii) A copy of every order made shall be sent to the applicant and to the concerned officer.

Pronouncement of advance ruling

Where the application is admitted, the AAR shall proceed as follows:

— Examine such further material as may be placed before it by the applicant or obtained by the AAR.

— Provide opportunity of being heard to the applicant or his authorized representatives and concerned officer or this authorized representative.

— Pronounce its advance ruling on the question specified in the application.

Reference to Appellate Authority

(i) Where the members of the AAR differ on any question on which the advance ruling is sought, they shall state the point/s of difference and refer it to the Appellate Authority for advance ruling for final decision.

(ii) The AAR shall pronounce its advance ruling in writing within ninety days of the receipt of application.

(iii) The Appellate Authority to whom a reference is made due to difference of opinion is required to pronounce the ruling within ninety days of such reference.

Submission of advance ruling pronounced.

A copy of the advance ruling pronounced by the concerned AAR / Appellate Authority, duly signed by the Members and certified, shall be sent to the applicant and to the concerned officer after pronouncement.

Comparative review

(i) The provision has some similarities with the Advance Rulings provision in Central Indirect Tax laws.

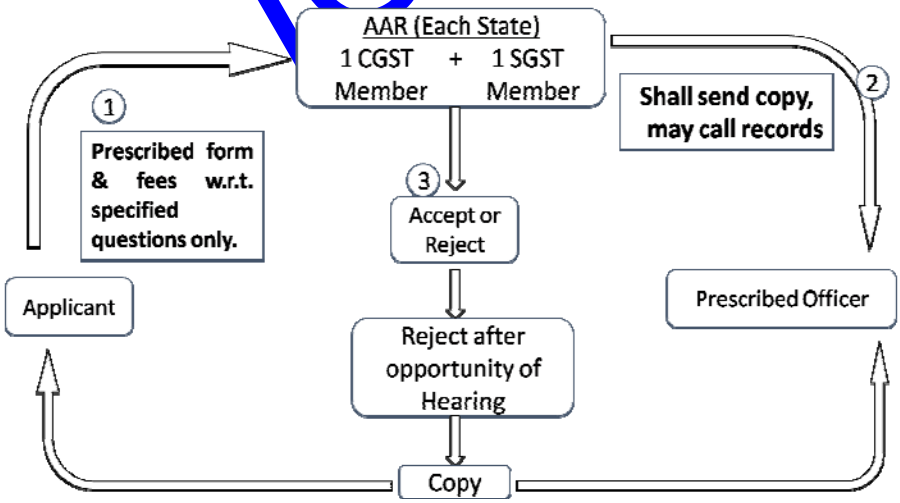
(ii) In case of difference of opinion, the matter would be directly referred to the appellate authority, which is a new development.

98.3 Related Provisions

Section / Rule / Form	Description	Remarks
Section 116	Appearance by authorised representative	This section defines the meaning of authorised representative (AR), who can be appointed as an AR, disqualification of AR etc. For the purpose of this sub section "authorised representative" shall have the meaning assigned to it in Section 116.

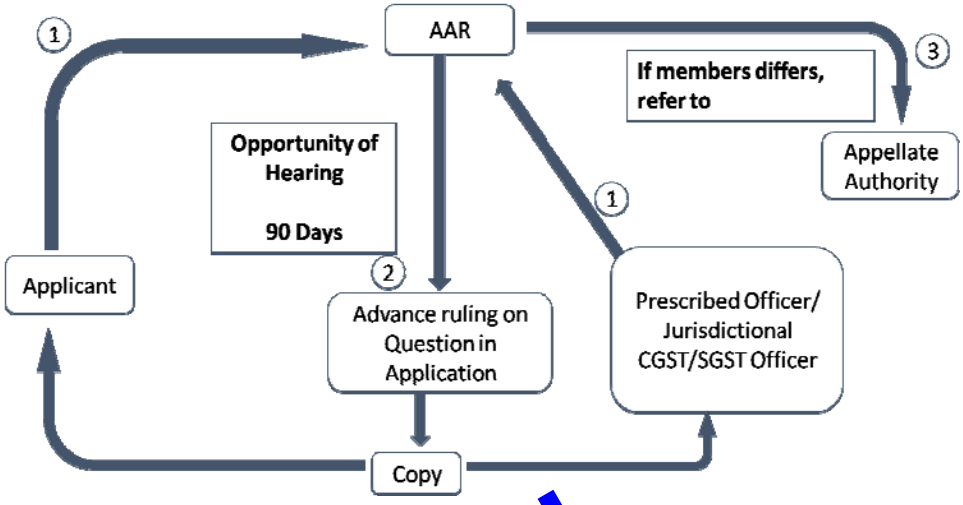
The analysis of above provision in a pictorial form is summarised as follows:

Application for Advance ruling – Sec: 98 & 97



* Not to admit if already before/decided by any Adjudicating or Appellate Authority.

Procedure for Advance ruling – Sec: 101



98.4 FAQs

Q1. When AAR shall not admit the application for advance ruling?

Ans. AAR shall not admit the application where the issue raised is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

Q2. Can an application be rejected without providing the applicant an opportunity of being heard?

Ans. No. Before rejecting the application, AAR shall provide the applicant an opportunity of being heard.

Q3. Whether it is necessary to give reasons for rejection in the order of the AAR?

Ans. Yes. Where the application is rejected, reasons for such rejection shall be given in the order.

Q4. When should a reference be made to the appellate authority?

Ans. A reference shall be made to the Appellate Authority stating the point of differences, when the members of the authority differ on any question on which advance ruling is sought.

98.5 MCQs

Q1. On receipt of an application for advance ruling, Authority for Advance ruling shall:

(a) fix a date of hearing

(b) forward a copy of the same to concerned officers

(c) None of the above

Ans. (b) forward a copy of the same to concerned officers.

Q2. AAR shall refuse to admit the application if the issue raised in the application is already pending in the applicant's own case before:

(a) any First Appellate Authority

(b) the Appellate Tribunal

(c) any Court;

(d) All the above

Ans. (d) All the above

Q3. The AAR shall pronounce its advance ruling:

(a) Without examining further materials placed before it by the applicant

(b) After examining further materials placed before it by the applicant

(c) Without providing the applicant or his AR any opportunity of being heard

(d) After providing the applicant or his AR any opportunity of being heard

(e) (b) & (d) both

Ans. (e) (b) & (d) both

Q4. The AAR should pronounce the ruling within:

(a) 30 days

(b) 90 days

(c) 60 days

(d) 45 days.

Ans. (b) 90 days

Statutory provision:

99. Appellate Authority for Advance Ruling

Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

99.1 Introduction

The appellate authority for advance ruling shall be constituted in each state/UT.

99.2 Analysis

The appellate authority constituted in each state shall be deemed to be the appellate authority in respect of that state/UT.

99.3 Comparative review

This is a new concept hitherto not seen in the pre-GST regime.

Under current tax laws, there is no provision for an appellate authority for advance ruling, which is a new development under GST laws.

99.4 Related Sections

Section	Description	Remarks
Section 99	Appellate Authority for Advance Ruling	Describes the constitution of Appellate Authority for Advance Ruling for a State or Union Territory.
Section 95 (b)	Appellate Authority	Defines the meaning of 'Appellate Authority' as the one constituted under section 99.

Statutory provision

100 Appeal to Appellate Authority

(1) The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.

(2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

(3) Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.

100.1 Introduction

This section deals with the procedure to be followed for filing of an appeal before the appellate authority against the order of the authority under section 98(4).

100.2 Analysis

(i) An appeal can be filed by the concerned or jurisdictional officer or the applicant, who is aggrieved by the ruling.

(ii) The appeal should be filed within 30 days from the date of receipt of the ruling. This period can further be extended for another 30 days, if there is sufficient cause for not filing the appeal within the first 30 days.

(iii) The appeal shall be in the prescribed FORM GST ARA-2 together with a fee of Rs. 10,000/-

(iv) The appeal shall be verified in the prescribed manner.

(v) Prescribed fee to be paid by the appellant.

100.3 Comparative review

This is a new mechanism evolved which was not prevalent in the existing indirect tax regime.

100.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 99	Appellate authority for advance ruling	This section discusses about constitution of appellate authority in each State / UT and who will be its members.

100.5 FAQs

Q1. Who can file an appeal before the appellate authority for advance ruling?

Ans. The concerned Officer or jurisdictional officer or the applicant may file an appeal before the Appellate Authority, if he is aggrieved by the advance ruling pronounced by the authority under section 98(4).

Q2. What is the time limit for filing an appeal before the appellate authority for advance ruling?

Ans. The time limit for filing an appeal before the appellate authority is 30 days from the date of communication of the advance ruling to the aggrieved party. This time can further be extended by another 30 days if sufficient cause is shown for not filing the appeal within the first 30 days.

Statutory provision

101. Orders of the Appellate Authority

(1) The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.

(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.

(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.

(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.

101.1 Introduction

This section deals with the procedure to be followed by the appellate authority to pass an order against the advance ruling of the authority appealed against under section 100.

101.2 Analysis

(i) The appellate authority must afford a reasonable opportunity of being heard to the parties before passing the order.

(ii) The said authority can either pass such order as it deems fit, or confirm or modify the ruling appealed against.

(iii) The order should be passed within 90 days from the date of filing appeal.

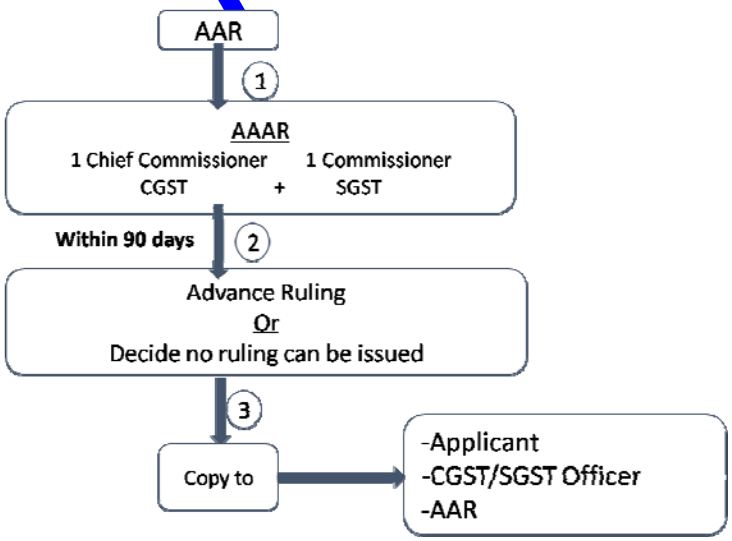
(iv) If there is a difference of opinion between members on the question covered under the appeal, then it would be considered that no advance ruling is issued in the matter.

(v) A copy of the appellate order should be signed by the members and communicated to the concerned officer and applicant, as soon as possible after such pronouncement.

101.3 Related Provisions

Section / Rule / Form	Description	Remarks
Section 99	Appellate authority for advance ruling	This section discusses about constitution of appellate authority in each State / UT and who will be its members.

Appellate Authority for Advance ruling – Sec: 100 & 101



Note: Rulings pronounced will only have a prospective effect,

101.4 FAQs

Q1. What is the time limit for passing of an order by the appellate authority for advance ruling?

Ans. The time limit for passing of an order by the appellate authority for advance ruling is 90 days from the date of filing of appeal.

Q2. Under what circumstances, advance ruling cannot be issued in respect of the question covered under the appeal?

Ans. If members of the appellate authority differ on any point or points of the question referred to them in appeal under 101(3), then it shall be deemed that no advance ruling is issued in respect of the question covered under the appeal.

Statutory provision

102. Rectification of advance ruling

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

102.1 Introduction

This section deals with the circumstances as to when an order of the authority or the Appellate authority can be rectified, time limit within which it can be done and the notice to the applicant or the appellant in case such rectification results in enhancing the tax liability or reducing the amount of admissible input tax credit.

102.2 Analysis

1. The advance ruling can be rectified by the authorities on their own accord or upon receipt of application from the jurisdictional officer or the applicant, if there are any mistakes apparent on the record.
2. The application for rectification can be made within six months, and cannot result in substantial amendment of the order.
3. If the rectification results in increase in tax liability or reducing of input credit then a hearing has to be given to the applicant/appellant.
4. The Appellate authority may amend the order to rectify any mistake apparent from the record, if such mistake:

(a) Is noticed by it on its own accord, or

(b) Is brought to its notice by the concerned or the jurisdictional officer or

(c) Is brought to its notice by the applicant.

102.3 Related Provisions

Section/Rule/ Form	Description	Remarks
Section 98	Procedure on receipt of application	This section states the procedure to be followed by the authority on receipt of an application or by the Appellate authority on a reference made to it by the authority. Section 98(6) provides for time limit of 90 days for pronouncement of advance ruling.
Section 101	Orders of the Appellate Authority	This section talks about passing of the order by the appellate authority, it's time limit, communication of the order and the situation where no advance ruling can be issued.

102.4 FAQs

Q1. When can an advance ruling order may be rectified?

Ans. An advance ruling may be amended by the authority or appellant authority, as the case may be, with a view to rectify any mistake apparent from the record, which:

(a) is noticed by the AAR or Appellate Authority on its own accord, or

(b) is brought to the notice of the AAR or Appellate Authority by the concerned or the jurisdictional officer or ;

(c) is brought to the notice of the AAR or Appellate Authority notice by the applicant.

Q2. Under what circumstances, a notice is required to be issued to the applicant or appellant, as the case may be, before rectification of an advance ruling order?

Ans. Before rectification of an advance ruling order, a notice is required to be issued to the applicant or appellant, as the case may be, to provide him a reasonable opportunity of being heard, if such rectification has the effect of:

— enhancing the tax liability or

— reducing the amount of admissible input tax credit.

102.5 MCQs

Q1. Rectification of order can be done under the following circumstances

(i) to do justice

(ii) when there is mistake apparent on record

(iii) if it in the interest of revenue

(iv) none of the above.

Ans. (ii) when there is mistake apparent on record

Statutory provision

103. Applicability of advance ruling

(1) The advance ruling pronounced by the Authority or, as the case may be, the Appellate Authority under this chapter shall be binding only -

(a) on the applicant who had sought it in respect of any matter referred to in subsection (2) of section 97 of the application for advance ruling;

(b) on the concerned or jurisdictional officer in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

103.1 Introduction

It states the binding effect of an advance ruling.

103.2 Analysis

(i) The advance ruling pronounced by the Authority under this chapter shall be binding only on the applicant and on the jurisdictional officer in respect of the applicant.

(ii) The advance ruling shall be binding on the said persons/authorities unless there is a change in law or facts or circumstances, on the basis of which the advance ruling has been pronounced. When any change occurs in such laws, facts or circumstances, the advance ruling shall no longer remain binding on such person.

103.3 Comparative review

The provision is similar to the Advance Rulings provisions in current Central Indirect Tax laws as contained in section 23E of Central Excise Act, section 28J of Customs Act and section 96E of the Finance Act, 1994.

103.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 97	Applicability of advance ruling	This Section sets out the questions on which ruling can be sought.

103.5 FAQs

Q1. Is the advance ruling binding on other assessees?

Ans. No. Advance ruling is binding only on the assessee who as an applicant has sought advance ruling in relation to any of the matters specified in subsection (2) of section 97.

Q2. Are the tax authorities bound by the advance ruling?

Ans. Only the jurisdictional officer/concerned officer, in respect of applicant who has sought advance ruling is bound by such rulings pronounced.

Statutory provision

104. Advance Ruling to be void in certain circumstances

(1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio* and thereupon all the provisions of the Act or the Rules made thereunder shall apply to the applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation.- The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned office and the jurisdictional officer.

104.1 Introduction

It states the circumstances under which the ruling would be considered as void *ab initio*.

104.2 Analysis

(i) If the Authorities (AAR and appellate authority) find that the advance ruling order has been obtained by the applicant/appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio*.

(ii) Consequently, all the provisions of the Act shall apply to the applicant as if such advance ruling had never been made.

(iii) Before passing the order, an opportunity of being heard should be given to the applicant/appellant.

(iv) The period beginning with the date of advance ruling and ending with the date of order under this sub-section shall be excluded in computing the period for issuance of Show-cause notice and adjudication order under sub-section(2) and (10) of both Section 73 and 74 respectively.

(v) A copy of the order so made shall be sent to the applicant and the concerned/ jurisdictional officer.

104.3 Comparative review

The provision relating to the circumstances when an advance ruling can be declared void *ab initio* are more or less the same as those in the current central Indirect Tax laws as contained in section 23F of Central Excise Act, section 28K of Customs Act and section 96F of the

Finance Act, 1994 except that under GST laws, an additional criterion of "suppression of material facts" has been added to serve as a basis for declaring an advance ruling void *ab initio.*

104.4 Related Provisions

Section/Rule/ Form	Description	Remarks
Section 73(2) & 73 (10)	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts	Sub-section 2 deals with time limit for issue of show-cause notice and sub-section 10 deals with time limit for issuance of adjudication order.
Section 74(2) & 74 (10)	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts	Sub-section 2 deals with time limit for issue of show-cause notice and sub-section 10 deals with time limit for issuance of adjudication order.

104.5 FAQs

Q1. Can the advance ruling be declared as void without hearing?

Ans. No. Advance ruling cannot be declared as void unless the opportunity of being heard has been given.

Q2. Under what circumstances advance ruling can be declared as void?

Ans. The authority or the appellate authority may declare an advance ruling to be void *ab initio* if it the applicant or the appellant, as the case may be, has obtained it by fraud, suppression of material facts or misrepresentation of facts.

Statutory provision

105. Powers of the Authority and Appellate Authority

(1) The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—

(a) discovery and inspection;

(b) enforcing the attendance of any person and examining him on oath;

(c) issuing commissions and compelling production of books of account and other records,

have all the powers of a civil court under the Code of Civil Procedure, 1908.

(2) The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.

105.1 Introduction

The provision specifies the powers conferred on the AAR and appellate authority in the discharge of its functions.

105.2 Analysis

(i) The Authorities have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records.

(ii) The Authorities are deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973.

(iii) Every proceeding before the Authorities shall be deemed to be a judicial proceeding within the meaning of sections 193, 196 and 228 of the Indian Penal Code, 1860.

105.3 Comparative review

The powers remain exactly the same as have been specified in section 23G of Central Excise Act, section 28L of Customs Act and section 96G of the Finance Act, 1994.

105.4 FAQs

Q1. What are the powers vested with the authority and the appellate authority?

Ans. The authority or the appellate authority shall have all the powers of a civil court to exercise the following powers:

- discovery and inspection;
- enforcing attendance of any person and examining him on oath;
- issuing commissions and compelling production of books of accounts and other records.

Q2. What is the nature of proceedings conducted by the AAR and appellate authority under this chapter?

Ans. The nature of proceeding conducted by AAR and appellate authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of Indian Penal Code (45 of 1860)

105.5 MCQs

Q1. The AAR shall be deemed to be _____ for the purpose of this chapter:

(a) High Court

(b) Supreme Court

(c) Economic Offences Court

(d) Civil Court

Ans. (d) Civil court

Q2. The proceedings under this chapter shall be deemed to be:

(a) Quasi-judicial proceedings

(b) Judicial proceedings

(c) Administration proceedings

(d) Special proceedings

Ans. (b) Judicial proceedings

Statutory provision

106. Procedure of the Authority and the Appellate Authority
The Authority or, as the case may be, the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

106.1 Introduction

It states the procedure to be followed by the AAR and the appellate authority in discharging its functions.

106.2 Analysis

The Authorities shall have the power to regulate their own procedure.

106.3 Comparative review

The powers remain exactly the same as are contained in section 23H of Central Excise Act, section 28L of Customs Act and section 96H of the Finance Act.

106.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 106	Procedure of the Authority and the Appellate Authority	This section deals with the powers of the authority and the appellate authority to regulate its own procedures.

Chapter– XVIII
Appeals and Revision

Statutory Provisions

107. Appeals to Appellate Authority

(1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such appellate authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union Territory Tax, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act, or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any Officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

(3) Where, in pursuance of an order under sub-section (2), the authorized officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.

(4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.

(6) No appeal shall be filed under sub-section (1) unless the appellant has paid –

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to ten percent of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.

(7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.

(8) The Appellate Authority shall give an opportunity to the appellant of being heard.

(9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order.

Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:

Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

(12) The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.

(13) The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:

Provided that where the issuance of order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year.

(14) On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.

(15) A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State Tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.

(16) Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118, be final and binding on the parties.

107.1 Introduction

(a) This section pertains to appeals to appellate authority by any person who is aggrieved against decision or order passed by adjudicating authority.

(b) This section also provides for appeal by revenue against decision or order passed by adjudicating authority.

107.2 Analysis

(i) The appeal is to be filed by the assessee within a period of 3 months from the date of communication of decision or order in Form GST APL 01 electronically or otherwise as notified by the Commissioner against a provisional acknowledgement. The grounds of appeal and form of verification must be duly signed and a hard copy of the appeal in triplicate together with a certified copy of the decision is to be filed before the Appellate Authority within 7 days of filing the appeal electronically. Thereafter, a final acknowledgement indicating the appeal number shall be issued in Form GST APL 02 by the said authority In such a situation thee appeal shall be deemed to be filed on the date on which the provisional acknowledgement stands issued.

In case the hard copy is filed after a period of 7 days the date of filing of appeal shall be the date of issue of final acknowledgement.

(ii) The Commissioner of Central / State or any Union territory with a view to satisfying himself about the legality or propriety of any order or decision direct a subordinate officer to file an application before the Appellate Authority within six months from the date of communication of decision or order in Form APL GST 03 electronically or otherwise as notified against issue of an acknowledgement. A hard copy of the appeal in triplicate together with a certified copy of the decision is to be filed before the Appellate Authority within 7 days of filing the appeal electronically and an appeal number shall be generated accordingly.

(iii) The appellate authority in either of the above cases is empowered to condone the delay upto a period of 1 month.

(iv) Appeal to be filed in prescribed form duly verified in prescribed manner along with

- Amount of tax, interest, fine, fee & penalty, as is admitted, in full; and
- pre-deposit of sum equal to 10% of remaining amount of tax in dispute.

(v) On payment of above amount, the recovery proceedings for balance amount are stayed.

(vi) Maximum 3 adjournments shall be granted to a party on showing reasonable cause to be recorded in writing.

(vii) Appellate authority may allow any additional grounds not specified in the grounds of appeal on being satisfied that the omission was not wilful or unreasonable.

(viii) Appellate authority to pass the order confirming, modifying or annulling the decision or order appealed against but shall not remand the case back to the adjudicating authority.

(ix) Opportunity of being heard to be granted in case of order for enhancing fees or penalty or fine in lieu of confiscation of goods or reducing amount of refund/input tax credit after issuing show cause notice.

(x) The appellate authority has power to issue show cause notice in case it is of the opinion

that any tax has not been paid or short paid or erroneously refunded or input tax credit is wrongly availed or utilised.

(xi) Appellate authority to hear and decide the appeal, wherever possible, within a period of 1 year from the date of filing.

(xii) Appellate authority to communicate the copy of order to the appellant, the respondent, the adjudicating authority, jurisdictional Commissioner of CGST, SGST and UTGST.

(xiii) The Appellate Authority shall, along with its order under sub-section (11) of section 107 of the Act, issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.

107.3 Comparative review

(i) Similar provisions are contained in Section 84 & 85 of the Finance Act, 1994 & Section 35 of the Central Excise Act, 1944

(ii) After examining the records of proceedings related to decision or order passed by adjudicating authority subordinate to him, Principal Commissioner of Central Excise or Commissioner of Central Excise may pass an order.

(iii) Under Service Tax, presently the time limit for filing first appeal to CCE (Appeals) by adjudicating authority is 1 month from the date of order or decision of Principal Commissioner of Central Excise or Commissioner of Central Excise

107.4 Related provisions

(i) Section 2(4) defines “adjudicating authority”

(ii) Section 2(24) defines “commissioner”

(iii) Section 2(8) defines “Appellate Authority”

Statutory Provisions

108. Powers of Revisional Authority

(1) Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the commissioner of State Tax or the Commissioner of Union Territory Tax, call for and examine the record of any proceeding and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of said order or not or in consequence of an observation by the Comptroller & Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may

be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

(2) The Revisional Authority shall not exercise any power under sub-section (1), if.-

(a) the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or

(b) the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised.

(c) the order has already been taken for revision under this section at any earlier stage.

(d) the order has been passed in exercise of the powers under sub-section (1).

Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.

(3) Every order passed in revision under sub-section (1) shall, subject to the provisions of sections 113 or section 117 or section 118, be final and binding on the parties.

(4) If the said decision or order involves an issue on which appellate tribunal or the high court has given it's decision in some other proceedings and an appeal to the high court or the supreme court against such decision of the appellate tribunal or the high court is pending, the period spent between the date of decision of appellate tribunal and the date of the decision of the high court or the date of decision of high court and the date of decision of supreme court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision has been initiated by way of issuance of notice under this section.

(5) Where the issuance of an order under sub-section (1) is stayed by the order of a Court or Tribunal, the period of such stay shall be excluded in computing the period referred to in clause (b) of sub-section (2).

(6) For the purposes of this section, the term, -

(i) 'record' shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority.

(ii) 'decision' shall include intimation given by any officer lower in rank than the Revisional Authority.

108.1 Introduction

This section pertains to revisionary powers of Revisional Authority.

108.2 Analysis

(i) After examining the record of any proceeding, the Revisional Authority may stay the operation of any decision or order if he considers that such decision or order passed by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue.

(ii) After giving the concerned person an opportunity of being heard and after making further necessary inquiry, the Revisional Authority may pass such order within 3 years of passing of the said order sought to be revised including enhancing or modifying or annulling the said decision or order.

(iii) The Revisional Authority shall not exercise such revisionary powers if

(a) appeal is filed against the order to –

— appellate authority U/s.107

— Appellate Tribunal U/s.112

— High Court U/s.117

— Supreme Court U/s.118

(b) period of 6 months as specified in section 107(2) has not expired or more than 3 years have expired after passing the decision or order

(c) the order has already been taken for revision at any earlier stage

(d) revisionary order has already been passed once.

(iv) However, the Revisional Authority may pass an order on any point which has not been raised & decided in an appeal, referred to hereinabove, within 1 year from the date of order passed in such appeal or within 3 years from the date of such order sought to be revised, whichever is later.

108.3 Related provisions

(i) Section 2(99) defines “Revisional Authority”

Statutory Provisions

109. Constitution of the Appellate Tribunal and Benches thereof

(1) The Government shall, on the recommendation of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the order passed by the Appellate Authority or Revisional Authority.

(2) The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereinafter in this Chapter referred to as “Regional Benches”), State Bench and Benches thereof (hereafter in this Chapter referred to as “Area Benches”).

(3) The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall

be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).

(4) The Government, shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).

(5) The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.

(6) The Government shall, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as "State Bench") for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:

Provided that the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council:

Provided further that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed.

(7) The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (5).

(8) The President and the State President shall, by general or special order, distribute the business or transfer cases among Regional Benches or, as the case may be, Area Benches in a State.

(9) Each State Bench and Area Benches of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.

(10) In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members:

Provided that any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a bench consisting of a single member.

(11) If the Members of the National Bench, Regional Benches, State Bench or Area Benches differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.

(12) The Government, in consultation with the President may, for the administrative convenience, transfer—

(a) any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or

(b) any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.

(13) The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.

(14) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.

109.1 Introduction

(a) This section pertains to constitution of GST Appellate Tribunal

109.2 Analysis

(a) Upon recommendation of Council, Central Government to constitute Goods & Service Tax Appellate Tribunal.

(b) The National Bench or Regional Benches to hear the appeals where one of the issues involved relates to the place of supply.

(c) The State Bench or Area Benches to hear the appeals involving matters other than matters covering place of supply.

(d) Any matter (other than matter involving question of law) involving tax, input tax credit, fine, fee or penalty not exceeding Rs.5 Lacs may be heard by single member bench.

(e) All other provisions relate to administrative matters and are therefore not relevant at this stage for discussion purposes.

109.3 Related provisions

(i) Section 2(9) defines "Appellate Tribunal"

(ii) Section 2(36) defines “Council”

Statutory Provisions

110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.

(1) A person shall not be qualified for appointment as—

(a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;

(b) a Judicial Member, unless he—

(i) has been a Judge of the High Court; or

(ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; or

(iii) is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years;

(c) a Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;

(d) a Technical Member (State) unless he is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council with at least three years of experience in the administration of an existing law or the State Goods and Services Tax Act or in the field of finance and taxation.

(2) The President and the Judicial Members of the National Bench and the Regional Benches shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:

Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:

Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Bench shall discharge the functions of the President until the date on which the President resumes his duties.

(3) The Technical Member (Centre) and Technical Member (State) of the National Bench and Regional Benches shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

(4) The Judicial Member of the State Bench or Area Benches shall be appointed by the State Government after consultation with the Chief Justice of the High Court of the State or his nominee.

(5) The Technical Member (Centre) of the State Bench or Area Benches shall be appointed by the Central Government and Technical Member (State) of the State Bench or Area Benches shall be appointed by the State Government in such manner as may be prescribed.

(6) No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.

(7) Before appointing any person as the President or Members of the Appellate Tribunal, the Central Government or, as the case may be, the State Government, shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.

(8) The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed:

Provided that neither salary and allowances nor other terms and conditions of service of the President, State President or Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment.

(9) The President of the Appellate Tribunal shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for reappointment.

(10) The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.

(11) The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.

(12) The President, State President or any Member may, by notice in writing under his hand addressed to the Central Government or, as the case may be, the State Government resign from his office:

Provided that the President, State President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government, or, as the case may be, the State Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

(13) The Central Government may, after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Members of the National Bench,

Regional Benches or Technical Members (Centre) of the State Bench or Area Benches, and the State Government may, after consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may remove from the office such President or Member, who—

(a) has been adjudged an insolvent; or

(b) has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or

(c) has become physically or mentally incapable of acting as such President, State President or Member; or

(d) has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, State President or Member; or

(e) has so abused his position as to render his continuance in office prejudicial to the public interest:

Provided that the President, State President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.

(14) Without prejudice to the provisions of sub-section (13),—

(a) the President or a Judicial and Technical Member of the National Bench or Regional Benches, Technical Member (Centre) of the State Bench or Area Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government and of which the President or the said Member had been given an opportunity of being heard;

(b) the Judicial Member or Technical Member (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given an opportunity of being heard.

(15) The Central Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or a Judicial or Technical Members of the National Bench. or the Regional Benches or the Technical Member (Centre) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (14).

(16) The State Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Judicial Member or Technical Member (State) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the

High Court under sub-section (14).

(17) Subject to the provisions of article 220 of the Constitution, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Bench and the Regional Benches or the State Bench and the Area Benches thereof where he was the President or, as the case may be, a Member.

110.1 Comments

This section deals with appointment of the President / Members of the Appellate Tribunal, their qualifications, methodology of appointment, service conditions etc.,. and hence are not commented upon in this background material.

Statutory Provisions

111. Procedure before Appellate Tribunal

(1) The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.

(2) The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) requiring the discovery and production of documents;

(c) receiving evidence on affidavits;

(d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;

(e) issuing commissions for the examination of witnesses or documents;

(f) dismissing a representation for default or deciding it ex parte;

(g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(h) any other matter which may be prescribed.

(3) Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

(a) in the case of an order against a company, the registered office of the company is situated; or

(b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

(4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973

111.1 Introduction

(i) This section deals with the procedure to be followed by Appellate Tribunal while disposing of any proceedings before it.

111.2 Analysis

(i) The Appellate Tribunal is not bound by the procedure laid down under the Code of Civil Procedure except in respect of certain matters such as summoning and enforcing attendance of person, receiving evidence on affidavits, requiring production of documents etc.

(ii) All the proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of Section 193, 228 & 196 of IPC.

Statutory Provisions

112. Appeals to Appellate Tribunal

(1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.

(2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.

(3) The Commissioner may, on his own motion or upon request from the Commissioner of State Tax or Commissioner of Union Territory Tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or the propriety of the said order and may, by order, direct any officer subordinate to him to apply to the Appellate Tribunal within six months from the date on which the said order has been passed for the determination of such points arising out of the said order as may be specified by the Commissioner in his order.

(4) Where in pursuance of an order under sub-section (3) the authorized officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107, or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).

(5) On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (1).

(6) The Appellate Tribunal may admit an appeal within 3 months after the expiry of period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.

(7) An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed:

(8) No appeal shall be filed under sub-section (1) unless the appellant has paid

(a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and

(b) a sum equal to twenty percent of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of the section 107, arising from the said order, in relation to which the appeal has been filed:

(9) Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

(10) Every application made before the Appellate Tribunal, —

(a) in an appeal for rectification of error or for any other purpose; or

(b) for restoration of an appeal or an application,

shall be accompanied by such fees as may be prescribed.

112.1 Introduction

(a) This section pertains to appeals to Appellate Tribunal by any person who is aggrieved against decision or order passed by appellate authority.

(b) This section also provides for appeal by revenue against decision or order passed by appellate authority.

112.2 Analysis

(a) The Appellate Tribunal has discretion to refuse to admit such appeal in case the tax amount or input tax credit or the difference in tax or input tax credit involved or amount of fine, fees or penalty ordered against does not exceed Rs. 50,000/-.

(b) The Commissioner may issue directions to any subordinate officer to file appeal to Appellate Tribunal against the order passed by the Appellate Authority or Revisional Authority.

(c) Every appeal by assessee to Appellate Tribunal to be filed within 3 months from the date of communication of order or decision appealed against.

(d) The appeal to the Appellate Tribunal by Revenue can be filed within 6 months from the date of order or decision appealed against.

(e) Memorandum of Cross objection to be filed within 45 days from the receipt of notice of filing of such appeal.

(f) Appellate Tribunal is empowered to condone the delay in filing appeal by assessee for a further period of 3 months or memorandum of cross objection for a further period of 45 days.

(g) No powers to Appellate Tribunal to condone the delay in filing appeal by revenue.

(h) Appeal to be filed in prescribed form duly verified in prescribed manner along with prescribed fees and

— Amount of tax, interest, fine, fee & penalty, as is admitted, in full; and

— pre-deposit of sum equal to 20% of remaining amount of tax in dispute in addition to amount deposited during filling appeal before Appellate Authority

(i) On payment of above amount, the recovery proceedings for balance amount are stayed till the disposal of appeal.

(j) No pre-deposit shall be payable in case of appeal filed by department.

(k) Every miscellaneous application shall be filed along with prescribed fees.

112.3 Relevant Rules

(1) An appeal to the Appellate Tribunal is to be filed electronically, in FORM GST APL-05 and a provisional acknowledgement shall be issued immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal shall be filed in quintuplicate to the Registrar in FORM GST APL-06.

(3) The appeal and the memorandum of cross objections shall be signed and verified.

(4) A hard copy of the appeal in FORM GST APL-05 shall be submitted to the Registrar in quintuplicate and with a certified copy of the decision or order appealed against within seven days of filing of the appeal and a final acknowledgement, indicating the appeal number shall be issued thereafter in FORM GST APL-02:

If the hard copy of the appeal and documents are submitted within seven days from the

date of filing the FORM GST APL-05, the date of filing of the appeal shall be the date of issue of provisional acknowledgement and where the hard copy of the appeal and documents are submitted after seven days, the date of filing of the appeal shall be the date of submission of documents. An appeal shall be deemed to be filed only on generation of the final acknowledgement number.

(5) The fees for filing and restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to maximum of twenty-five thousand rupees.

(6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors

112.4 Application to the Appellate Tribunal

(a) A cross appeal or appeal by Revenue to the Appellate Tribunal shall be made electronically, in FORM GST APL-07.

(b) A hard copy of the application in FORM GST APL-07shall be submitted to the Registrar in quintuplicate and shall be accompanied by a certified copy of the decision or order appealed against within seven days of filing the application under sub-rule (1) and an appeal number shall be generated.

112.5 Production of additional evidence before the Appellate Authority or the Appellate Tribunal

(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely –

(a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -

(a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or

(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

112.6 Comparative review

(a) Similar provisions are contained in Section 86 of the Finance Act, 1994 & Section 35B of the Central Excise Act, 1944

Statutory Provisions

113 Orders of Appellate Tribunal

(1) The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.

(2) The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(3) The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State Tax or the Commissioner of Union Territory Tax or the other party to the appeal within a period of three months from the date of the order:

Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given opportunity of being heard.

(4) The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to

the Appellate Authority or Revisional Authority, or the original adjudicating authority, as the case may be, the appellant, the jurisdictional Commissioner or the Commissioner of State Tax or the Union Territory Tax.

(6) Save as Provided in section 117 or section 118, orders passed the Appellate Tribunal on an appeal shall be final and binding on the parties.

113.1 Introduction

(i) This section pertains to the orders by Appellate Tribunal

113.2 Analysis

(i) Appellate Tribunal to pass the order confirming, modifying or annulling the decision or order appealed against.

(ii) The Appellate Tribunal also has power to remand the case back to the appellate authority or the Revisional authority or the original adjudicating authority.

(iii) Maximum 3 adjournments shall be granted to a party on showing reasonable cause to be recorded in writing.

(iv) The Appellate Tribunal is empowered to amend its order to rectify any mistake apparent from record, However tribunal may rectify it's order if the mistake is brought to it's notice by commissioner or other party to appeal within period of 3 months of date of such order . Opportunity of being heard to be granted in case such rectification results into enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability.

(v) The Appellate Tribunal to hear and decide the appeal, as far as possible, within a period of 1 year from the date of filing.

(vi) The Appellate Tribunal to communicate the copy of order to appellate authority / Revisional authority / original adjudicating authority, the appellant, the jurisdictional Commissioner, Commissioner of State Tax or Union Territory Tax.

(vii) The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

113.3 Comparative review

(a) As per existing provisions of Section 35C of the Central Excise Act,1944, the time limit for rectification of mistake apparent from records is 6 months of date of order.

(b) As per Section 35C, the preferable time limit for deciding the appeal by CESTAT is 3 years from date of filing.

Statutory Provisions

114. Financial and administrative powers of President

(1) The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed:

Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.

114.1 Introduction

This section pertains to the financial & administrative powers of the President over the National Bench and Regional Benches of the Appellate Tribunal.

114.2 Analysis

The President is empowered to delegate his financial and administrative powers to any other Member or any officer of the National Bench and Regional Benches, on a condition that such Member or officer shall continue to act under the direction, control and supervision of the President while exercising such delegated powers.

Statutory Provisions

115. Interest on refund of amount paid for admission of appeal

Where an amount paid by the appellant under sub-section (6) of section 107 or under sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

115.1 Introduction

(i) This section provides for interest on delayed refund of pre-deposit made while filing the appeal.

115.2 Analysis

(i) Interest at the rates specified in Section 50 shall be payable on refund of pre-deposit.

(ii) Such interest to be calculated from the date of payment of such pre-deposit till the date of refund

115.3 Comparative review

Section 35FF of the Central Excise Act, 1944 read with Notification No. 24/2014-CE (NT) dated August 12, 2014 provides for interest on refund of pre-deposit at the rate of 6% per annum.

115.4 Related provisions

Section	Description
Section 56	Interest on delayed refunds
Section 107(6)	Appeal to Appellate Authority
Section 112(8)	Appeal to Appellate Tribunal

115.5 FAQ

Q1. When is interest on refund of pre-deposit calculated?

Ans. The interest will be calculated from the date of pre-deposit to the date of refund of the same.

Statutory Provisions

116. Appearance by authorised representative

(1) Any person who is entitled or required to appear before an Officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorized representative.

(2) For the purposes of this section, the expression "authorised representative" shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —

(a) his relative or regular employee; or

(b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or

(c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or

(d) a retired officer of the Commercial Tax Department of any State Government or Union Territory or of the Board, who, during his service under the Government, had worked in a post not below the rank than that of a Group-B gazetted officer for a period of not less than two years.

Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or

(e) any person who has been authorized to act as a Goods and Services Tax Practitioner on behalf of the concerned registered person.

(3) No person, —

(a) who has been dismissed or removed from government service; or

(b) who is convicted of an offence connected with any proceeding under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or under the existing law or under any of the Acts passed by a state legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both, or

(c) who is found guilty of misconduct by the prescribed authority;

(d) who has been adjudged as an insolvent, shall be qualified to represent any

person under sub-section (1) --

(i) for all times in the case of a person referred to in clause (a), (b) and (c); and

(ii) for the period during which the insolvency continues in the case of a person referred to in clause (d).

(4) Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this Act.

116.1 Introduction

(i) This section provides for appearance by authorised representative in proceedings or appeals except in circumstances where personal appearance is required for examination or oath or affirmation.

116.2 Analysis

(i) "Authorised representative" means –

— relative or regular employee

— Practising Advocate

— Practising CA, CWA or CS

— A retired government officer who had worked for not less than 2 years in a post not lower in rank than Group-B gazetted officer

— Goods and Services Tax Practitioner

(ii) Any person, who has retired or resigned after serving more than 2 years in the indirect tax departments of Government of India or any State Government as a gazetted officer, shall not be entitled to appear as authorised representative for a period of 1 year from the date of retirement or resignation.

(iii) Any person,

— who has been dismissed or removed from government service

— who is convicted of an offence under CGST Act, SGST Act, IGST Act, UTGST Act or under existing laws

— who is found guilty of misconduct by the prescribed authority

shall not be qualified as authorised representative.

(iv) Any person, who has become insolvent, shall not be qualified as authorised representative during the period of insolvency.

(v) Any disqualification under SGST Act or UTGST Act shall be construed as disqualification under CGST Act.

116.3 Comparative review

(i) Section 35Q of the Central Excise Act,1944

116.4 Related provisions

(i) Section 2(23) defines “chartered accountant”

(ii) Section 2(28) defines "company secretary"

(iii) Section 2(35) defines “cost accountant”

(iv) Section 2(55) defines “goods and service tax practitioner”

116.5 MCQ

Q1. Any person who has retired/resigned after serving 2 years as gazetted officer in the indirect tax departments of the Government of India or any State Government shall be entitled to appear as authorised representative after

A. 1 year from date of resignation / retirement	2 years from date of resignation / retirement
3 years from date of resignation / retirement	Not entitled to appear at all

Ans. 1 year from date of resignation / retirement

Q2. Any person who has been dismissed or removed from government services shall be entitled to appear as authorised representative after

1 year from date of dismissal / removal	2 years from date of dismissal / removal
3 years from date of dismissal / removal	Not entitled to appear at all

Ans. Not entitled to appear at all

Q3. Any insolvent person shall not be entitled to appear as authorised representative

Upto a period of 1 year of insolvency	Upto a period of 2 years of insolvency
During the period of insolvency	Not entitled to appear at all

Ans. During the period of insolvency

Q4. Any person who is disqualified to represent, being found guilty of misconduct, has no further remedy at all

True	False

Ans. True

Statutory Provisions

117. Appeals to High Court

(1) Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal if it is satisfied that the case involves a substantial question of law.

(2) An appeal under sub-section (1) shall be filed within one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form verified in such manner as may be prescribed;

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.

(3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.

(5) The High Court may determine any issue which -

(a) has not been determined by the State Bench or Area Benches; or

(b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).

(6) When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.

(7) Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.

(8) Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.

(9) Save as otherwise Provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

117.1 Introduction

(i) This section provides for appeal to High Court by any person aggrieved by an order passed by State Bench or Area Benches.

117.2 Analysis

(i) High Court may admit an appeal if it is satisfied that the case involves a substantial question of law.

(ii) No appeal shall lie to High Court if such order is passed by National Bench or Regional Benches.

(iii) Appeal to be filed in the form of appeal memorandum, precisely stating the substantial question of law involved, within 180 days from the date of receipt of order appealed against accompanied by prescribed fee.

(iv) High Court is empowered to condone the delay in filing appeal.

(v) On being satisfied, High Court shall formulate a substantial question of law.

(vi) Appeal to be heard only on the question so formulated and the respondent shall be allowed to argue that the case does not involve such question.

(vii) The High Court may hear the appeal on any other substantial question of law not formulated by it after satisfying, for reasons to be recorded, of involvement of such question in the case.

(viii) The High Court may determine any issue which has not been determined or has been wrongly determined by the Appellate Tribunal.

(ix) Appeal to be heard by a Bench of not less than 2 Judges of High Court and shall be decided in accordance with the majority of opinion of such Judges.

(x) Difference of opinion on any point shall be referred to one or more of the other Judges of High Court and such point shall be decided according to the opinion of majority of Judges who have heard the case including those who first heard it.

(xi) The effect of judgment of High Court shall be given on the basis of a certified copy of the judgment.

(xii) The provisions of Code of Civil Procedure relating to appeals to High Court shall apply to appeals under this section.

117.3 Comparative review

(i) Section 35G of the Central Excise Act,1944

117.4 FAQ

Q1. Any appeal filed before High Court shall be heard by a bench consisting how many judges of High Court?

Ans. An appeal filed before the Honourable High Court shall be heard by judges consisting of not less than two judges.

117.5 MCQ

Q1. The High Court may admit an appeal if the case involves a substantial question of fact

(a) True

(b) False

Ans. (b) False

Q2. An appeal involving a matter, where two or more States or a State and Centre have a difference of views regarding place of supply, shall lie to High Court

(a) True

(b) False

Ans. (a) True

Q3. An appeal before High Court shall be filed within

(a) 6 months from date of order

(b) 6 months from date of communication of order

(c) 180 days from date of order

(d) 180 days from date of communication of order

Ans. (d) 180 days from date of communication of order

Q4. The High Court can condone the delay in filing appeal for a period upto

(a) 1 Month

(b) Month

(c) Without any time limit

(d) No condonation powers

Ans. (c) Without any time limit

Statutory Provisions

118. Appeals to Supreme Court
(1) An appeal shall lie to the Supreme Court -
(a) from any order passed by the National Bench or the Regional Benches of the Appellate Tribunal; or

(b) from any judgment or order passed by High Court in an appeal made under section 117, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.

(2) The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.

(3) Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner Provided in section 117 in the case of a judgment of the High Court.

118.1 Introduction

(i) This section provides for appeal to Supreme Court.

118.2 Analysis

An appeal can lie with the Supreme Court in case of:

(i) Any judgement or order passed by National Bench, Regional Benches of Appellate Tribunal or High Court.

(ii) When an appeal is reversed, or varied, the effect shall be given to the order of the Supreme Court on the question of law so formulated and delivered.

(iii) The said judgement shall clearly indicate the grounds on which the decision is founded.

(iv) Apart from this, the Supreme Court is empowered to frame any substantial question of law not formulated by any lower authority if it is satisfied that the case before it involves such question of law.

118.3 Comparative review

(i) Section 35L of the Central Excise Act,1944

118.4 Related provisions

Section 117 of CGST Act – Appeal to High Court

Statutory Provisions

119. Sums due to be paid notwithstanding appeal etc.

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the National or Regional Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the State Bench or Area Benches of the Appellate Tribunal under subsection (1) of section 113 or an order passed by the High Court under section 117, as the case may be, shall be payable in accordance with the order so passed.

119.1 Introduction

(i) This section provides for payment of sums due pending appeal.

119.2 Analysis

(i) The sums due to the Government as a result of an order passed by the Appellate Tribunal or High Court shall be paid notwithstanding that an appeal has been preferred to High Court or Supreme Court, as the case may be.

119.3 Comparative review

Section 35N of the Central Excise Act,1944

Statutory Provisions

120. Appeal not to be filed in certain cases

(1) The Board may, on the recommendation of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer the central tax under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions, issued under subsection (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.

(3) Notwithstanding the fact that no appeal or application has been filed by the Officer of central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.

(4) The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the Officer of central tax in pursuance of the orders or instructions or directions issued under sub-section (1).

120.1 Introduction

(i) This section provides for non-filing of appeal by revenue in certain cases.

120.2 Analysis

(i) On recommendation of Council, the Board may issue order or instructions or directions fixing monetary limits for the purpose of regulating the filing of appeal or application by Officer of central tax.

(ii) In case the Officer has not filed an appeal / application against any decision / order in view of such order / instruction / directions, it shall not preclude him from filing appeal / application in any other cases involving same / similar issue or question of law.

(iii) No party in appeal / application shall contend that the Officer has acquiesced (agreed / consented) in the decision on the disputed issue by not filing an appeal / application.

(iv) The Appellate Tribunal or court hearing such appeal / application shall have regard to the circumstances under which appeal / application was not filed by the Officer in pursuance of such order / instructions / directions.

120.3 Comparative review

(i) Section 35R of the Central Excise Act,1944

Statutory Provisions

121. Non Appealable decision and orders

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of the central tax if such decision taken or order passed relates to any one or more of the following matters namely:-

(a) An order of the Commissioner or other authority empowered to direct transfer of proceeding from one officer to another officer;

(b) An order pertaining to the seizure or retention of books of account, register and other documents; or

(c) An order sanctioning prosecution under this Act; or

(d) An order passed under section 80.

121.1 Introduction

(i) This section prescribes decisions or orders which are non-appealable.

121.2 Analysis

(i) No appeal shall lie against any decision / order taken / passed by Officer of central tax if such decision / order relates to any one or more of following matters –

- Transfer of proceeding from one officer to another officer;
- Seizure or retention of books of account, register and other documents;
- Order sanctioning prosecution under the Act
- Order passed U/s.80 related to payment of tax & other amount in instalments.

121.3 Related provisions

1. Section 80– Payment of tax and other amount in instalments
2. Section 2(41) defines “document”
3. Section 67– Power of inspection, search & seizure
4. Section 132– Prosecution

Chapter– XIX
Offences and Penalties

Statutory Provision

122.	Penalty for certain offences
(1)	Where a taxable person who -
(i)	supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
(ii)	issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder;
(iii)	collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
(iv)	collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
(v)	fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;
(vi)	fails to collect tax in terms of sub-section (1) of section 52 , or collects an amount which is less than the amount required to be collected under the said sub-section, or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;
(vii)	takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act, or the rules made thereunder;
(viii)	fraudulently obtains refund of tax under this Act;
(ix)	takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;
(x)	falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;
(xi)	is liable to be registered under this Act but fails to obtain registration;
(xii)	furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;
(xiii)	obstructs or prevents any officer in discharge of his duties under the Act;

(xiv) transports any taxable goods without the cover of documents as may be specified in this behalf;

(xv) suppresses his turnover leading to evasion of tax under this Act;

(xvi) fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;

(xvii) fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or rules made thereunder or furnishes false information or documents during any proceedings under this Act;

(xviii) supplies, transports or stores any goods which he has reason to believe are liable to confiscation under this Act;

(xix) issues any invoice or document by using the registration number of another registered person;

(xx) tampers with, or destroys any material evidence or document;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act;

he shall be liable to a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not paid to the Government or tax not collected under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

(2) Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized

(a) for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten percent of the tax due from such person, whichever is higher.

(b) for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or the tax due from such person, whichever is higher.

(3) Any person who

(a) aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);

(b) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(c) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;

(d) fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry;

(e) fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder, or fails to account for an invoice in his books of account;

shall be liable to a penalty which may extend to twenty-five thousand rupees.

122.1 Introduction

For effective implementation of any tax-law and to do justice to tax abiding society, provisions to take strict action against offenders are required. The discussion in the following paragraphs deal with the punitive provisions of GST law.

122.2 Analysis

At the outset, the section declares the offences that attract penalty as a consequence, apart from the requirement to pay the tax and applicable interest. Some of the offences listed under this section may also attract prosecution under section 132 but that depend on the gravity of the offence defined in that section.

The Section is divided in three main parts:

(i) The first sub-section prescribes 21 types of offences, any one of which if committed, can attract penalty of ten thousand rupees or equal to amount of tax involved, whichever is higher.

(ii) The second sub-section deals with two situations, first is where certain offences committed are not due to either fraud or wilful misstatement or suppression of facts. In such a case, penalty will get reduced to 10% of tax involved subject to a minimum of ten thousand rupees. And then, where the offence committed is due to either fraud or any wilful misstatement or suppression of facts to evade tax will result in a penalty equal to tax involved subject to a minimum of ten thousand rupees.

(iii) The third sub-section deals with offences where the person is not directly involved in any evasion but may be a party to evasion or if he does not attend summons or produce documents. Penalty in such a case would be upto twenty five thousand rupees.

While this section describes the offence and prescribes the penalty applicable, the procedure for adjudicating the imposition of this penalty is under section 73 and section 74 in which there is no express reference to this section. Persons found to have committed the offences listed in this section are liable to payment of penalty as follows:

A. Penalty equivalent to higher of Rupees 10,000/- or tax evaded/ tax not deducted/ collected or short deducted/collected or tax deducted/collected but not paid whichever is higher in the following cases:

1. Supplies any goods/services:

   (a) Without issue of any invoice or

   (b) Issues an incorrect/false invoice in respect of such supply

2. Issues an invoice without supply of goods/services in violation of the provisions of the Act/ Rules

3. Collects any amount as tax but fails to deposit the same with the Government beyond a period of three months from due date

4. Collects any tax in contravention of law but fails to deposit the same with the Government beyond a period of three months from due date

5. Fails to

   (a) Deduct tax/deduct appropriate tax, as per Section 51 (Section 51 is applicable to certain specific persons. The said section requires such specified persons to deduct tax at the rate of one per cent out of the payment to the supplier if the value of supply under a contract exceeds two lakh and fifty thousand rupees) or

   (b) deposit the tax deducted with the Government

6. Fails to

   (a) collect tax/collect appropriate tax as per provisions of Section 52 (Section 52 is applicable to electronic commerce operator to collect tax from the supplier of goods at the time of payment to such supplier at the rate of one per cent)

   (b) deposit the tax collected with the appropriate Government

7. takes or utilizes input tax credit without actual receipt of goods/services either fully or partially in contravention of provisions of Act/ Rules

8. fraudulently obtains refund of tax

9. takes or distributes input tax credit in contravention of section 20 , or the rules made thereunder (Section 20 prescribes manner of distribution of credit by input service distributor)

10. With an intention to evade payment of tax

    (a) falsifies or substitutes financial records, or

    (b) produces fake accounts or documents, or

    (c) furnishes any false information or return

11. fails to obtain registration

12. furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently

13. obstructs or prevents any officer in discharge of his duties

14. transports any taxable goods without the cover of specified documents

15. suppresses his turnover leading to evasion of tax

16. fails to keep, maintain or retain books of account and other documents as specified in law

17. fails to furnish information or documents called for by an officer or furnishes false information or documents during any proceedings

18. supplies, transports or stores any goods which he has reason to believe are liable to confiscation

19. issues any invoice or document by using the registration number of another taxable person

20. tampers with, or destroys any material evidence or document

21. disposes off or tampers with any goods that have been detained, seized, or attached under this Act.

B. Penalty at a reduced rate of 10% of the tax involved subject to minimum of Rs.10,000 will be levied in cases where any registered taxable person who supplies any goods or services by whom any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax. Penalty of 100% of the tax involved subject to minimum of Rs. 10,000 where fraud or any wilful misstatement or suppression of facts to evade tax.

C. Penalty up to rupees twenty-five thousand where any person:

1. aids or abets any of the offences specified in clause A above;

2. acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation;

3. receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;

4. fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry

5. fails to issue invoice in accordance with the provisions of this Act or rules made thereunder, or fails to account for an invoice in his books of account

122.3 Comparative review

Penalty provisions are more or less in line with the following provisions of subsumed Central laws in addition to the provisions of VAT laws of various States:

Section/Rule	Act/Rule	Provision
Section 9	Central Excise Act, 1944	Offences and penalties.
Chapter XVI	Customs Act, 1962	Offences & Prosecutions
Rules 8(3A)	Central Excise Rules, 2002	Failure to pay duty declared in return

Rules 25 & 2*6	Central Excise Rules, 2002	— Confiscation & Penalty — Penalty for Certain Offences
Section 76	Finance Act, 1994	Penalty for failure to pay Service tax
Section 77	Finance Act, 1994	General penalty for residual offences
Section 78	Finance Act, 1994	Penalty for failure to pay service tax for reasons of fraud
Section 89	Finance Act, 1994	Offences and Penalties
Rules 15	Cenvat Credit Rules, 2004	Penalty for defaults in relation to CENVAT credit
Rules 15A	Cenvat Credit Rules, 2004	General penalty

122.4 Related provisions

Section or Rule	Description
Section 2(107)	Definition of taxable person
Section 31	Tax Invoice
Section 142	Supplementary Invoice
Section 51	Tax to be deducted at source (TDS)
Section 52	Tax to be collected at source by the electronic commerce operator
Sections 16 to 21, 41 and 42	Input tax credit
Section 22 to 30	Registration
Section 54 to 58	Refund

122.5 FAQs

Q1. Whether penalty becomes automatically leviable without any adjudication?

Ans. Though not specifically mentioned in section 122 relating to penalties, in the light of section 126 dealing with general disciplines related to penalty and in view of principles of natural justice, penalties cannot be imposed without affording him an adequate opportunity of being heard.

Q2. Can there be any liability even if a person is not a taxable person?

Ans. Yes, penalty under sub-section (3) can be levied on any person even if he is not a taxable person

122.6 MCQs

Q1. If a person has failed to obtain the registration the penalty is equivalent to:

(a) amount of tax

(b) 10% of tax

(c) upto ₹ 10,000

(d) the amount of tax or ₹ 10,000 whichever is higher

Ans. (d) the amount of tax or ₹ 10,000 whichever is higher

Q2. If a person fails to appear before GST officer, the maximum penalty that can be levied is:

(a) amount of tax

(b) 10% of tax

(c) upto ₹ 10,000

(d) none of the above

Ans. (d) none of the above

Q3. Penalty of 10% of the tax can be levied if:

(a) a person repeatedly had not appeared before GST officer for 3 times

(b) the taxable person has not filed returns for 6 consecutive months or more

(c) a taxable person has been served with show cause notice for 3 times repeatedly

(d) registered taxable person has not paid under bona fide belief

Ans. (d) registered taxable person has not paid under bona fide belief.

Q4. There is no penalty for not carrying specified documents during transportation of goods

(i.) true

(ii) false

Ans. (ii) false

Statutory provision

123. Penalty for failure to furnish information return

If a person who is required to furnish an information return under Section 150 fails to do so within the period specified in the notice issued under sub-Section (3) thereof, the prescribed authority proper officer may direct that such person shall be liable to pay, by way of penalty of, a sum of one hundred rupees for each day of the period during which the failure to furnish such return continues.

Provided that the penalty imposed under this section shall not exceed five thousand rupees..

123.1 Introduction

This Section would be relevant where the information return as prescribed under Section 150 is not filed.

123.2 Analysis

If the person who is required to file an 'information return' as prescribed under Section 150 has not filed the return within the stipulated period of 90 days from the date of issue of show cause notice, a penalty of ₹ 100/- per day shall be levied for each day for which the failure continues but not exceeding five thousand rupees.

123.3 Comparative Review

The provision is similar to Section 15B of Central Excise Act, 1944.

123.4 Related provisions

Section	Description
Section 150	Filing of Information Return and issue of show cause notice for non-filing

123.5 FAQs

Q1. What would be the penalty for not filing the information return?

Ans. Penalty of Rs.100 per day would be applicable for each day for which the failure continues.

Q2. Would penalty under this Section be payable for defective returns?

Ans. No. Penalty for defective information returns would not be payable under Section 150.

Q3. Is there any maximum ceiling on penalty payable for failure to furnish information return u/s. 150?

Ans. Yes. There is maximum ceiling of Rs. 5,000/- under this section.

Statutory provision

124. Fine for failure to furnish statistics

If any person required to furnish any information or return under section 151,—

(a) without reasonable cause fails to furnish such information or return as may be required under that section, or

(b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty five thousand rupees.

124.1 Introduction

This section provides for penal consequences for failure to furnish information or return as required under section 151 regarding collection of statistics

124.2 Analysis

The section specifies penalty for failure to provide information or return in two circumstances viz.

(a) fails to furnish information or return without reasonable cause; and

(b) where furnished knowing it to be false.

The penalty specified is of upto Rs. 10,000/- and where the offence is continuing a further fine of upto Rs.100 per day subject to maximum of Rs. 25,000/-.

124.3 Related provisions

Section	Description
Section 151	Power to collect statistics

Statutory provision

125. General Penalty

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately Provided for in this Act, shall be liable to a penalty which may extend to twenty five thousand rupees.

125.1 Introduction

The duty of the State is not only to recover all lawful dues from a defaulter but to do justice towards the law abiding populace to impose a penalty – *jus in rem*. To this end offences are listed in section 122 along with penalty specifically applicable to each. Any offence that does not have a specific penalty prescribed, cannot be let off without penal consequences. Section 125 is a general penalty provision under the GST law for cases where no separate penalty is prescribed under the Act or rules.

125.2 Analysis

Penalty upto rupees twenty five thousand is imposable where any person contravenes:

(a) any of the provisions of the Act; or

(b) rules made thereunder

for which no penalty is separately prescribed under the Act

125.3 Comparative review

General penalty provisions are more or less in line with the following provisions of subsumed Central laws in addition to the provisions of VAT laws of various States:

Section/Rule	Act/Rule	Provision
Rule 27	Central Excise Rules, 2002	General Penalty
Rule 15A	Cenvat Credit Rules, 2004	General penalty
Section 77	Finance Act, 1994	General penalty for residual offences

The residuary penalty as prescribed under service tax law and central excise law is upto ₹ 10,000/- and 5,000/ respectively-. There is substantial increase in maximum limit of penalty as prescribed under the Act.

125.4 Related provisions

Section	Description
Section 126	General disciplines related to penalty

125.5 FAQs

Q1. Which are the cases where general penalty can be levied?

Ans. The instances where there is no specific penalty prescribed under any other section or rule made thereunder general penalty will be attracted.

Q2. What is the amount of general penalty leviable under the Act?

Ans. An amount upto ₹ 25,000/-

125.6 MCQs

Q1. General penalty can be levied in addition to the specific penalties prescribed under the law

(i) Yes

(ii) No

Ans. (ii) No, when no specific penalty is prescribed, then only the general penalty applies.

Q2. If the assessee discovers any default on his own he must pay penalty along under this section?

(i) Yes

(ii) No

Ans. (ii) No.

Statutory provision

126. General disciplines related to penalty

(1) No officer under this act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation. - For the purpose of this sub-section –

(a) a breach shall be considered a 'minor breach' if the amount of tax involved is less

than rupees five thousand.

(b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this act shall while imposing penalty in an order for a breach of the any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under the Act is either a fixed sum or expressed as a fixed percentage.

126.1. Introduction

While penalties are not new in tax laws, this section lays down certain guiding principles to ensure tax administration can be held accountable to the tax paying citizenry. It is salutary that such well-reasoned 'general disciplines' relating to penalty are Provided in the Act.

126.2. Analysis

Guidelines for imposing penalty is one of the highlights of this progressive tax legislation. Courts have, for long, addresses the presence of circumstances surrounding the instance of – non-payment of tax now admitted – for the imposition of penalty. Now, a section proving guidance on 'how' and 'when' – to impose or refrain from imposing penalty – is salutary.

The following guiding disciplines in certain circumstances apply to substantial penalties:

(a) No penalty can be imposed where the tax involved is less than Rs. 5,000/- (minor breach) or in case of documentation errors apparent on the face of record.

(b) When penalty is still liable to be imposed, the next safety as laid down is to inquire into the degree and severity of the breach to proceed with imposition of penalty. In these cases, if the facts do not demand imposition of penalty, restraint is advised. However, no such discretion is Provided in the section while providing for amount of penalty.

(c) Person liable to penalty must be given an opportunity of being heard. Further a speaking order is passed for imposing such penalty.

(d) Voluntary disclosure by a person to an officer (not merely in his own books and records) about the circumstances of the breach may be considered as a mitigating factor for the quantifying of penalty.

(e) Cases involving fixed sum or fixed percentage of penalty are excluded.

126.3 Comparative review

Finance Act, 1994 vide Section 80 Provided for waiver of penalties in cases where the assessee was able to prove that there was a reasonable cause of failure. The same was deleted with effect from 14.05.2015.

126.4 Related provisions

Section/Rule/Form	Description	Remarks
Section 122	Offences	Specifies the gist of offences under the Act

126.5 FAQs

Q1. What are the discretionary powers of the officers to waive the penalties?

Ans. Section 126(2) prescribes that penalty shall be levied depending on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

Q2. What is regarded as "minor breach"?

Ans. A breach shall be considered a 'minor breach' if the amount of tax involved is less than rupees five thousand.

Q3. What shall be considered as "mistake easily rectifiable"?

Ans. An omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

126.6 MCQs

Q1. For minor breaches of tax regulations or procedural requirements, the tax authority shall-

(a) not impose substantial penalties

(b) impose nominal penalty

(c) not impose any penalty.

(d) None of the above.

Ans. (c) not impose any penalty.

Statutory provision

127. Power to Impose penalty in certain cases

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceeding under sections 62, or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

127.1 Introduction

This section empowers to the proper officer to initiate separate penalty proceedings even if the penalty is not covered under any proceedings under any other sections.

127.2 Analysis

Penalty proceedings can be initiated under this Section even if the same are not covered under the following sections:

Section 62: Assessment of non-filers of returns

Section 63: Assessment of unregistered persons

Section 64: Summary assessment

Section 73 and 74: Determination of tax by proper officer

Section 129: Detention, seizure and release of goods and conveyances in transit

Section 130: Confiscation of goods or conveyances and levy of penalty

In other words, penalties can be imposed by proper officer after giving due opportunity even in cases where there are no proceedings open with regard to assessment, adjudication, detention or confiscation. This may involve situations where there is no evasion of tax directly by the person concerned but he may be involved in offences mentioned in sub-section (3) of Section 122. Section 122(3) encompasses the following situations:

1. aids or abets any of the offences specified in section 122(1)
2. acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation;
3. receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;
4. fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry;
5. fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder, or fails to account for an invoice in his books of account.

Statutory provision

128. Power to waive penalty or fee or both

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

128.1 Introduction

This section empowers the government to waive penalty for certain class of taxpayers or

under certain circumstances.

128.2 Analysis

This section provides for waiver of penalty leviable under section 122 or section 123 or section 125 or late fee payable under section 47 to those class of taxpayers or under such mitigating factors as notified by the Government.

Statutory provision

129. Detention, seizure and release of goods and conveyances in transit

(1) Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or rules made thereunder, all such goods and the conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,

(a) on payment of the applicable tax and penalty equal to one hundred percent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two percent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;

(b) on payment of the applicable tax and penalty equal to the fifty percent of the value of the goods reduced by the tax amount paid thereon, and, in case of exempted goods, on payment of an amount equal to five percent of the value of goods or twenty five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty.

(c) upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:

Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.

(2) The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.

(3) The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).

(4) No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.

(5) On payment of the amount referred to in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.

(6) Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as Provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.

129.1 Introduction

This section provides for the provision relating to detention of goods or conveyances or both in case of certain defaults under the law.

129.2 Analysis

(a) If a person contravenes any provision of the Act while transporting or storing goods, then such goods and the conveyance in which such goods are carried and all the documents relating to such goods and conveyance can be detained or seized. The proper officer detaining and seizing the goods and/or conveyance has to give proper opportunity to the transporter to explain his case by issuing a proper notice to him. After hearing the transporter the officer shall pass an appropriate order.

(b) In case of default, where the owner of the goods comes forward for the payment of tax, penalty will be levied equal to 100% of the amount of tax and in case of exempted goods 2% of the value of goods or Rs.25000/- whichever is less.

(c) In case where owner of the goods does not come forward for payment of tax, then an order shall be passed for payment of amount of tax and penalty equal to 50% of the value of goods reduced by tax amount paid (to be paid by any other person other than owner) and in case of exempted goods 5% of the value of goods or Rs.25000/- whichever is less.

(d) The proper officer shall release the goods upon the payment of tax and amount of penalty in the above manner or upon furnishing a security equivalent of the amount payable and all the proceedings under this particular section shall deemed to be concluded. However, if the person (either owner of the goods or any other person) fails to discharge the amount of tax and penalty under this section within 7 days, than the goods and/or conveyance shall be liable for confiscation. The period of 7 days can be reduced by proper officer if goods are of perishable or hazardous nature. Further, such goods can be released on provisional basis under bond as per the provisions of section 67.

129.3 Related provision

Section / Rule / Form	Description	Remarks
Section 67	Inspection of goods in movement	Prescribed documents are requires to be carried along with the goods being transported.

129.4 FAQs

Q1. Under what circumstances a conveyance can be detained?

Ans. A conveyance can be detained, when the conveyance is used for –

- Transportation of any goods or
- Storage of such goods while they are in transit

in violation of the GST Act or rules made thereunder.

Q2. What is the quantum of penalties in case of detention/seizure of goods and/or conveyance?

Ans.

- In case of owner– the quantum of penalty would be equivalent to the amount of tax and in case of exempted goods 2% of the value of the goods or Rs.25000/- whichever is less.
- In case, payment is to be made by the person other than the owner, penalty shall be 50% of the value of the goods and in case of exempted goods 5% of the value of goods or Rs.25000/- whichever is less..

129.5 MCQs

Q1. The detained goods shall be released only after payment of –

(a) Applicable tax and penalty;

(b) Furnishing a security;

(c) Tax and Interest;

(d) Either (a) or (b).

Ans. (d) Either (a) or (b)

Q2. Number of days within which the amount of tax and penalty on seized goods should be paid-

(a) 3;

(b) 12;

(c) 7;

(d) 15.

Ans. (c) 7

Statutory provision

130.	Confiscation of goods and/or conveyances and levy of penalty
(1)	Notwithstanding anything contained in this Act, if any person –
	(i) supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or
	(ii) does not account for any goods on which he is liable to pay tax under this Act; or

(iii) supplies any goods liable to tax under this Act without having applied for the registration; or

(iv) contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax, or

(v) uses any conveyance as a means of transport for carriage of taxable goods in contravention of the provisions of this Act or rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,

then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.

(2) Whenever confiscation of any goods is authorized by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit:

Provided that such fine shall not exceed the market value of the goods confiscated, less the tax chargeable thereon.

Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:

Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

(3) Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.

(4) No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person a reasonable opportunity of being heard.

(5) Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.

(6) The proper officer adjudging confiscation shall take and hold possession of the things confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession

(7) The proper officer may, after satisfying himself that the confiscated goods and conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose such goods or conveyances and deposit the sale proceeds thereof with the Government.

130.1 Introduction

This section provides for specific causes leading to confiscation of goods/conveyances. The nature of authorization to confiscate and opportunity to release goods/conveyances liable for such confiscation are detailed in this section.

130.2 Analysis

There are five precise causes for confiscation of goods specified in this section and they are:

Action	Consequence
Supply or receive goods in contravention of the Act or rules made thereunder	Resulting in actual evasion of tax
Not accounting for goods	Carrying a liability to payment of tax
Supply of goods liable to tax	Without applying registration
Contravention of the provisions of Act or rules made thereunder	With intent to evade payment of tax
Use of conveyance to transport/store goods	In contravention of the Act or rules made thereunder

— In all the above cases, goods or conveyance shall be liable for confiscation. However the conveyance shall not be confiscated where the owner of the conveyance proves that it is without the connivance of owner himself, his agent or person in charge of the conveyance. Further, the person shall be liable to pay penalty under section 122 of the Act.

Confiscation of goods of person/owner:

— If the goods are liable to be confiscated under the provisions of this Act, satisfying any of the above causes, the proper officer shall give the owner of the goods, or where the owner is not known, person in whose custody the goods are found or the owner of the conveyance or the person in-charge of the conveyance; an option to pay fine in lieu of confiscation.

— The amount of fine shall not exceed the market value of goods as reduced by the amount of tax payable thereon. However, at the same time the same shall not be less the amount of penalty as leviable under section 129. While section 129 is applicable on transporters, section 130 primarily overs the owner.

— Where the conveyance is used for transportation of goods or passenger on hire, the owner of the conveyance shall be given an option to pay fine equal to amount of tax payable on the goods transported on his conveyance. It is worthwhile to note that the amount of fine payable is in addition to tax and other charges payable on confiscated goods.

— The order for confiscation cannot be issued without giving the person an opportunity of being heard.

— The title of the confiscated goods or conveyance shall be vested upon the Government. The proper officer adjudging confiscation shall take and hold possession of the things confiscated on behalf of the Government and every officer of police shall assist in taking such hold and possession.

If the proper officer is satisfied that the confiscated goods/conveyance are not required for any proceedings under the Act, than he shall after giving reasonable time not exceeding 3 months to pay fine in lieu of confiscation, dispose the goods and deposit the sale proceeds with the Government.

130.3 Comparative review

The provision as discussed above for confiscation of goods and levy of penalty is akin to current confiscation provisions under Sections 33 and 34 of the Central Excise Act, 1944.

130.4 Related provisions

Section / Rule / Form	Description	Remarks
Section 122	Offences and Penalties	Specifies the gist of offences under the Act
Section 126	General discipline related to penalty	The principles and disciplines related to impose of penalty

130.5 FAQs

Q1. Are all cases of contraventions of any of the provisions of the Act or Rules liable for confiscation?

Ans. No, only if the contravention of the provisions results in evasion of taxes or there lies an intent to evade the payment of tax, confiscation of goods/conveyance is permissible.

Q2. What is the maximum amount of fine in lieu of confiscation that can be levied?

Ans. The maximum amount of fine in lieu of confiscation shall not exceed the market price of the goods confiscated, less the tax chargeable thereon

Q3. Can the option to pay redemption fine in lieu of confiscation of goods be given to any person other than the owner of the goods?

Ans. Yes, in cases where owner is not known, the person from whose possession or custody such goods have been seized.

Q4. Is option to pay fine in lieu of confiscation of goods is to be granted in each case or at the discretion of the officer?

Ans. The option to pay fine in lieu of confiscation is not at the discretion of proper officer but it is an option Provided by law.

Q5. Can the option to pay fine in lieu of confiscation be exercised anytime?

Ans. The option to pay fine in lieu of confiscation shall be exercised within 3 months of confiscation.

130.6 MCQs

Q1. Option of redemption of goods liable for confiscation shall be given to –

(a) Firstly to owner;

(b) Firstly to person who was in possession when seized.

(c) Transporter;

(d) None of the above.

Ans. (a) Firstly to owner

Statutory provision

131. Confiscation or penalty not to interfere with other punishments

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

131.1 Introduction

This is an administrative provision which empowers the Government to initiate other proceedings, as relevant, in addition to confiscation of goods or imposition or penalty.

131.2 Analysis

Normally, the inference is that where the goods are confiscated or where any penalty is imposed, no other proceedings which are punitive in nature should be initiated.

This Section provides that in addition to confiscation of goods or penalty already imposed, all / any other proceedings may also be initiated or continued under the GST law or any other law, as applicable. This could be prosecution, arrest, cancellation of registration etc., as applicable and Provided for the relevant non-compliances.

131.3 Comparative review

This provision is similar to Section 34A of the Central Excise Act, 1944.

Statutory provision

132. Punishment for Certain Offences

(1) Whoever commits any of the following offences namely:-

(*a*) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;

(*b*) issues any invoice or bill without supply of goods or services or both in violation

of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;

(*c*) avails input tax credit using such invoice or bill referred to in clause (*b*);

(*d*) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

(*e*) evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (*a*) to (*d*);

(*f*) falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(*g*) obstructs or prevents any officer in the discharge of his duties under this

(*h*) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;

(*i*) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;

(*j*) tampers with or destroys any material evidence or documents;

(*k*) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

(*l*) attempts to commit, or abets the commission of any of the offences mentioned in clauses (*a*) to (*k*) of this section,

shall be punishable –

(*i*) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;

(*ii*) in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;

(*iii*) in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, 35 with imprisonment for a term which may extend to one year and with fine;

(*iv*) in cases where he commits or abets the commission of an offence specified in clause (*f*) or clause (*g*) or clause (*j*), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

(*2*) Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.

(*3*) The imprisonment referred to in clauses (*i*), (*ii*) and (*iii*) of sub-section (*1*) and sub-section (*2*) shall, in the absence of special and adequate reasons to the contrary to be 45 recorded in the judgment of the Court, be for a term not less than six months.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (*5*) shall be non-cognizable and bailable.

(*5*) The offences specified in clause (*a*) or clause (*b*) or clause (*c*) or clause (*d*) of sub-section (*1*) and punishable under clause (*i*) of that sub-section shall be cognizable and non- bailable.

(*6*) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

Explanation.— For the purposes of this section, the term "tax" shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

132.1 Introduction

This section talks about cases of tax evasion and penal actions applicable on specific events subject to amount of tax sought to be evaded. This provision speaks of prosecution of offenders and the punishment initiated on them.

132.2 Analysis

A. In this section the law makers have identified situations whereby there can be a leakage or revision of government revenue and have thus penned down 12 such situations of malafide intent which are as follows:

(a) Supply of goods or services or both without the cover of invoice with an intent to evade tax;

(b) If any person issues any invoice or bill without actual supply of goods or services or both leading to wrongful input tax credit or refund of tax;

(c) Any person who avails input tax credit using invoice referred in point (b) above;

(d) Collection of taxes without payment to the government for a period beyond 3 months of due date;

(e) Evasion of tax, availment of credit or obtaining refund with an intent of fraud where such offence is not covered in clause (a) to (d) above.

(f) Falsifying records or production of false records/accounts/documents/information with an intent to evade tax;

(g) Obstructs or prevents any officer from doing his duties under the act;

(h) Acquires or transports or in any manner or deals with any goods which he knows are liable for confiscation under this Act;

(i) Receives or in any way, deals with any services or has reason to believe are in contravention of any provisions of this law;

(j) Tampers with or destroys any material evidence or documents;

(k) Fails to supply any information which he is required to supply under this law or supply false information;

(l) Attempts or abets the commission of any of the offences mention above.

This section enables institution of prosecution proceedings against the offenders and the period of imprisonment and quantum of fine varies depending on the amount of tax evaded or seriousness of the offence listed below:

Amount of Tax evaded/ erroneous refund/ wrong ITC availed or utilized	Fine	Imprisonment
Exceeding Rs. 5 Crores	Yes	Upto 5 years
Rs 2 Crores – 5 Crores	Yes	Upto 3 years
Rs 1 Crores – 2 Crores	Yes	Upto 1 year

B. If any person commits any offence specified in clause (f), (g) or (j) above, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.

C. In case of repetitive offences without any specific/special reason which is recorded by an order of the court will entail an imprisonment term of not less than 6 months which could extend to 5 years plus with a fine.

D. All offences mentioned in this section are non-cognizable and bailable except the following cases:

   a. Where the amount exceeds 5 Crores

   b. Instances covered by (a) to (d) in Para A.

E. Every prosecution proceeding initiated requires prior sanction of the Commissioner.

132.3 Comparative Review

The present Central and State level indirect tax laws covers prosecution powers.

Statutory provision

133. Liability of Officers and certain other persons

(1) Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under sub-section (*1*) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, wilfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.

(*2*) Any person—

(*a*) who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;

(*b*) who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.

133.1 Introduction

This Section casts duties & obligations on the officers of the Goods and Service Tax Laws to keep the information collected either from the statistical data collected by the government or from the information furnished in the information returns.

133.2 Analysis

Since the Officers of the department are dealing with sensitive information, the secrecy and security of such information is of utmost importance. If the officers who are dealing with the statistical data or data collected from the information returns, he has to maintain utmost secrecy of the same.

If the officer willfully discloses such information or contents by any reason other than by reason of his duties cast upon him under the Act, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to 25,000 rupees or both.

Further any the prosecution under this section would be carried out with the prior sanction of the Government in case of prosecution of a Government Servant and with the sanction of commissioner in case of others.

133.3 Comparative review

Under the present Central and State level laws acting could be initiated under the Service Rules whenever these provisions under the GST law are executed for the first time.

Statutory provision

134. Cognizance of offences

No court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

134.1 Introduction

This provision sets out the manner of taking cognizance of offences.

134.2 Analysis

Any offence under the Act or Rules can be tried only before a Court not lower than the Court of Judicial Magistrate First Class. Further, previous sanctions of the Commissioner is mandatory in every such case.

Statutory provision

135. Presumption of Culpable Mental State

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation.—For the purposes of this section,—

(i) the expression "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;

(ii) a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

135.1 Introduction

In this section the framers of law have cast the responsibility upon the shoulders of the one who is alleged of culpable mental state to prove otherwise.

135.2 Analysis

Now once the law has stated that in case of any prosecution which requires the existence of a culpable mental state, the court would presume the existence of it.

Under the current revenue laws, the burden to prove was on the one who alleges it. Hon'ble Supreme Court in the case of Uniworth Textiles Limited vs. Commissioner of Central Excise, Raipur (2013) 31 taxmann.com 67 (SC) stated that "Burden to prove invocation of extended period on Department. The assessee cannot be asked to bring evidence to prove his bona fide. Similarly it is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it."

The accused can prove that he had no such mental state in respect of a particular act for which he is charged. The expression "Culpable Mental State" is defined inclusively to cover "intent, motive, knowledge of fact, belief in or reason to believe". It also covers facts which exist beyond a reasonable doubt and not based on probabilities.

Hence a very landmark judgement of the Hon'ble Supreme Court would lose its relevance in the cases covered by this section.

135.3 Comparative Review

Section 9C of the Central Excise law has a identical provision. Under the present laws the onus to prove non-existence of Culpable Mental State is cast on the assessee only.

Statutory provision

136. Relevancy of statements under certain circumstances

A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains,––

(*a*) when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or

(*b*) when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.

136.1 Introduction

This provision deals with relevancy of statements and documents recorded or deposed during investigation proceedings.

136.2 Analysis

A Statement recorded during an investigation proceedings or inquiry or enquiry will be relevant to prove the truthfulness of facts when

(a) It is made by a person who is not available in Court on account of his death, incapacity, prevention by another party or when he absconds; or

(b) The Court and with the statement as an evidence on examination of the person as a witness.

136.3 Comparative review

Similar provisions are traceable to section 9D of the Central Excise Act, 1944.

Statutory provision

137. Offences by companies

(*1*) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, 5 the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

(*2*) Notwithstanding anything contained in sub-section (*1*), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

(*3*) Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu undivided family or a trust, the partner or *karta* or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (*2*) shall, *mutatis mutandis*, apply to such persons.

(*4*) Nothing contained in this section shall render any such person liable to any punishment Provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

Explanation.—For the purposes of this section,—

(i) "company" means a body corporate and includes a firm or other association of individuals; and

(*ii*) "director", in relation to a firm, means a partner in the firm.

137.1 Introduction

This section lowers down heavily on the persons who take shelter on the principle of separate legal status of artificial judicial persons and back out of their responsibility of payment of dues of the Government.

137.2 Analysis

This section states that where an offence is committed by companies, every person/director/ manager/secretary or any other officer who at the time of commitment of the offence, was in charge of and was responsible to the company for the conduct of business of the company, as well as the company shall be deemed to be guilty of such offence and proceeded against and punished accordingly.

Where such offences are committed by the person being Partnership Firm, LLP, HUF or trust, AOP or BOI then the partner or Karta or Managing Trustee (as the case may be) shall be deemed to be guilty and liable to be proceeded against and punished.

Further if the accused person proves that he was in no way related to the offence being committed or he had exercised all possible measures to prevent commission of such offences, then he is not punishable under this section.

137.3 Comparative Review

These provisions are comparable to section 9AA of the Central Excise Act, 1944 as well as several State level VAT legislations with few exemptions to persons who can be prosecuted. The provision as regards LLP, HUF, Trust are new developments.

Statutory provision

138. Compounding of Offences

(*1*) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to—

(*a*) a person who has been allowed to compound once in respect of any of the offences specified in clauses (*a*) to (*f*) of sub-section (*1*) of section 132 and the offences specified in clause (*l*) which are relatable to offences specified in clauses (*a*) to (*f*) of 35 the said sub-section;

(*b*) a person who has been allowed to compound once in respect of any offence, other than those in clause (*a*), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;

(*c*) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;

(*d*) a person who has been convicted for an offence under this Act by a court;

(*e*) a person who has been accused of committing an offence specified in clause (*g*) or clause (*j*) or clause (*k*) of sub-section (*1*) of section 132; and

(f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section

shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

(*2*) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent of the tax involved, whichever is higher, and the maximum amount not

being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.

(*3*) On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

138.1 Introduction

This provision deals with compounding of offences by payment of the prescribed compounding fees

138.2 Analysis

(a) Compounding of an offence means payment of a sum of money in monetary terms instead of undergoing prosecution.

(b) Compounding of an offence is understood as a comparison between the offender and the tax department and is not an agreement or contract.

(c) Compounding of a offence can be either before or after institution of the prosecution proceedings.

(d) On payment of tax, interest and penalty a person can approach for compounding of the offence.

(e) Specified offences can be compounded only once.

(f) In specified cases compounding would be minimum of Rs. 10000/- or 50% of tax whichever is higher.

(g) Certain other cases envisages a compounding fee of Rs. 30000/- or 150% of tax whichever is higher.

(h) On payment, the proceedings indicated will abate and no criminal proceedings can be launched.

(i) Compounding of offences is impermissible to the following offences:

  (i) A person who has compounded once in respect of supply value exceeding Rs. One Crore.

  (ii) A person who is convicted by a Court under this Act.

  (iii) Prescribed class of persons,

  (iv) A person permitted to compound offences in terms of section 132.

Chapter–XX
Transitional Provisions

Statutory provision

139. Migration of existing Tax Payers to GST

Section

(1) On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under sub- section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.

(2) The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.

(3) The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued, if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24.

139.1 Introduction

This transitory provision deals with migration of existing registrants into the GST regime. All existing registrants having a valid Permanent Account Number will be issued provisional registration certificate. After furnishing required information final certificate of registration will be granted. If the information is not furnished, the registration is liable to be cancelled.

139.2 Analysis

As part of implementation of GST, the existing tax payers / registrants having a valid PAN would be granted provisional registration certificates under the GST law. The details are as follows:

(i) The existing tax payer other than a person deducting tax or a ISD shall declare his Permanent Account Number (PAN), mobile number, e-mail address, State or Union territory shall enrol himself for getting the provisional registration certificate.

(ii) On successful verification of the PAN, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.

(iii) Upon enrolment the said person will be granted a provisional registration certificate in Form REG-25 incorporating the GSTIN which will be available on the common portal.

(iv) A person having a single PAN in a State or UT shall be granted only one provisional

registration certificate although he may hold multiple registrations under the existing central and State laws

(v) A person who holds a provisional certificate of registration is required to furnish certain information in Form REG-24, within a period of 3 months;

(vi) If the information furnished is correct and complete, a certificate of registration in Form GSTREG 06 will be issued.

(vii) If the particulars and/or information has not been furnished or not found to be correct or complete, the proper officer shall cancel the provisional registration and issue an order in Form GST REG-26 cancelling the registration after serving a show cause notice in Form GST REG-27 and affording the person concerned a reasonable opportunity of being heard.

(viii) Every existing taxpayer / registrant, who is not liable to be registered under the Act can file electronically an application in Form GST REG-28 at the Common Portal for cancellation of the registration granted provisionally to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said provisional registration.

(ix) A person to whom provisional certificate is issued and who is eligible to pay tax under composition, may opt to do so by filing electronically an intimation, within thirty days after the appointed day, or such further period as may be extended by the Commissioner in this behalf. However, where the said person does not opt to pay tax under composition within the time prescribed in this behalf, he shall be liable to pay tax under section 9.

(x) A Special Economic Zone Unit or a Special Economic Zone Developer shall make a separate application for registration as a business vertical distinct from its other units located outside the SEZ.

139.3 Comparative review

This provision is broadly comparable to the provisions relating to migration of registrations from the erstwhile Sales Tax to the Value Added Tax at the time of introduction of VAT law, in 2004/2005.

139.4 Related provisions

Section	Description	Remarks
Section 22	Registration	Persons liable for registration
Section 23	Registration	Persons not liable for registration
Section 24	Registration	Compulsory registration in certain cases; irrespective of the threshold limit specified under section 22.
Section 28	Amendment of registration	Every registered taxable person shall inform the proper officer of any changes in the information furnished at the time of registration, or furnished subsequently, in the manner and within such period as may be prescribed.

Section	Description	Remarks
		The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in the manner and within such period as may be prescribed: Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed.
Section 29	Cancellation of Registration	The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed.
Section 30	Revocation of cancellation of registration	The registered person whose registration is cancelled by the proper officer, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.
Rule 16 of Registration Rules	Migration of persons under the existing law.	Every person registered under the erstwhile indirect tax laws shall be Provided with a provisional certificate of registration.

Pictorially, an analysis of this transition provision can be presented as follows:

PRE GST

Existing taxpayer – i.e. registered under any of earlier laws

POST GST

- Existing tax payer, if liable to be registered under section 22 of the Act – then compulsorily to be registered
- If not liable to be registered under Section 22 of the Act – can apply for registration voluntarily
- In case of multiple business verticals in a State - Option to obtain separate registration for each business vertical
- Mandatory to have Permanent Account Number (PAN) (if Non - Resident taxable person then document as may be prescribed)
- "Provisional Certificate of Registration" granted irrespective of whether existing taxpayer liable to be registered under section 22 of the Act or not.
- Further allowable extended time period to submit requisite documents as may be prescribed
- Final registration to be granted by Central Government (CG)/State Government (SG) subject to the condition that the :

  Requisite information submitted within the time period allowed

- "Provisional Certificate of Registration" granted deemed to not have been issued if application filed for cancellation of registration by person not liable to be registered under Section 22 of the Act/If he does not furnish the prescribed information within prescribed time period.

Documents:

S.No.	Documents	File Size Format	Maximum Allowable Size
1.	Proof of Constitution of Business • In case of Partnership firm: Partnership Deed of Partnership Firm (PDF and JPEG format in maximum size of 1 MB) • In case of Others: Registration Certificate of the Business Entity	PDF or JPEG	1 MB
2.	Photograph of Promoters/ Partners/ Karta of HUF	JPEG	100 KB
3.	Proof of Appointment of Authorized Signatory	PDF or JPEG	1 MB
4.	Photograph of Authorized Signatory	JPEG	100 KB
5.	Opening page of Bank Passbook/ Statement containing Bank Account Number of < Account Number>, Address of Branch, Address of Account holder and few transaction details	PDF	

FAQs

Q1. What is the criteria for issuing provisional registration?

Ans: Every person registered under any of the earlier laws and having a valid PAN will be issued a certificate of registration, provisionally.

Q2. When is the final registration certificate issued replacing the provisional one ?

Ans: The holder of the provisional certificate will be required to furnish certain other information and documents as prescribed in the GST Rules. Upon furnishing the same, the final registration will be issued.

Q3. What happens if the prescribed documents are not furnished within the Prescribed time?

Ans: If the person fails to furnish the prescribed information/documents within the specified time, the certificate of registration provisionally issued may be cancelled.

Q4. Whether the GST Registration for existing registered dealer shall be taken by submission of required documents or will it be done automatically?

Ans: Yes, the data has to be submitted on GSTN portal and only then registration will be granted. A provisional registration will be granted which will be made final upon submission of additional information/documents after the appointed date.

Q5. Can a person who is registered under the earlier law opt out of GST voluntarily?

Ans. Yes, by making an application in Form GST REG 28, a person can opt out of GST.

Q6. What will happen to the provisional registration if the person claims to be not liable for registration under GST?

Ans: The provisional certificate shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person stating that he was not liable to registration.

Q7. What will be the position of the provisional registration of a composite dealer? Will he remain as composite dealer even after the appointed day?

Ans: No. Even existing composite taxpayer has to specifically apply for composition tax within 30 days from the appointed date and the receipt of provisional certificate will not be considered as automatic transition to composite scheme.

Q8. Can a VAT dealer opt for composition scheme after the time prescribed?

Ans: If a registered taxable person does not opt to pay tax under composition scheme within the specified time, he shall be liable to pay tax under regular scheme.

Q9. What happens if the tax payer has distinct VAT registrations in the same State?

Ans: The transitional provisions will allot only one registration certificate in each state based on single PAN even though such person had multiple registrations in the state. He can have distinct registrations in the same State by way of an option only if the business units qualify as business verticals under the GST law.

Q10. What happens to the distinct registrations obtained under the Central Excise and Service Tax laws for the different business premises and units in the same state?

Ans: All business units/premises registered either under the Central Excise or Service Tax law will be consolidated into a single CGST registration for that State, unless these units qualify as distinct business verticals under the GST law.

MCQs

Q1. Should an existing tax payer surrender his registration certificate for obtaining the GST registration?

(a) Yes, all registration certificates shall be surrendered;

(b) No. Provisional registration is automatic;

(c) Migrated to provisional registration only on verification of documents;

(d) No. Final registration is automatic.

Ans: (b) No. Provisional registration is automatic

Q2. Is PAN mandatory for migration to provisional GST registration?

(a) Yes

(b) No

(c) PAN application is sufficient

(d) Exempted may be given by the proper officer

Ans: (a) Yes

Q3. Should the composition dealer under the old law require to obtain final GST registration?

(a) Yes, mandatory for all composition dealers

(b) Yes, subject to his turnover crossing the threshold under GST

(c) No, the old number will continue

(d) No, will be governed by old law.

Ans: (b) Yes, subject to his turnover crossing the threshold under GST

Q4. Can a dealer having multiple registrations in a State obtain a consolidated GST registration or should he get separate GST registrations?

(a) Rules will have to prescribed in this regard;

(b) Any number of registrations can be obtained in each state;

(c) Single registration for each state will be granted without any exception;

(d) Two or more registrations for each state will be granted in case of separate business verticals.

Ans: Two or more registrations for each state will be granted in case of separate business verticals.

Statutory Provision

140(1)-Amount of CENVAT credit carried forward in the return allowed as input tax credit.

A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the existing law in such manner as may be prescribed.

PROVIDED that the registered person shall not be allowed to take credit in the following circumstances, namely:—

(i) where the said amount of credit is not admissible as input tax credit under this Act; or

(ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government

140.1.1 Introduction

This transition provision enables a taxable person to carry forward unutilized input credit under the CENVAT Credit Rules, 2004.

140.1.2 Analysis

The amount of any input credit carried forward in a return, which is unutilized under the existing tax regime may be carried forward into the GST regime except in the case of a person who opts to pay tax under composition scheme in a GST regime.

- The said credit will be allowed to be carried forward to the GST regime, if the following conditions are satisfied:

  (1) The said credit is admissible as input tax credit under the provisions of the CGST Act;

  (2) The registered person has furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date.

  (3) Input tax credit does not relate to goods manufactured and cleared under exemption notifications as are notified by the Government.

  (4) Input tax credit carried forward will not be allowed if such credit relates to goods manufactured and cleared under exemption notifications as notified by the government.

Particulars	CGST
Credit to be carried forward	CENVAT credit
Relevant law	CENVAT Credit Rules, 2004
Laws to be subsumed and the relevant credit	Central Excise Service tax
Input Tax Credit to be carried forward	— Central Excise paid on 'inputs' /capital goods — Countervailing duty paid on 'inputs'/capital goods — Special Additional Duty paid on 'inputs' /capital goods in case of manufacturers — NCCD paid on 'inputs' — Service tax paid on 'input services' – both direct or reverse charge — Krishi Kalyan Cess for Service Provider.
Conditions	— The said credit is admissible as input tax credit under the provisions of the CGST Act ; — The registered person has furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; — The said credit does not relate to goods

Particulars	CGST
	manufactured and cleared under such exemption notifications as are notified by the Government; — Must have been reflected as input credit carried forward in the return filed for the last month / period under the existing law, viz., last monthly return or quarterly return or the half yearly return, as the case may be.
Form in which the credit would be availed under the GST Law	Would be available as a balance in the Electronic Credit Ledger of the tax payer. FORM GST TRAN-1 (To be submitted electronically within 60 days of the appointed day)

Illustration 1: Assume that GST is applicable from 1st July, 2017 and the amount of credit as per the return for the period ending 30th June, 2017 is as follows:

Particulars of Input tax Credit	Credit amount as per return
Central Excise	200,000
Service Tax	100,000
Education Cess	10,000
Secondary and Higher Education Cess	5,000
Krishi Kalyan Cess	5,000
Swachh Bharat Cess	5000
Additional Duty u/s 3(1) of CTA - CVD	40,000
Additional Duty u/s 3(5) of CTA - SAD	30,000
Input Tax Credit under VAT	50,000
Total	445,000

What will be the amount of opening CGST to be brought forward as per the GST Law as on 1st July, 2017?

Ans. The amount of CGST to be brought forward on 1st July, 2017 will be calculated as follows:

A. If the tax payer is a Manufacturer

CGST Components	CGST Value
Central Excise	200,000
Service Tax	100,000
Education Cess	10,000
Secondary and Higher Education Cess	5,000
Additional Duty u/s 3(1) of CTA	40,000

Additional Duty u/s 3(5) of CTA	30,000
Krishi Kalyan Cess	5000
Total CGST	390,000

Note:

1. Swachh Bharat Cess will not be allowed to be carried forward.
2. Input credit under VAT will not be allowed to be carried forward as CGST.
3. EC and SHEC – Provision relating to carry forward of the same would need to be seen subsequently. At present, the law lacks to provide clarity on the same.
4. KKC may not be allowed to be carried forward by manufacturer.

B. If the tax payer is a Service Provider

CGST Components	CGST Value
Central Excise	200,000
Service Tax	100,000
Education Cess	10,000
Secondary and Higher Education Cess	5,000
Krishi Kalyan Cess	5,000
Additional Duty u/s 3(1) of CTA-CVD	40,000
Total CGST	3,60,000

Note:

1. Service Provider not entitled to avail credit of SAD & Swachh Bharat Cess.
2. Additional Duty u/s 3(1) of CTA – CVD will be available if it is paid on import purchase of specified goods.
3. EC and SHEC – Provision relating to carry forward of the same would need to be seen subsequently. At present, the law lacks to provide clarity on the same

140.1.3 FAQ

Q1. A person who is registered under service tax as well as under Central Excise and having unavailed cenvat credit in central excise return, has not filed his service tax returns. Whether he can carry forward the unavailed cenvat credit as per the last central excise return to GST regime?

Ans: No. Credit cannot be taken unless he has furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date.

Q2. Whether returns under CST in relation to the six months immediately preceding the appointed date also to be furnished in order to carry forward the unavailed cenvat credit with respect to service tax and central excise into the GST regime?

Ans: Yes, The registered person has to furnish all the returns required under the existing law for the period of six months immediately preceding the appointed day.

140.1.4 Related provisions

Section	Description
Section 2(107)	Meaning of 'taxable person'
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 16 to 21	Manner of taking input tax credit
Section 2(48)	Meaning of Existing law

Statutory Provision

140(2). Credit of unavailed CENVAT credit in respect of capital goods, not carried forward in a return, shall be allowed.

A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

PROVIDED that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act:

Explanation .- For the purposes of this section, the expression "unavailed cenvat credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

140.2.1 Introduction

This transition provision enables a person to avail CENVAT credit of the balance amount (unavailed portion) in respect of capital goods, that has not been availed under the existing laws. The unavailed portion of credit relating to capital goods under the existing laws not carried forward through a return can be availed, Provided such credits are admissible under the GST laws.

140.2.2 Analysis

A registered person (except person opting for composition scheme) shall be allowed to take the amount of CENVAT Credit on capital goods not carried forward in the return. However, the said credit should be admissible under the existing law as well as under the provisions of the CGST Act.

"Unavailed CENVAT credit" means the amount that remains after subtracting the amount of Cenvat credit already availed in respect of capital goods by the taxable person under the

existing law from the aggregate amount of Cenvat credit to which the said person was entitled to, in respect of the said capital goods under the existing law.

- Under the CENVAT Credit Rules, 2004, in respect of eligible capital goods, credit is required to be claimed in 2 parts of 50% each. Credit to the extent of 50% maximum of the central excise duty paid ought to be claimed in the same financial year in which the capital goods are received and the balance 50% can be claimed in any subsequent years.
- Further, it needs to be noted that the capital goods referred above, means the goods as defined under Clause (a) of Rule 2 of CENVAT Credit Rules, 2004.

Eg 1: A manufacturer purchased a capital asset worth Rs. 11,25,000 (including excise duty of Rs. 1,25,000) on 5th May, 2017. In the month of June, 2017, he could avail CENVAT Credit to the extent of 50% only i.e. Rs. 62,500. The unavailed CENVAT Credit on capital goods as on 1st July, 2017 (appointed day) will be Rs. 125,000 – 62,500 = Rs. 62,500.

Eg 2: CENVAT Credit on Capital Goods used outside the factory of manufacturer is not allowable[9]. So, it will not be admissible as input tax credit in the GST Law either.

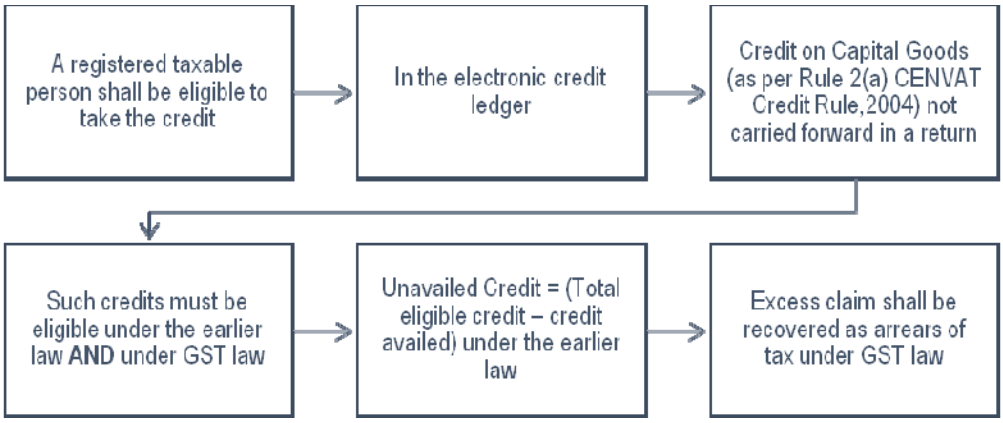
In terms of Sub Rule 2(a) of the Transition provision Rules particulars relating to every item of capital goods in respect of tax/duty awaited or utilised by way of credit under the existing law shall be indicated. Similar details in respect of unavailed portion under the existing laws shall also be stated. The details, conditions and documentation are as follows:

Particulars	CGST
Credit to be carried forward	CENVAT credit
Relevant law	CENVAT Credit Rules, 2004
Details of credit to be carried forward	— Central Excise paid on 'capital goods' — Countervailing duty paid on 'capital goods' — Special Additional Duty paid on 'capital goods'
Conditions	— Should qualify for eligible input credit under both, the existing law and the GST law — Would be in respect of input credit which is not carried forward in the return filed for the last period under the existing law
Form in which the credit would be availed under the GST law	— FORM GST TRAN-1 (To be submitted electronically within 60 days of the appointed day) — Would be available as a balance in the electronic credit ledger of the tax payer

It must be clearly understood that CENVAT Credit can only be availed as CGST Credit in the Electronic Credit Ledger.

[9] Madras Cement v. CCE (2003) 158 ELT 293 = 56 RLT 978 (CESTAT 3 member bench)

Pictorially this provision can be depicted as follows:



140.2.3 Related provisions

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 16 - 21	Manner of taking input tax credit
Section 79	Recovery of tax
Section 2(48)	Existing law

Statutory Provision

140(3). Credit of eligible duties in respect of inputs held in stock allowed in certain situations

A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of notification No. 26/2012-Service Tax, dated 20.06.2012 or a first stage dealer or a second stage dealer or a registered importer, or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions:

(i) such inputs and / or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iii) the said registered person is in possession of invoice and/or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;

(iv) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(v) the supplier of services is not eligible for any abatement under the Act:

PROVIDED that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit in such rate and in such manner as may be prescribed.

The amount of credit under sub-section (3) shall be calculated in such manner as may be prescribed.

Explanation.— For the purpose of this sub section, the expression "eligible duties" means-

(i) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985(5 of 1986);

(ii) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985(5 of 1986);

(iii) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957);

(v) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001(14 of 2001);

(vi) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(vii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975); and

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

140.3.1 Introduction

This transition provision sets out the conditions and procedure for availing input credit in respect of stock held on appointed day by certain registered taxable persons under the GST Law. Inputs which are held in stock and inputs contained in semi-finished / finished goods held in stock which were for manufacture of exempted goods under the earlier law have also been dealt with.

Registration under the GST law is mandatory to claim such credits.

140.3.2 Analysis

The following persons shall be entitled to take credit of eligible duties and taxes on inputs held in stock and inputs contained in semi–finished or finished goods held in stock on the date on which this provision is made effective:

- not liable to be registered under the earlier law, or
- was engaged in the manufacture of exempted goods or provision of exempted services, or
- was providing works contract service and was availing the benefit of notification No. 26/2012-Service Tax, dated 20.06.2012, or
- a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer

The credit shall be allowed to the aforesaid taxable persons subject to the following conditions:

- Such inputs and/or goods are used or intended to be used for making taxable supplies under CGST Act.
- He is eligible for input tax credit on such inputs under CGST Act.
- He is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs, which
- were issued not earlier than twelve months immediately preceding the date on which these provisions come into effect.
- That the supplier of services is not eligible for any abatement under the CGST Act.
- In terms of Sub Rule 2(b) of the Transition Provision Rules the application in Form GST TRAN -01 shall specify separately the details of stock held on the appointed day upto 6 tax periods indicating the details of supplies effected during each tax period.

Availability of Credit to Trader who is not in possession of invoice evidencing payment of Central Excise Duty –Refer Rule 3 of the Transition Provision Rules

- As per proviso to sub section(1), credit may be allowed to a trader even if he is not in a possession of such invoice/document disclosing payment of duty/tax .
- However, in such cases the person will have to follow the conditions specified below:-
- Credit shall be allowed at the rate of 40%, of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid. This situation arises when invoice is raised under the current tax regime & supply happens in a GST regime.
- Such goods were not wholly exempt from duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated.
- The registered person is in possession of documents relating to procurement of goods.

- The stock of goods on which the credit is availed must be stored in a way that it can be easily identified.
- The scheme shall be available for six tax periods from the appointed date
- Registered person availing this scheme must furnish the details of stock held by him and submit a statement in FORM GST TRAN--- at the end of each of the six tax periods during which the scheme is in operation indicating the details of supplies of such goods effected during the tax period.
- The amount of credit allowed shall be credited to the electronic credit ledger.
- Eligible Duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day on which the CGST Act comes into force shall include the laws cited in the Section supra
- Explanation

The expressions "Central Value Added Tax (CENVAT) credit" "first stage dealer", "second stage dealer", or "manufacture" shall have the same meaning assigned to them in the Central Excise Act, 1944 or the rules made there under.

Particulars	CGST
Credit to be carried forward	CENVAT credit
Relevant law	CENVAT Credit Rules, 2004
Specified duties which would be allowed as transitional credit	— Central Excise paid on 'inputs' specified in schedules I and II of CETA, 1985 — Countervailing duty paid on 'inputs' under Customs Tariff Act — Special Additional Duty paid on 'inputs' — National Calamity Contingent Duty paid on 'inputs' — AED paid under AED (Textile &Textile Articles) Act, 1978 on 'inputs' — AED paid under AED (Goods of Special Importance) Act, 1957 on 'inputs'

It must be clearly understood that CENVAT Credit can only be availed as CGST Credit in the Electronic Credit Ledger.

Credit of eligible duties and taxes on input held in stock

140.3.3

Person eligible for input tax credit	Credit available on	Conditions
• Person not liable to be registered under the earlier law • Person engaged in manufacture/ sale of exempted goods, provision of exempted services • Person providing works contract service and availing abatement under notification no. 26/2012 • First/ Second stage dealer, • importer or • a depot of a	• Inputs held in stock and inputs contained in semi-finished goods or finished goods held in stock as on appointed day • Above benefit not available for input services • Such credit can be taken in the electronic credit ledger	• Goods must be used for taxable supply • Eligible to take the credit under GST law • Such person should be in possession of invoice or other prescribed document • Invoice or other document should be within 12 months from the appointed day • Excess claims will be recovered as arrears of tax under GST law

Related provisions

Section	Description	Remarks
Section 2(46) CGST Law	Definition of 'Electronic Credit Ledger'	Input tax credit will be taken in this document.
Section 2(108) CGST Law	Definition of Taxable supply	Only inputs intended to be used for taxable supplies are allowed as credit.
Section 16 to 21 CGST Law	Manner of taking input tax credit	This is for determining the admissibility of Input tax credit under the GST law
Section 79 CGST Law	Recovery of tax	For recovery of arrears of tax under GST for demand arising from proceedings under earlier law
Rule 9(1)	Documents and	Contains the list of documents on the basis of

CENVAT Credit Rules 2004	Accounts	which CENVAT Credit can be availed
Rule 2(d) CENVAT Credit Rules 2004	Definition of exempted goods	One of the possible pre-conditions in respect of category of person is engaged in manufacture/sale of exempted goods
Proviso to Rule 4(7) CENVAT Credit Rules 2004	Time limit for admissibility of CENVAT Credit	Similar time limit prescribed as one of the conditions for availment of credit under GST law
Rule 9 Central Excise Rules 2002	Registration under Central Excise	One of the possible preconditions in respect of category of persons is non registration in earlier law.
Section 69(1) and Rule 4 Finance Act 1994 & Service Tax Rules	Registration under Service Tax	One of the possible preconditions in respect of category of persons is non registration in earlier law.

Statutory Provision

140(4) Credit of eligible duties and taxes in respect of inputs held in stock allowed in certain situations

(1) A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of Finance Act, 1994, but which are liable to tax under this Act shall be entitled to take, in his electronic credit ledger,

(a) the amount of Cenvat credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and

(b) the amount of Cenvat credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).

Explanation.— For the purpose of this sub section, the expression "eligible duties" means-

(i) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985(5 of 1986);

(ii) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985(5 of 1986);

(iii) the additional duty of excise leviable under section 3 of t(Textile and Textile Articles)

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957);

(v) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001(14 of 2001);

(vi) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(vii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975); and

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

140.4.1 Introduction

This transition provision sets out the provisions for availing input credit by a taxable person who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or engaged in provision of taxable as well as exempted services under Chapter V of Finance Act, 1994.

140.4.2 Analysis

This provision is applicable only for inputs (not capital goods) held in stock or in respect of inputs contained in semi-finished goods or finished goods held in stock on the appointed day on 'ELIGIBLE DUTIES and the amount of cenvat credit carried forward in a return furnished under the existing law by him.

The definition of 'Eligible Duties ' as stated in explanation 1 to Section 143(10) cited supra is applicable here.

The claim of transitional credit under this Section is subject to the following conditions:

(i) The person must be a registered person under the GST Laws.

(ii) The taxable person must have been engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of Finance Act, 1994.

(iii) In terms of Sub Rule 2(b) of the Transition Provision Rules the application in Form GST TRANS -01 shall specify separately the details of stock held on the appointed day upto 6 tax periods indicating the details of supplies effected during each tax period.

The details of credit availment is as follows:

Particulars	CGST
Credit to be carried forward	Amount of CENVAT credit carried forward in a return furnished under earlier law in terms of section 140(1)

Particulars	CGST
	Amount of Cenvat credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to exempted goods or services, in terms of section 140(3). Reference may be in Section 140(3) for better understanding.
Relevant law	CENVAT Credit Rules, 2004
Form in which the credit would be available under the GST law	- FORM GST TRAN-1 (To be submitted electronically within 60 days of the appointed day) - Would be available as a balance in the electronic credit ledger of the tax payer

140.4.3 Related provisions

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 16 to 21	Manner of taking input tax credit
Section 79	Recovery of tax

Statutory Provision

140(5). Credit of eligible duties and taxes in respect of inputs or input services during transit

(1) A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or taxpaying document of the same was recorded in the books of accounts of such person within a period of thirty days from the appointed day:

PROVIDED that the period of thirty 30 days may, on sufficient cause being shown, be extended by the commissioner for a further period not exceeding thirty days.

PROVIDED FURTHER that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section

140.5.1 Introduction

This transition provision sets out the conditions and procedure for availing input credit in case of transactions that are spread over the transition period.

140.5.2 Analysis

(i) In any given business scenario it is possible that invoices are raised in the current tax regime and applicable taxes are also remitted under the existing laws. However, inputs or input services in respect of such transactions are received in a GST regime. This provision allows the difficulty in clearing credits in such instances. In order to avail such credits in the Electronic Credit Ledger the following conditions need to be satisfied:

(a) Invoices/duty paid documents must be recorded in the books within 30 days for the appointed date which may be extended by the commissioner for another 30 days on showing sufficient cause.

(b) The recipient of inputs or input services must furnish a statement as follows:

In terms of Rule 2(c) of Transition provisions the said taxable person shall furnish the following details:

(i) A statement indicating the name & address of the supplier together with invoice details.

(ii) Description, quantity and value of goods or services.

(iii) The amount of taxes, duties, VAT, Entry tax charged by the supplier.

(iv) The date at which receipt of goods or services are entered in the books of the recipient.

Explanation

For the purpose of this sub section, the expression "eligible duties and taxes" means

(1) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985(5 of 1986);

(2) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985(5 of 1986);

(3) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

(4) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957);

(5) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001(14 of 2001);

(6) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(7) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);

(8) the service tax leviable under section 66B of the Finance Act, 1994

140.5.3 Related provisions

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 16 to 21	Manner of taking input tax credit
Section 79	Recovery of tax

Statutory Provision

140(6). Credit of eligible duties and taxes on inputs held in stock to be allowed to a taxable person switching over from composition scheme

(1) A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:

(i) such inputs or goods are used or intended to be used for making taxable supplies under this Act;

(ii) the said registered person is not paying tax under section 10;

(iii) the said registered person is eligible for input tax credit on such inputs under this Act;

(iv) the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and

(v) such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

140.6.1 Introduction

This transition provision sets out the conditions and procedure for availing input credit by a registered person who is switching over from composition scheme (paying tax at fixed rate or fixed amount) under the existing laws to a regular scheme under the GST law.

140.6.2 Analysis

This provision is applicable only for inputs (not capital goods) held in stock or in respect of inputs contained in semi-finished goods or finished goods held in stock on the appointed day on 'ELIGIBLE DUTIES' The claim of transitional credit under this Section is subject to the following conditions:

(i) The person must be a registered person under the existing law as well as GST Laws.

(ii) He should have opted for payment of tax at a fixed rate or fixed amount in lieu of tax

payable under the existing law. Eg. Compounded Levy Scheme under central excise in case of aluminium/steel pattas/pattis, special service tax rates in case of insurers carrying on life insurance business, persons providing services in relation to purchase/ sale of foreign currency including money changers

(iii) Specified duties paid on 'inputs' would be allowed as input tax credit, in his Electronic Credit Ledger.

(iv) The person should opt for payment of tax under the regular scheme under the GST law (cannot be a composition taxpayer u/s 10 of CGST Law).

(v) The relevant inputs should be held in stock on the date of introduction of GST.

(vi) Inputs may take any of the following forms –

(i) inputs as such (in the same form as it was procured / received – may be raw materials, consumables, packing materials, traded goods etc.),

(ii) may be contained in WIP or semi- finished goods or

(iii) may be contained in the finished goods.

(vii) Such inputs must be used or intended to be used for making taxable supplies under the GST Laws.

(viii) Such goods should qualify as eligible inputs under the GST law.

(ix) The registered person should be in possession of the invoice and such other documents (as may be prescribed) that shall satisfy the following conditions:

(a) The invoice / other document should evidence the payment of duty / tax on such goods.

(b) The invoice should not be more than 12 months prior to the date of introduction of GST.

(x) In terms of Sub Rule 2(b) of the Transition Provision Rules the application in FORM TRAN-1 shall specify separately the details of stock held on the appointed day upto 6 tax periods indicating the details of supplies effected during each tax period.

140.6.3 Related provisions

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 10	Composition Dealer
Section 16 to 21	Manner of taking input tax credits
Rule 2(b)	Transition Provision Rules under GST Laws

Statutory provisions

140(7). Credit distribution of service tax by Input Service Distributor.

Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services are received on or after the appointed day.

140.7.1 Introduction

(i) This provision has an overriding effect over all other provisions under the GST law.

(ii) This provision is applicable when:

(a) The services are received by the Input Service Distributor before the date of applicability of GST and

(b) Tax on such services have not yet been distributed by the Input Service Distributor on the date of applicability of GST.

(c) Invoices relating to such services are received on or after appointed date.

(iii) Such services will be eligible for distribution as credit under the GST law.

(iv) Such provision will be applicable irrespective of the date of receipt of invoice by the Input Service Distributor.

140.7.2 Analysis

Input Service Distributor: This term has been defined under Section 2(61) of the CGST Law to mean "an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office."

Explanation.- For the purpose of distributing the credit of CGST (SGST in State Acts) and / or IGST or UTGST, Input Service Distributor shall be deemed to be a supplier of services.

Services: This term has been defined under Section 2(102) of the CGST law to mean "anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged."

Date of receipt of invoice is immaterial: In respect of the services received by the Input Service Distributor before the date of applicability of GST, the invoice can be received by the Input service distributor:

(a) either before the date of applicability of GST; or

(b) on the the date of applicability of GST

(c) after the date of applicability of GST

This section seeks to cover all the cases.

Date of receipt of services crucial: For the purposes of this section, it is important that the underlying services must have been received prior to the appointed date.

Distribution of credit under GST Law: If any input service distributor:

- receives services before the date of applicability of GST; and
- such services are yet to be distributed on the date of applicability of GST, for want of invoice
- then irrespective of the date of the receipt of invoices by the Input Service Distributor
- the distribution of credit will be as per the GST law.

Manner of distribution of credit by Input Service Distributor: Section 20 of the CGST law provides the manner in which the credit will be distributed. Following are the key points for consideration:

- If the invoice is received by the Input Service Distributor before the date of applicability of GST, he can distribute the CENVAT Credit under the old law and carry forward this credit as CGST on the date of applicability of GST under section 140(1) of the CGST law. If he distributes the credit on or after the applicability of GST, he can take it as CGST or IGST depending on the nature of supply being intra State or inter-state respectively.
- If the invoice is received by the Input Service Distributor on or after the date of applicability of GST, he can distribute the credit in the form of CGST or IGST depending on the nature of supply being intra State or inter-state .
- If the Input Service Distributor and the recipient of credit are located in two different States, then the input tax credit of both CGST and IGST will be distributed as IGST.
- If the Input Service Distributor and the recipient of credit are located in the same State, then the input tax credit of both CGST and IGST will be distributed as CGST.

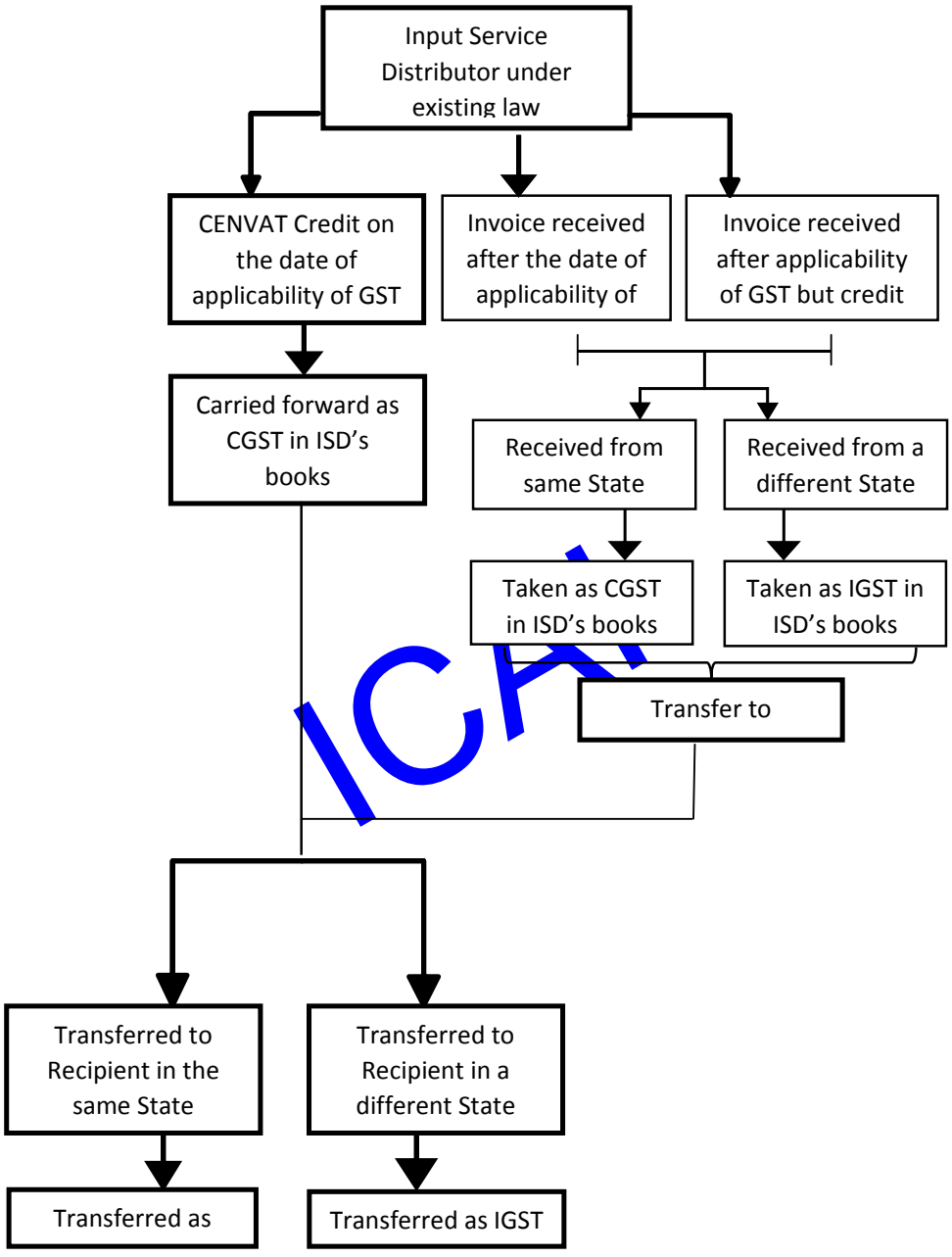
140.7.3 Comparative Review

This is a transitional provision for converging the provisions of the earlier law with the GST law. As this provision is temporary and only for the transition period, there are no comparative provisions in the earlier law which can be relatable to this section.

140.7.4 Related provisions

Section	Description	Remarks
2(61)	Definition of Input Service Distributor	To know the meaning of Input Service Distributor under the GST law
2(102)	Definition of Service	It is imperative to know the meaning of service to determine as to what will be distributed under the GST law
20	Manner of distribution of Input Tax Credit by ISD	Section 20 acts as an extension of section 140(7). The eligibility of the credit is discussed as per Section 140(7) whereas the manner of distribution is under section 20.

Analysis of this transitional provision can be presented in the following flowchart:


Input Service Distributor under existing law
CENVAT Credit on the date of applicability of GST
Invoice received after the date of applicability of
Invoice received after applicability of GST but credit
Carried forward as CGST in ISD's books
Received from same State
Received from a different State
Taken as CGST in ISD's books
Taken as IGST in ISD's books
Transfer to
Transferred to Recipient in the same State
Transferred to Recipient in a different State
Transferred as
Transferred as IGST

Statutory provisions

140(8). Provision for transfer of unutilized Cenvat Credit by taxable person having centralized registration under the earlier law

Where a registered person having centralized registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of cenvat credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

Provision also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralized registration was obtained under the existing law.

140.8.1 Analysis

Under the current law where centralized registration is obtained and credit is lying in balance, it is Provided that:

- Credit balance may be taken and carried forward in GST
- Such credit transfer will require filing of a return within 3 months
- Credit is required to be eligible under the GST law
- Credit is permitted to be transferred to other locations of the person which qualify as taxable persons in GST having the same PAN.

It is interesting that the provision does not lay down any criteria for such transfer of credit between various locations of the person and this is a welcome measure as part of the transition steps.

Transfer of unutilised Cenvat credit by a person having centralised registration

Note:

1. Only those credits which are admissible under GST laws will be allowed

2. Credit may be transferred to any registered taxable person having the same PAN for which centralised registration was obtained under existing law

3. This section does not prevent upward revision of credits. However, in respect of downward revision of credits such lower credits alone shall be permitted.

In terms of Sub Rule 2(b) of the Transition Provision Rules the application in FORM TRAN-1 shall specify separately the details of stock held on the appointed day upto 6 tax periods indicating the details of supplies effected during each tax period.

Statutory Provisions

140(9) Reclaiming CENVAT credit reversed due to non-payment of consideration

Where any CENVAT credit availed for the input services Provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of THREE months from the appointed day.

140.9.1 Introduction

This transition provision has been introduced with a view to enable the availment of credit in cases where CENVAT credit has been reversed in terms of second proviso to rule 4(7) of the CENVAT Credit Rules, 2004. In terms of the said proviso, CENVAT credit is reversed in case of input services, the payment of consideration for which is not made within a period of 3 months from the date of invoice/challan etc. Subsequently, such credit is allowed as and when the payment is made.

140.9.2 Analysis

This Section would apply in the following circumstances:

(i) The CENVAT credit had been reversed by the manufacturer or the service provider in terms of second proviso to Rule 4(7) of the CENVAT Credit Rules, 2004.

(ii) Such payment is then made after the appointed day.

(iii) The payment is made within 3 months from the appointed day.

It provides that where the above conditions are fulfilled, the credit shall be allowed as CGST credit.

For the period ending with the day immediately preceding the appointed day, if the registered person files an original/revised return within 3 months of the appointed day.

Statutory Provision

141 Transitional provisions relating to job work

(1) Where any inputs received at a place of business had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to

the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if such inputs are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142.

(2) Where any semi-finished goods had been removed from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (hereafter in this section referred to as "the said goods") are returned to the said place on or after the appointed day, no tax shall be payable, if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within the period specified in this sub-section

(3) Where any excisable goods manufactured at a place of business had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods, are returned to the said place on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within the period specified in this sub-section

The tax under sub-sections (1), (2) and (3) shall not be payable, only if the manufacturer and the job-worker declare the details of the inputs or goods held in stock by the job-worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.

141(1) Inputs removed for job work and returned on or after the appointed day

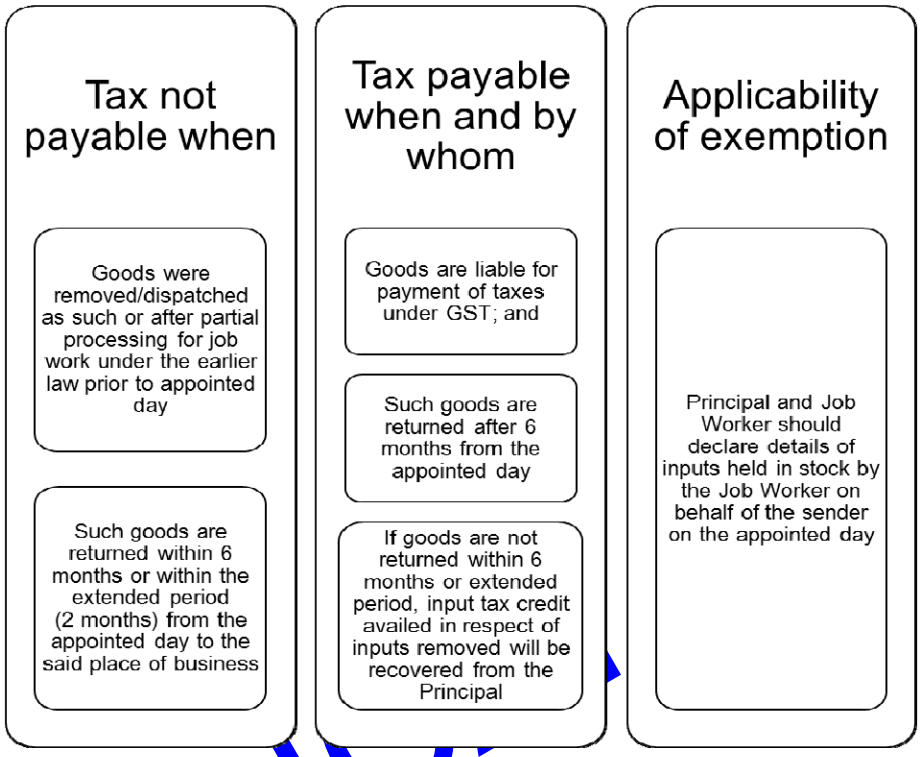
141.1.1 Introduction

This transition provision is with respect to inputs removed as such or after partial processing from a place of business for the purposes of carrying out any processing, repair, reconditioning or for any other purposes under the existing laws but are returned / returnable after the date of implementation of GST.

141.1.2 Analysis

- Inputs removed by a Principal to a Job Worker's premises that are returned to the Principal within 6 months (or within an extended period of further 2 months) no tax shall be payable. However, if the inputs are not retuned within 6 months or such extended period of 2 months than the input tax credit availed by the Principal shall stand be recovered as arrears of tax under CGST Law and no input tax credit of such tax paid shall be allowed under the CGST Law.
- Every Principal and the Job Worker shall within 60 days from the appointed day file an application in Form GST TRAN-1 specifying the stock/capital goods held by him in the Job Worker's premises agent wise/branch wise. Refer Rule 2 of GST Transition Rules.
- Eg 1: A manufacturer had removed inputs worth Rs. 5,00,000 on 1st January, 2017 for job work. GST is assumed to be applicable from 1st July, 2017. On 10th December, 2017, the inputs are returned by the job worker. Since, the inputs are returned within 6 months from the date of applicability of GST, no tax will be payable.
- Eg 2: In Eg 1 above, if the goods are not returned by the job worker within the period of 6 months from the applicability of GST i.e. by 31st December, 2017, then the input tax credit shall be liable to be recovered in terms of section 142 (8)(a); i.e., the input tax credit shall be liable to be recovered as an arrear of tax under the CGST Act and the amount so recovered shall not be admissible as input tax credit..

Inputs removed for Job work and returned on or after the appointed day



141.1.3 Related provisions

Section	Description
Section 2(68)	Definition of 'Job work'
Section 2(72)	Definition of 'Manufacturer'
Section 2(85)	Definition of 'Place of Business'
Section 142(8)(a)	Recovery of any amount in pursuance of assessment or adjudication proceedings under the existing laws
Section 79	Recovery of amount payable to Government

Statutory Provision

141(2) Semi-finished goods removed for job work and returned on or after the appointed day

141.2.1 Introduction

This transitional provision is with respect to semi-finished goods which were dispatched from a place of business for job work (for the purpose of carrying out any manufacturing processes) under the existing laws but are returned / returnable after the date of implementation of GST.

141.2.2 Analysis

- Semi-finished goods removed by a Principal to a Job Worker's premises that are returned to the Principal within 6 months (or within an extended period of further 2 months) no tax shall be payable. However, if the semi-finished goods are not returned within 6 months or such extended period of an additional 2 months then the input tax credit availed by the Principal shall stand reversed under the existing law or as arrears under the CGST Law.
- Every Principal and the Job Worker shall within 60 days from the appointed day file an application in Form GST TRAN-1 specifying the stock/capital goods held by him in the Job Worker's premises agent wise/branch wise. Refer Rule 2 of GST Transition Rules.
- The manufacturer may, instead of bringing the said goods back to his place of business, transfer the said goods to the premises of any registered person for the purpose of supplying there from to places within India or for exports. The premises of the same registered person refers to premises like bonded warehouses where to goods manufactured can be removed from the place of manufacture without payment of excise duty by complying with the relevant provisions of the Central Excise Law. If the supplies from those premises are made within India, tax shall be paid on such supplies. If the said goods are exported no tax need to be paid on such supplies.

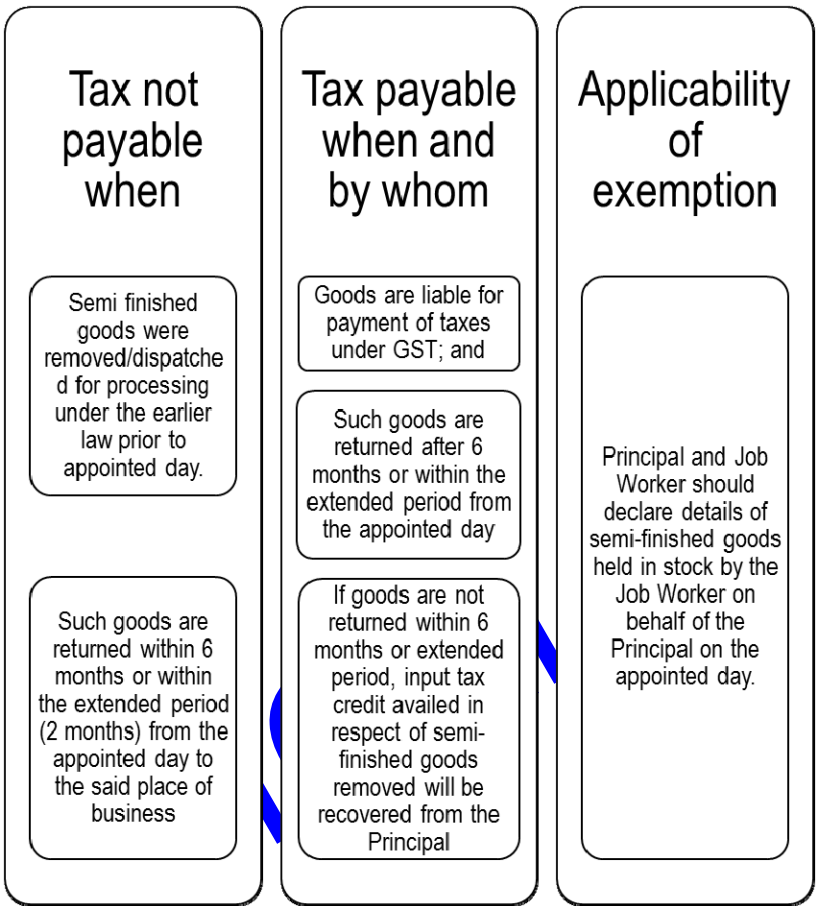
Eg 1: A manufacturer had removed semi-finished goods worth Rs. 5,00,000 on 1st January, 2017 for further processing. GST is assumed to be applicable from 1st July, 2017. On 10th October, 2017, these goods are returned by the job worker. Since the goods are returned within 6 months from the date of applicability of GST, no tax will be payable.

Eg 2: In Eg 1 above, if the goods are not returned by the job worker within the period of 6 months from the applicability of GST i.e. till 31st December, 2017, then the input tax credit shall be liable to be recovered in terms of section 142 (8)(a); i.e., the input tax credit shall be liable to be recovered as an arrear under the CGST Act.

Eg 3: In Eg 1 above, assume that the goods are directly transferred to a registered taxable person within 6 months from the applicability of GST i.e. till 31st December, 2017. In this case, tax will be payable under GST if the goods there from are supplied in India and tax will not be payable if the same is exported.

The analysis of above provision in a pictorial form is summarised as follows:

Semi-finished goods removed for Job work and returned on or after the appointed day



141.2.3 Related provisions

Section	Description
Section 2(68)	Definition of 'Job work'
Section 2(72)	Definition of 'Manufacturer'
Section 2(85)	Definition of 'Place of Business'
Section 142(8)(a)	Recovery of any amount in pursuance of assessment or adjudication proceedings under the existing laws

Statutory Provision

141.3 Finished goods removed for carrying out certain processes and returned on or after the appointed day

141.3.1 Introduction

This transition provision is with respect to excisable goods manufactured and removed from a place of business without payment of duty for the purposes of carrying out any tests or any other process and which are returned / returnable after the date of implementation of GST.

141.3.2 Analysis

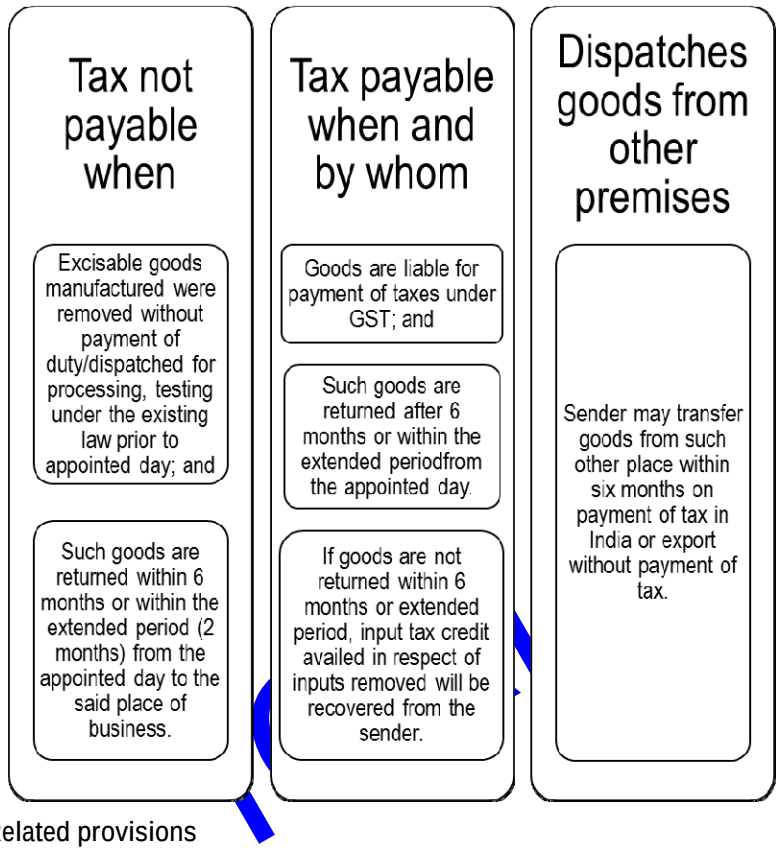
- Excisable goods are manufactured and removed from the place of business without payment of duty for carrying out tests or any other process (not amounting to manufacture), to any other premises, whether registered or not, in terms of the earlier law prior to the appointed day. Subsequently such goods, are returned to the said place of business on or after the appointed day, then no tax shall by payable if the said
- goods, after undergoing the process, are returned to the said place within 6 months from the appointed day.
- The period of 6 months may be extended by the Commissioner for a further period not exceeding 2 months.
- If the said goods are not returned within 6 months or extended period, from the appointed day, the input tax credit shall be liable to be recovered under the existing law. If the input tax credit is not recovered under the existing law, it will be recovered as an arrear under the CGST Act.
- The manufacturer may, in terms of the provisions of the earlier law, transfer the said goods to the premises of any registered person from where the said goods are supplied on payment of tax or exported. The premises of the same registered person refers to premises like bonded warehouses to where goods manufactured can be removed from the place of manufacture without payment of excise duty by complying with the relevant provisions of the Central Excise Law. If the transfer from those premises are made within India, tax shall be paid on such transfers. If the said goods are exported no tax need to be paid on such transfers.

Eg 1: A manufacturer had removed finished goods worth Rs. 5,00,000 on 1st January, 2017 for testing. GST is assumed to be applicable from 1st July, 2017. On 20th November, 2017, these goods are returned by the person after testing the goods. Since the goods are returned within 6 months from the date of applicability of GST, no tax will be payable.

Eg 2: In Eg 1 above, assume that the goods are not returned directly from the premises of the tester within 6 months from the applicability of GST i.e. till 31st December, 2017. In this case, input tax credit shall be liable to be recovered in terms of section 142(8)(a).

The analysis of above provision in a pictorial form is summarised as follows:

Finished goods removed for carrying out certain processes and retuned on or after the appointed day



141.3.3 Related provisions

Statute	Section	Description
IGST	Section 10	Place of supply of goods

This provision stipulates that immunity from paying tax under section 141(1), 141(2) and 141(3) is available only if both the manufacturer and the job worker declare the details of inputs or goods held in stock by the job worker on behalf of the manufacturer.

141.3.4 FAQs

Q1. Can the benefit of sub section 1, 2 & 3 be availed even if the date of removal of inputs, semi-finished goods or finished goods is falling beyond one year before the appointed date?

Yes. There are no restrictions in Sec 141 regarding the time period before the appointed date within which the date of removal of goods removed should fall in order to avail the benefit of Sec 141. The restriction regarding the time limit is only in respect of receiving back of the goods to the place of business from where those goods were originally removed.

Statutory Provision

142(1) Duty paid Goods returned to the place of business on or after the appointed day

Where any goods on which duty, if any, had been paid under the existing law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the duty paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer.

Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.

142.1.1 Introduction

This transitional provision provides for refund of duties paid on goods under existing law when returned to the place of business.

142.1.2. Analysis

This section provides for refund in respect of sales returns, viz., where the sale was under the existing law and the return is under the GST law. The Section provides that the person receiving the said goods back under the GST regime would be eligible to refund of the duty paid under the existing law at the time of removal of goods, if the person returning the goods is not a registered person, return of goods by a person registered would tantamount to be a deemed supply.

This provision would be applicable in the following circumstances:

(i) Duty was paid at the time of removal: Central Excise duty, should have been paid when the goods were removed/sold under the existing law.

(ii) Sales return should be to any place of business: While the law provides that the return can be to any place of business (in the same state by a person other than a registered person) and not necessarily to the same place of business from where it was removed, it is essential that the return should be to the same taxable person.

(iii) Return of goods by a registered person will be held to be a deemed supply of goods and the original supplier receiving the goods shall not be entitled to input tax credit if returned within 6 from appointed date. No input tax credit if returned after 6 months.

(iv) Time period: The Section provides for time lines for both, the removal and the return.

  (a) Removal: It should have taken place not earlier than 6 months from the date of introduction of GST.

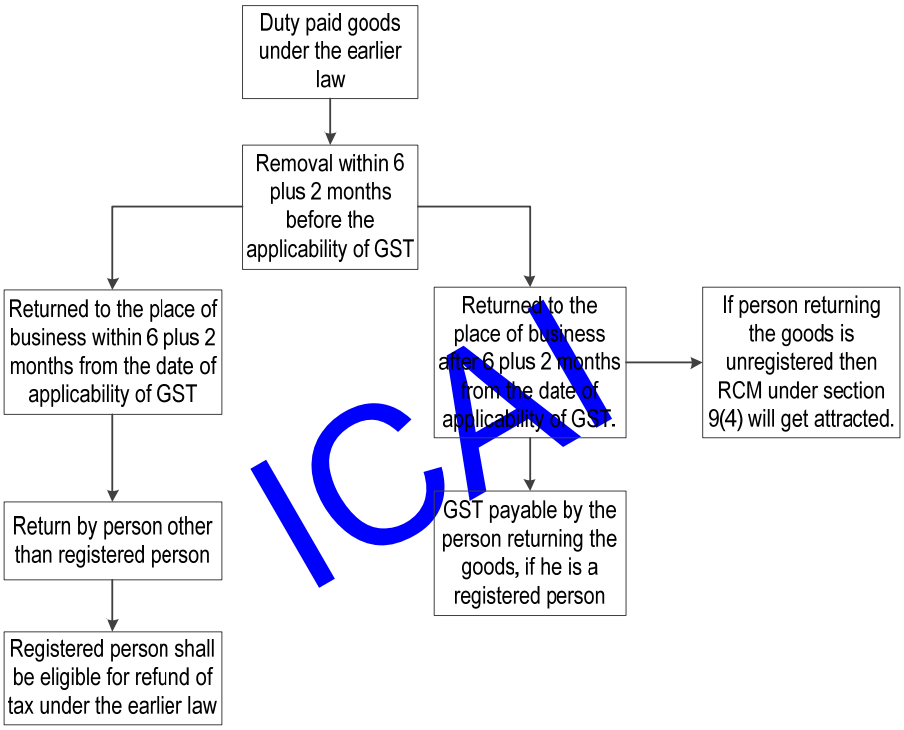
  (b) Return: It should be within 6 months from the date of introduction of GST.

  If the goods are not returned within the time line, the supplier shall not be eligible for the said refund.

(v) Also, please note that similar provision would find place in the SGST Act so that the full incidence of GST flows to these transaction.

Eg 1: A manufacturer had removed goods for sale worth Rs. 5,00,000 on 1st March, 2017 after paying the necessary duty under Central Excise law. These goods are also taxable under GST. GST is assumed to be applicable from 1st July, 2017. On 10th July, 2017, goods worth Rs. 1,00,000 are returned by the buyer. Since, the goods are returned within 6 months from the date of applicability of GST, the supplier shall be eligible for refund of Central Excise Duty paid by him.

The analysis of above provision in a pictorial form is summarised as follows:



Statutory Provision

142(2) Issue of supplementary invoices, debit or credit notes where price is revised in pursuance of a contract

(a) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered taxable person who had removed or Provided such goods or services or both may issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act.

(b) Where, in pursuance of a contract entered into prior to the appointed day, the price of

any goods or services or both is revised downwards on or after the appointed day, the registered taxable person who had removed or Provided such goods or services or both may issue to the recipient a supplementary invoice or credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or credit note shall be deemed to have been issued in respect of an outward supply made under this Act:

PROVIDED that the said registered taxable person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.

142.1.1 Introduction

This is a transition provision with respect to goods or services or both in respect of which there is either an upward or a downward revision of price under a contract which was entered into prior to the date of introduction of GST.

142.1.2 Analysis

In cases where there is a price revision, either upward or downward, the CGST Act provides that the amount to the extent of such revision is deemed to be an outward supply under the CGST Act. Consequently, all the CGST provisions including issue of invoices (debit or credit notes) and payment of taxes would apply to such revision. This would apply to the provisions of supply of goods and services, respectively.

This provision would apply as follows:

(i) For upward revisions: The taxable person shall issue a supplementary invoice or a debit note within 30 days from the date of such revision.

The amount of tax involved therein would be deemed to be the tax payable on such supplies under the CGST Act.

It would be deemed to be a supply in the month in which the supplementary invoice / debit note is issued and the provisions relating to disclosure in the return and payment of tax would apply accordingly.

The supplementary invoice / debit note would have to comply with the requirements as prescribed under the CGST Act.

Eg 1: A contract for supply of manpower was entered on 10th June, 2017 for Rs. 5,00,000. Due to certain re-negotiations, this price was revised to Rs. 5,50,000 on 15th July, 2017. Assuming applicability of GST from 1st July, 2017, the supplier should issue a supplementary invoice/debit note for Rs. 50,000 within 30 days of 15th July, 2017 i.e. 15th August, 2017. This supplementary invoice/debit note will be assumed to be for outward supply of Rs. 50,000 with GST charged on the same

(ii) For downward revisions: The taxable person shall issue a credit note within 30 days from the date of such revision.

In terms of the credit note, the supplier of goods would be allowed to reduce the tax liability as if the adjustment is under the CGST Act.

It would be deemed to be a supply (adjustment) in the month in which the credit note is issued and the provisions relating to disclosure in the return and adjustment to tax would apply accordingly. This adjustment (reduction in the tax liability) would be allowed only if the recipient of the credit note also reduces his input credit correspondingly.

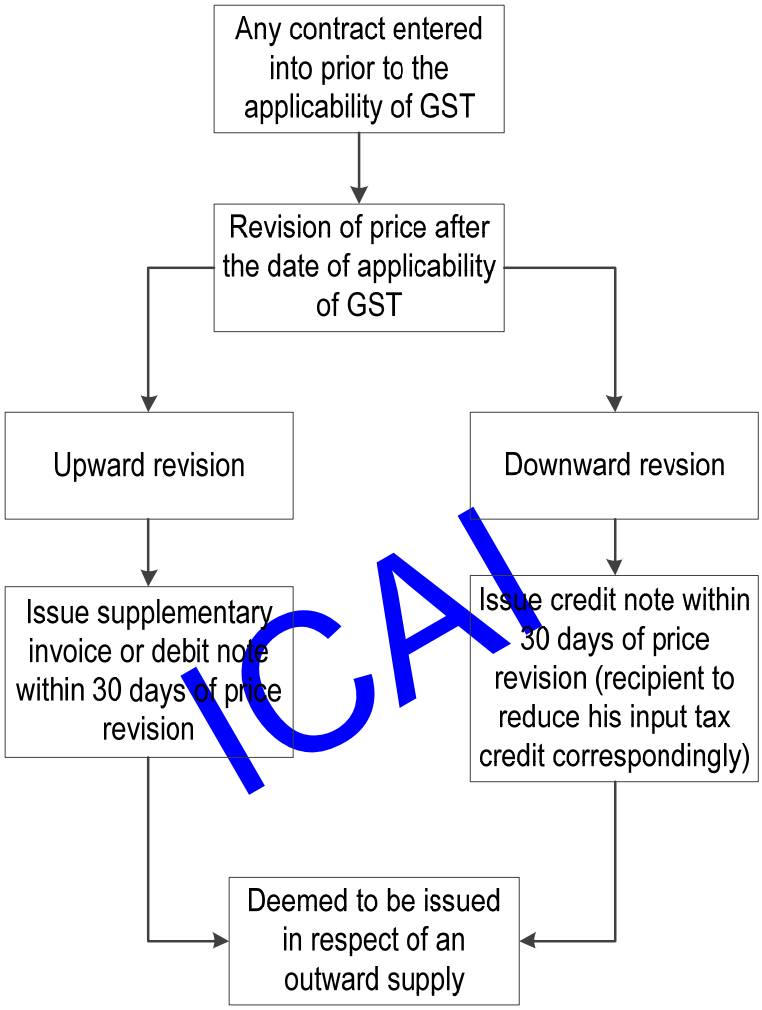
The credit note would have to comply with the requirements as prescribed under the CGST Act.

Eg 2: A contract for supply of manpower was entered on 10th June, 2017 for Rs. 5,00,000. Due to certain re-negotiations, this price was revised downwards to Rs. 4,00,000 on 15th July, 2017. Assuming applicability of GST from 1st July, 2017, the supplier should issue a credit note for Rs. 100,000 within 30 days of 15th July, 2017 i.e. 15th August, 2017. This credit note will be assumed to be for outward supply of Rs. 1,00,000 and accordingly the tax liability would be reduced. However, the said reduction shall be allowed only if the recipient of the credit note has reduced his corresponding input tax credit.

142.1.3 Comparative review

Rule 6(3) of Service Tax Rules, 1994: Where an assessee has issued an invoice or received any payment, against a service to be Provided which is not so Provided by him either wholly or partially for any reason (or when the invoice amount is re-negotiated due to deficient provision of service, or any terms contained in a contract) the assessee may take the credit of such excess service tax paid by him, if the assessee has refunded the payment or part received for the service Provided or has issued a credit note for the value of the service not so Provided to the person to whom an invoice had been issued.

The analysis of above provision in a pictorial form is summarised as follows:



Statutory Provisions

142(3) Refund claims for amount paid under existing law to be disposed of under existing law

Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax or interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

PROVIDED that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse:

PROVIDED FURTHER that no refund claim shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

142(4) Refund claims filed after the appointed day for goods cleared or services Provided and exported before or after the appointed day to be disposed of under existing law

Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law for the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of existing law:

PROVIDED that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse:

PROVIDED FURTHER that no refund claim shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

142.3.1. Introduction

This transition provision is with respect to

- Refund claims/applications under the existing law.
- Refund claims/applications under the existing laws filed after the appointed day for the goods or services exported before or after the appointed day.

It provides that the claim for such refund should be processed as prescribed under the relevant existing law.

142.3.2. Analysis

The section provides that where any person has made an application for refund of CENVAT credit, duty, tax or interest paid, the same would have to be processed in terms of the provisions contained in the respective existing laws. The provisions of GST law would have no bearing on the same.

Therefore, refund application under the current laws can continue to be filed under this section, even after the introduction of GST.

It also provides the following:

(i) The refund, if allowed, would accrue in cash under the existing law and would not be credited to the electronic credit ledger or electronic cash ledger.

(ii) The refund if rejected, fully or partially would lapse.

(iii) No refund claim shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

Eg 1: An export manufacturer files a claim for refund of Rs. 5,00,000 on 15th June, 2017. Assume applicability of GST from 1st July, 2017. The refund claim will be processed under the provision of the earlier law i.e. Central Excise law itself. If the refund is considered as admissible by the Department, then the same will be paid in cash subject to the Doctrine of Unjust Enrichment.

Eg 2: If the refund claim is rejected, then the amount so rejected will lapse and not be available as credit.

142.4.1. Analysis

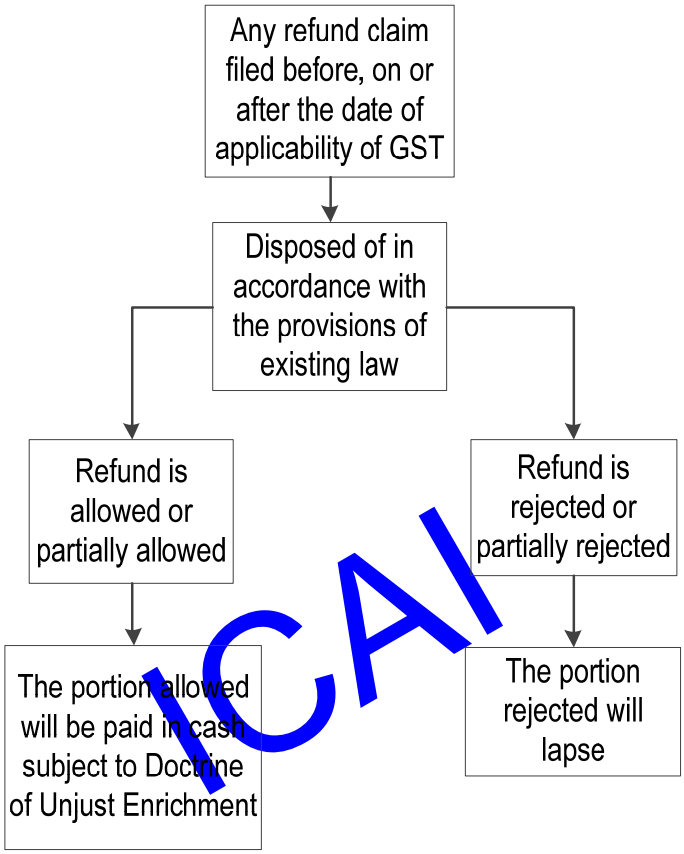
The section provides that every claim for refund of any duty or tax paid under existing law, filed after the appointed day, for the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the existing law.

It also provides the following:

(i) The refund, if rejected, fully or partially would lapse.

(ii) No refund claim shall be allowed of any amount of Cenvat credit / input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

Analysis of this transition provision can be presented through a flowchart as under:



Statutory provision

142(5) Refund claims filed after the appointed day for payments received and tax deposited before the appointed day in respect of services not Provided.

Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not Provided, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of subsection (2) of section 11B of the Central Excise Act, 1944

142.5.1 Introduction

This transition provision is with respect to refund claims in respect of services not Provided, filed after the appointed day.

142.5.2 Analysis

The section provides that every claim for refund of any tax deposited under the existing law in respect of services not Provided, filed after the appointed day, shall be disposed of in accordance with the provisions of the existing law and any amount eventually accruing to him shall be paid in cash.

142.5.3 Related provisions

Statute	Section	Description
Central Excise Act, 1944	Section 11B (2)	Provision for unjust enrichment

Statutory provision

142(6) Claim of CENVAT credit to be disposed of under the existing law

(a) Every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:

PROVIDED that no refund shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(b) Every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day, under the existing law shall be disposed of in accordance with the provisions of existing law, and if any amount of credit becomes recoverable as a result of appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

142.6.1 Introduction

This transition provision is with respect to claim of CENVAT Credit initiated under the existing law and disposal of appeals, reviews or reference proceedings pertaining thereto.

142.6.2 Analysis

The Section applies where any matter in respect of CENVAT credit is pending in an appeal or review or reference under any of the existing laws.

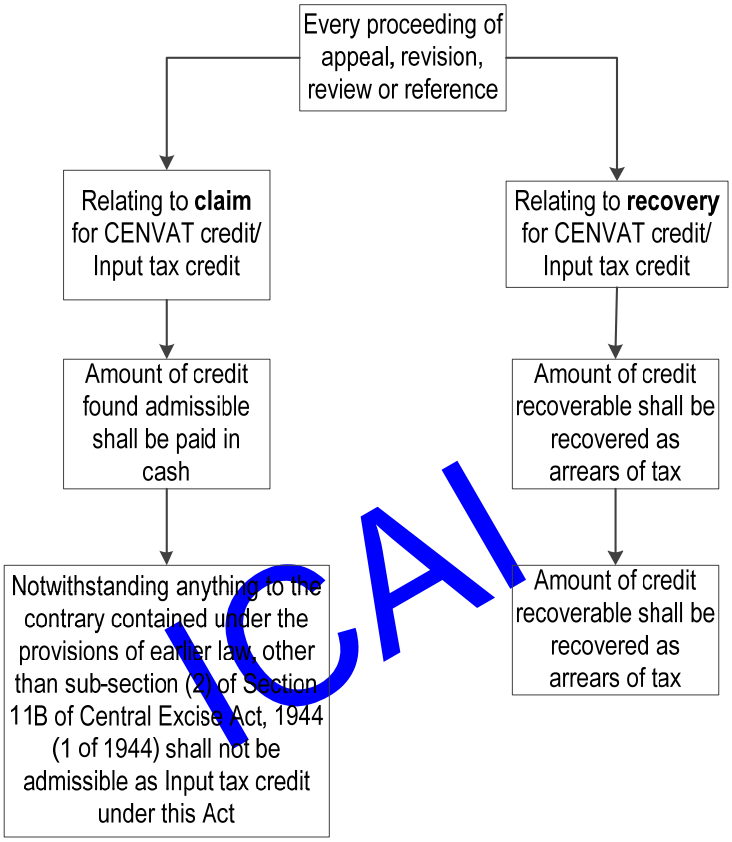
It provides that the provisions of CGST would have no bearing on the same and should be dealt with in accordance with the provisions of existing laws as follows:

— If the input credit are finally allowed: A refund would accrue to the claimant in cash.

— If the input credit is disallowed: It would become recoverable as an arrear of tax under the CGST.

— The amount so recovered would not be allowed as input tax credit under the CGST law.

Analysis of this transitional provision can be presented as a flowchart as under:



Statutory provision

142(7) Finalization of proceedings relating to output duty or tax liability

(1) Every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.

(2) Every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to

the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this act.

142(8) (a) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;

(b) where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.

142.8.1 Introduction

This transition provision is with respect to output tax / duty liabilities pending in appeal, review, or reference proceedings under any of the existing law.

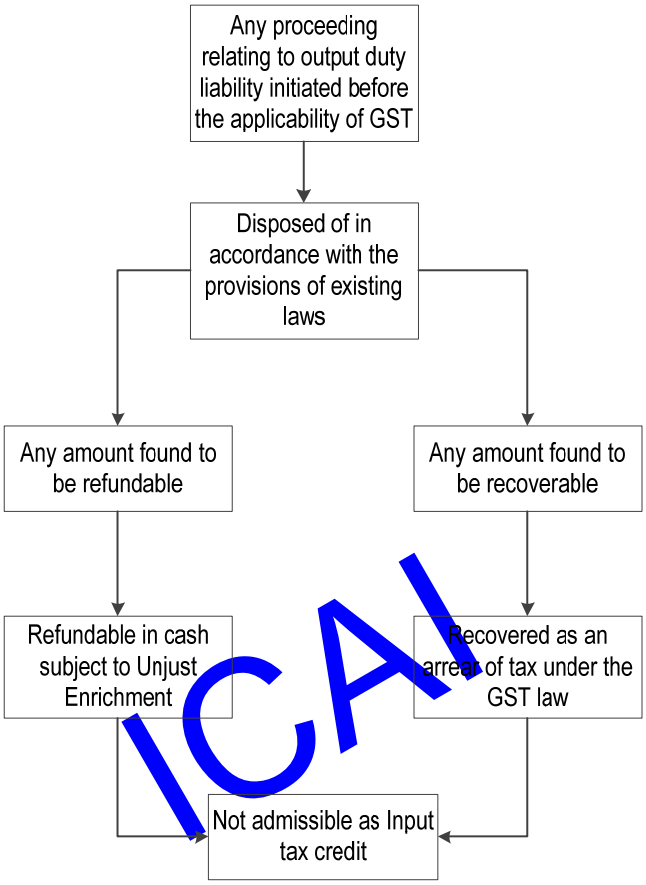
142.8.2 Analysis

The section applies where any matter in respect of output tax / duty liabilities are pending in appeal, review or reference proceedings under any of the existing law.

It provides as follows:

- If the output liability is finally payable: It should be recovered as an arrear of tax under CGST Act.
- The amount so recovered would not be allowed as input tax credit under the CGST laws.
- If the output liability is finally allowable to the claimant: It would accrue to the claimant as refund in cash under the existing law. If any amount is rejected, the same shall not be available as input tax credit under CGST.

Analysis of this transition provision can be presented in the following flowchart:



Statutory Provisions

142(9) Treatment of the amount recovered or refunded pursuant to revision of returns

(a) Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of cenvat credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.

(b) Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or cenvat credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and amount rejected, if any, shall not be admissible as input tax credit under this act.

142.9.1 Introduction

This transition provision deals with a situation where tax becomes payable or refundable by virtue of revision of returns under existing law.

142.9.2 Analysis

This Section applies where any return is revised under the existing laws by virtue of which any amount becomes payable by or refundable to, the taxable person. This could arise due to any of the following reasons:

(i) Short payment of output tax liability (payable);

(ii) Excess payment of output tax liability (refundable);

(iii) Short claim of CENVAT credit (refundable);

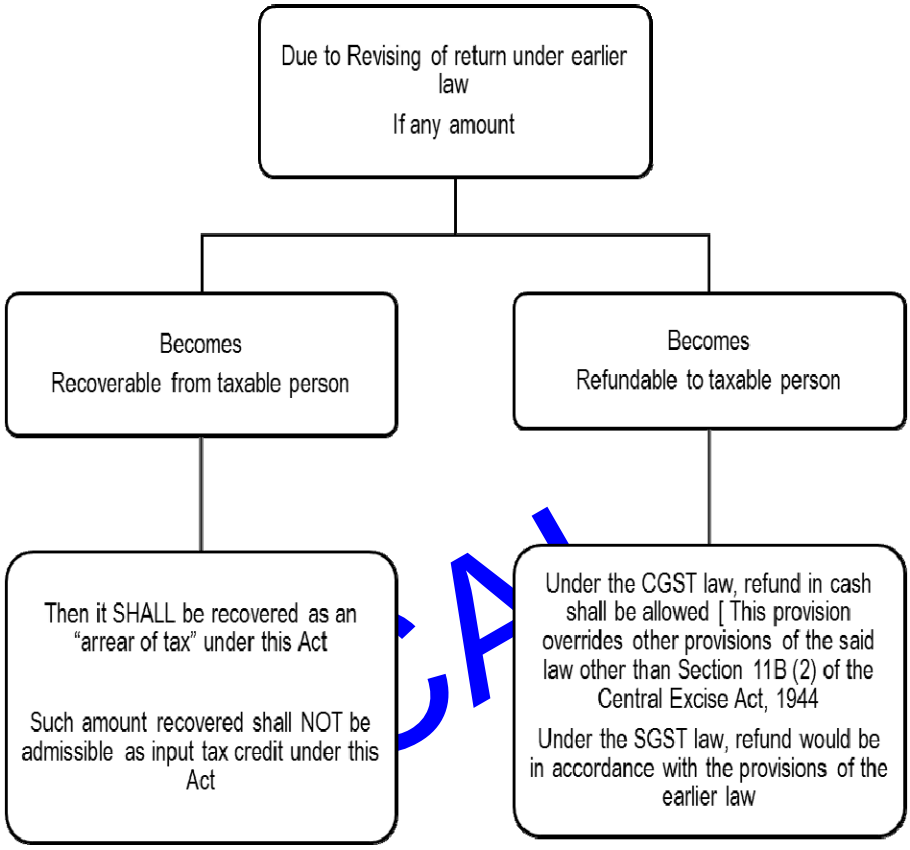
(iv) Excess claim of CENVAT credit (payable);

The Section specifies that:

— If any amount is recoverable: It should be recovered as an arrear of tax under the CGST Act. The amount so recovered would not be allowed as input tax credit.

— If the amount is allowable as refund: It would accrue to the claimant as cash refund under the existing law.

Analysis of this transitional provision can be presented in the following flowchart:



Statutory Provisions

142 (10) Treatment of long term contracts
Save as otherwise Provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

142.10.1 Introduction

This transitional provision deals with long term contracts.

142.10.2 Analysis

It provides that in respect of a contract entered into prior to GST regime, the goods or services or both which are supplied on or after the introduction of GST would be liable to tax under the GST Act to the extent the supply takes place after introduction of GST.

Even if the construction contract or works contract is entered into prior to the date of introduction of GST, the contracts would be taxable under the GST Act.

Eg 1: A contract for a painting job was entered on 19th June, 2017. Assume the applicability of GST from 1st July, 2017. The job is performed from 10th July, 2017 to 30th July, 2017. The said supply will be taxable under GST law.

Statutory Provisions

142(11) Progressive or periodic supply of goods or services

(a) notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;

(b) notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;

(c) where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.

142.11.1 Introduction

This transition provision deals with transactions which have suffered tax (Value Added Tax or Service Tax) on the ground that consideration was received under the earlier law, whereas the supply is made after the date of introduction of GST.

142.11.2 Analysis

I. No CGST shall be levied on:

1. Goods, to the extent tax was leviable under the Value Added Tax Act of the state;

2. Service, to the extent Service Tax was leviable on the said service.

In short, GST shall not be levied on a supply to the extent Value Added Tax or Service Tax, as the case may be, was leviable on the said supply.

Eg: Advance of Rs. 1,00,000/- was received on 10th June, 2017 for service to be rendered in July, 2017. The invoice for the service was raised for Rs. 1,50,000/- on 31st July, 2017. Assuming appointed day as 1st July, 2017, GST shall be levied only on Rs. 50,000/-.

II. Where tax was paid under both Value Added Tax Act and under Finance Act, 1994, viz., Construction service, works contract or supply of food/beverages, Tax shall be leviable under CGST Act on the supplies effected after the appointed day and the Value Added Tax or Service Tax shall be admitted as credit to the taxable person.

Eg: Contract entered in March, 2017 for Rs. 1,00,00,000/-. Advance received till 30th June, 2017 amounts to Rs. 10,00,000/-. Value Added Tax of Rs. 40,000/- and Service

Tax of Rs. 60,000/- have been paid on the said advance. Assuming appointed day as 1st July, 2017 GST shall be levied on Rs. 1,00,00,000/- as per Sec 13 of the CGST Act. The value added tax and service tax paid shall be allowed as credit under the existing law in the manner as may be prescribed.

III. Supplies liable to both VAT as well as ST are Provided for in this clause. For eg. Works contracts, Hoteliers when the time of supply under CGST Act applies. The differential tax under GST and those already paid under current law will become payable. Credit of tax already paid must not be understood as 'input tax credit' as defined u/s 2(63). This is an apparent conflict but not so u/s 140(5) of the CGST Act which needs to be reconciled. The said credit pertains to the credit under existing laws and the same shall be available as credit under existing laws..

142.11.3 Related provisions

Section	Description
Section 2(28)	Definition of consideration
Section 12	Time of supply of goods
Section 13	Time of supply of services

Statutory Provisions

142(12) Taxability of supply of goods sent on approval basis.

Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:

Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period specified in this subsection:

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.

142.12.1 Introduction

This transition provision covers the goods sent on approval basis under existing law returned to the supplier within a period of 6 months from the appointed day or extended period and beyond.

142.12.2 Analysis

No CGST shall be payable for goods sent on approval basis, returning to the supplier due to rejection or non approval by the buyer within a period of 6 months or the extended period of 2 months. However, tax shall be payable by the person returning the goods as well as by the

person sending the goods if the goods are returned after the period of six months and such goods are liable to tax under the CGST Law.

142.12.3 Time period:

(a) Sending of goods: It should have taken place not earlier than 6 months prior to the appointed day.

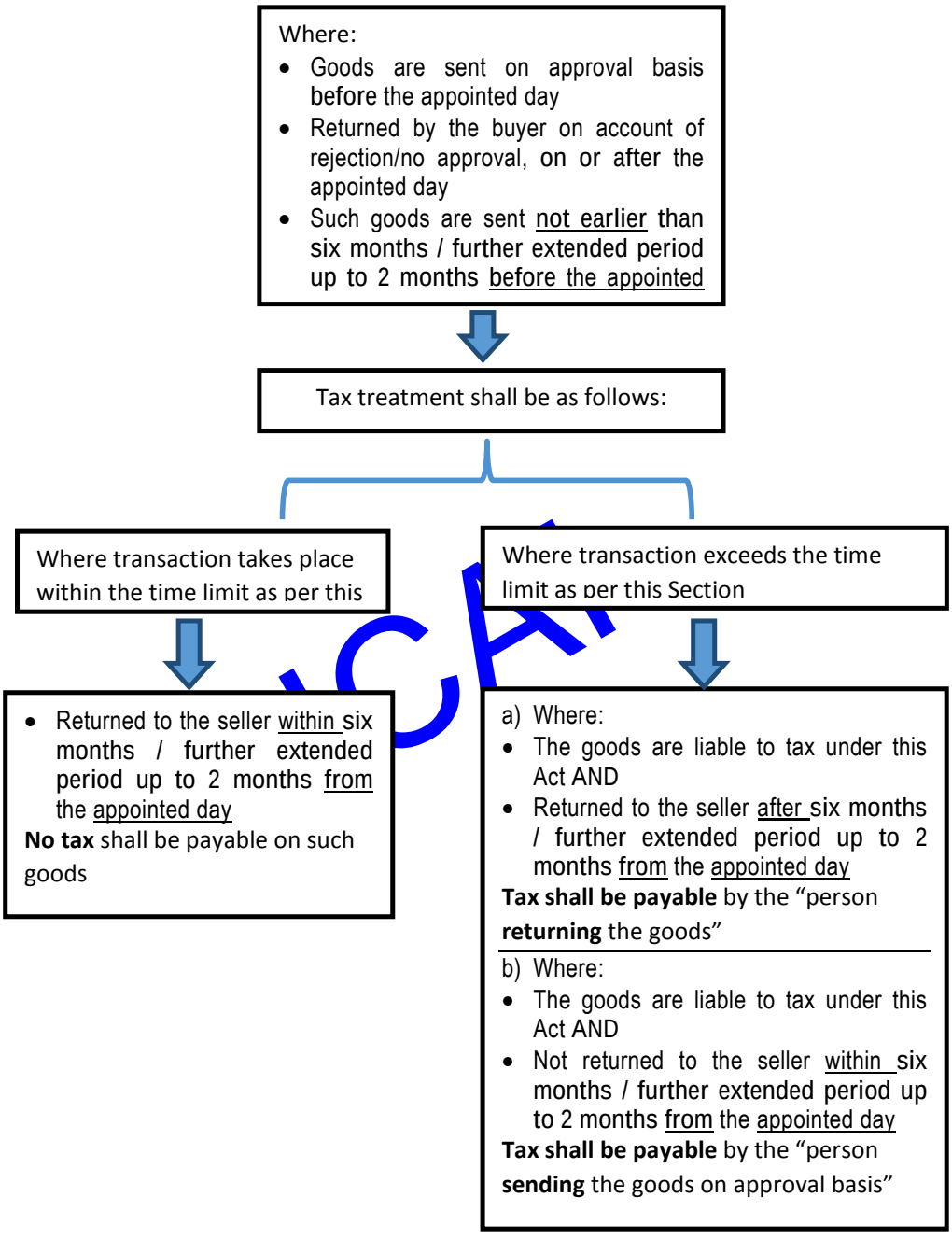
(b) Return of goods: It should be within 6 months from the appointed day or as extended by the commissioner by a period not exceeding two months on sufficient causes being shown.

If goods are returned after the said period, CGST shall be paid by the person returning the goods.

If the goods are not returned within the period specified, the person who has sent the goods on approval shall pay GST on the said goods. This shall be available as credit to the purchaser of the goods.

In case of sale of approval prior to appointed date, GST TRAN -1 to be filed within 60 days as per Rule 3 of the GST Transitional Provision Rules.

Flowchart analysing the transitional provisions in Section 142(12).


Where:
• Goods are sent on approval basis before the appointed day
• Returned by the buyer on account of rejection/no approval, on or after the appointed day
• Such goods are sent not earlier than six months / further extended period up to 2 months before the appointed
Tax treatment shall be as follows:
Where transaction takes place within the time limit as per this
Where transaction exceeds the time limit as per this Section
• Returned to the seller within six months / further extended period up to 2 months from the appointed day
No tax shall be payable on such goods
a) Where:
• The goods are liable to tax under this Act AND
• Returned to the seller after six months / further extended period up to 2 months from the appointed day
Tax shall be payable by the "person returning the goods"
b) Where:
• The goods are liable to tax under this Act AND
• Not returned to the seller within six months / further extended period up to 2 months from the appointed day
Tax shall be payable by the "person sending the goods on approval basis"

Statutory Provisions

142(13) Supply of goods in respect of which tax is to be deducted at source.

Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under the any law of a state or union territory relating to Value Added Tax and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.

142.13.1 Introduction

This transition provision is in respect of TDS under Section 51. It is a transitional provision to ensure that there is no double deduction of tax at source due to introduction of GST.

142.13.2 Analysis

This Section would apply in the following circumstances:

(i) The supplier had sold any goods under the existing law; and

(ii) TDS applies on such transactions under existing law; and

(iii) The supplier had issued the invoice before the appointed day;

(iv) Payment is made to the supplier after the appointed day.

It provides that merely because payment is made to the supplier after the date of introduction of GST, the TDS provisions under Section 51 of the CGST Act will not apply. In other words, no tax shall be deductible under CGST Act at the time of making payment to the supplier.

Related provisions

Statute	Section	Description
CGST	Section 51	Tax deduction at source

Chapter XXI
Miscellaneous

Statutory Provisions

143. Job Work Procedure

(1) A registered person (hereafter in this section referred to as the "principal") may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall,—

(a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;

(b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case—

(i) where the job worker is registered under section 25; or

(ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.

(2) The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

(4) Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period

of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

(5) Notwithstanding anything contained in sub-sections (1) and (2), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

Explanation.—For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

143.1. Introduction

This section provides for a special procedure to exempt supplies from payment of GST by principal to job worker and return from job worker to principal subject to certain conditions and procedure.

Meaning of job work and job worker: Section 2(68) gives the meaning of the term 'job work'. As per the said provision, it means a person undertaking any treatment or processing of goods belonging to another registered taxable person. Any person who does such job work will be considered as "Job worker".

143.2. Analysis

Sending of inputs or capital goods to job worker

This provision enables registered taxable person to send inputs / capital goods under intimation and subject to such conditions as may be prescribed to a job worker without payment of tax.

It also provides that the inputs or capital goods can be sent from one job worker to another job worker as well without payment of any tax on such goods being sent.

Receipt of inputs or capital goods from the job worker after job work or otherwise

After the processing of goods or otherwise, the goods may be dealt with in any of the following manner by the principal:

(a) Brought back to any place of business without payment of tax and thereafter supplied,
  (i) Within India on payment of tax;
  (ii) For export with or without payment of tax;

(b) Supply from the place of business of job worker –
  (i) Within India on payment of tax;
  (ii) For export with or without payment of tax;

Direct Supply of goods from job worker

The goods can be supplied directly from the place of business of job worker by the principal

only when the principal declares the place of business of the job worker as his additional place of business. However, the exceptions are -

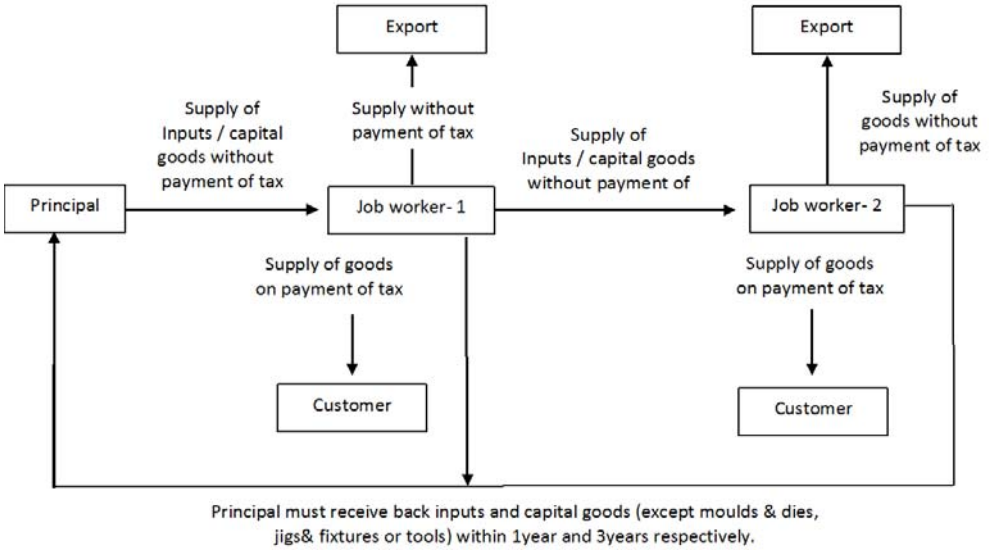
(i) If job worker is registered under Section 25;

(ii) The principal is engaged in the supply of notified goods.

Responsibility for accountability of Inputs / Capital Goods

If the benefit under this section is availed, the principal is responsible and accountable for all the transactions between him and the job worker.

The above chain can be represented as under:



Inputs sent to Job Worker not received back with one year

As per section 143(3), where the inputs sent for job-work are not received back by the "principal" after completion of job-work or otherwise or are not supplied from the place of business of the job worker as aforesaid within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out. Hence, the Principal would be liable to pay interest from the date inputs were sent out.

Capital Goods Sent to Job Worker not received back with three years

As per section 143(4), where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job-work are not received back by the "principal" or are not supplied from the place of business of the job worker as aforesaid within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job-worker on the day when the said capital goods were sent out. Hence, the Principal would be liable to tax along with pay interest from the date capital goods were sent out.

Waste and Scrap generated at Job worker

As per section 143(5), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax if such job worker is registered, or by the principal, if the job worker is not registered.

Application of certain provisions of CGST Act, 2016 under IGST Act

As per section 20 of the IGST Act, the provisions relating to job work would be applicable in case of IGST Act also.

143.3. Comparative review

The term 'job work' has not been defined in the Central Excise Act or Customs Act but the same has been provided for in Notification No 214/86 C.E. dated 25.03.1986 and CENVAT Credit Rules, 2004.

143.4. Related provisions

In section 143 there is no specific reference to any other sections but there are other provisions where section 143 has been referred to:

Section / Rule / Form	Description	Remarks
Sub-section (68) of Section 2	Job work definition	The job work has been defined to mean undertaking any treatment or process.
Section 19	Taking ITC in respect of inputs and capital goods sent for Job work	The condition and procedure has been prescribed.
Section 22 – Explanation (ii)	Registration	The turnover of job work for principal should not be included in aggregate turnover of job worker

143.5. FAQ

Q1. Who shall undertake responsibility for keeping proper accounts under this provision and in case of contraventions?

Ans. The principal would undertake the primary responsibility and accountability of the goods including payment of taxes if any.

Q2. Can goods be supplied from job worker's place?

Ans. Yes, this provision allows supply of goods from job worker's premises but only on payment of taxes within India and without payment of taxes for export.

Q3. Whether any time period has been prescribed within which goods have to be returned to principal?

Ans. Yes, inputs are to be returned to Principal or supplied from the place of business of job worker within one year of their being sent out. .

Q4. Whether there is any time limit for capital goods also?

Ans. Yes, capital goods, other than moulds and dies, jigs and fixtures, or tools sent for job work, are to be returned to Principal or supplied from the place of business of job worker within three years of their being sent out.

143.6 MCQ

Q1. The inputs and/ or capital goods may be sent by .....to job worker under intimation and subject to such conditions as may be prescribed

(a) Taxable person

(b) Unregistered taxable person

(c) Registered person

Ans. (c) Registered person

Q2. The job workers are allowed to send such goods to other

(a) Manufacturers

(b) Traders

(c) Job workers

(d) All of the above

Ans. (c) Job workers

Q3. Who will undertake responsibility and accountability for any contravention under this section?

(a) Principal

(b) Manufacturer

(c) Job worker

(d) No body

Ans. (a) Principal

Q4. What is the time limit within which inputs return to principal?

(a) 365 days (One Year)

(b) 180 days

(c) 270 days

(d) 2 years

Ans. (b) 365 days (One Year)

Q5. What is the time limit within which Capital goods have to be returned to principal?

(a) One Years

(b) Two Years

(c) Three years

(d) None of above

Ans. (d) Three years

Statutory provision

144. Presumption as to documents in certain cases

Where any document —

(i) is produced by any person under this Act or any other law for the time being in force; or

(ii) has been seized from the custody or control of any person under this Act or any other law for the time being in force; or

(iii) has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force,

and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall—

(a) unless the contrary is proved by such person, presume—

(i) the truth of the contents of such document;

(ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;

(b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

145. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence

(1) Notwithstanding anything contained in any other law for the time being in force,—

(a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or

(b) a facsimile copy of a document; or

(c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or

(d) any information stored electronically in any device or media, including any hard copies made of such information,

shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof

or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

(2) In any proceedings under this Act or the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate,—

(a) identifying the document containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer, shall be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

145.1 Introduction

Both the sections i.e. Section 144 dealing with " Presumption as to Documents in Certain Cases" and Section 145 dealing with "Admissibility of micro films, facsimile copies of documents and computer printouts as documents and evidence" are analysed together.

145.2 Analysis

As per the Webster Dictionary presumption means "a belief that something is true even though it has not been proved". Presumption, is an inference of fact drawn from other known facts, unless there is contrary evidence.

This presumption is rebuttable, since, any contrary evidence provided by the assessee, negates such presumption and such presumption is not a conclusive proof. The words "shall presume" in the Act suggest that the judge cannot refuse to draw the presumption.

In general practice the onus of proving relevance and genuineness of documents produced as evidence is on the person producing the said documents. This chapter deals with documents produced as evidence by prosecution. Further, this section has placed the onus of proving the contrary on the assessee i.e. the assessee has to prove that the documents provided by prosecution are not proper evidence.

The term 'document' has been defined so as to include written or printed record of any sort and electronic record as defined in the Information Technology Act, 2000 (Sec 2(41)). Any information stored electronically or any hard copies made thereof is treated as document.

A certificate by a responsible person in relation to the operation of the computer or the management of such activities is required for identifying the document and describing the manner it was produced is required.

145.3 Comparative Review

Comparison to Central Excise:

Sections 144 and 145 of the CGST Act are similar to Sections 36A and 36B of the Central Excise Act respectively.

In addition, Sec 12B of the Central Excise Act deals with Presumption that the incidence of duty has been passed on to the buyer.

Landmark Judgements:

— In the case of Commissioner of Central Excise and Customs, Surat - Vs. Vinod Kumar Gupta, a computer print out of the data collected on USB during a raid was adduced as an evidence against the manufacturer, and further the witnesses had disowned their statements, The Honourable Gujarat High Court has held that such reliance on such material was impermissible in view of non-fulfilling the conditions contained in sub-section (2) of Section 36-B of the Central Excise Act.

— In the case of Commissioner of Central Excise, Ludhiana Vs. Ghansham Bassi, the Honourable Punjab and Haryana High Court noted that the Tribunal had wrongly rejected the appeals of the revenue without considering the arguments raised by the department and relevant provisions of law regarding maintenance of record. The Honourable Court further held that the Tribunal had only recorded that the Commissioner (Appeals) had passed a detailed order by taking into consideration various precedent decisions of the Tribunal as also the provisions of Section 36B of the CE Act and also found that there was no evidence of clandestine removal. The charges of clandestine activities and removal of goods thereof were required to be adjudicated on the basis of appreciating factual matrix by giving sufficient and cogent reasons. A perusal of the order of the Tribunal more particularly para 8 thereof showed that no legally justified reasons had been recorded for rejecting the appeals of the revenue. The Tribunal being final fact finding authority was required to deal with all aspects of facts and law before recording its conclusions based thereon.

145.6 MCQ

Q1. Document includes:

(a) Written record

(b) Printed Record

(c) Electronic

(d) all of the above

Ans: (d) All of the above

Statutory provision

146. Common Portal

The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.

146.1. Introduction

This section deals with notification of common portal for various purposes upon recommendation by the GST Council.

146.2. Analysis

This common portal would facilitate registration, tax payment, filing returns, computation and settlement of integrated tax, electronic way bill and other prescribed purposes.

146.3. Comparative Review

GST is a technology driven law and this type of common portal is hitherto unheard of in the history of Indian tax jurisprudence although there was some attempt made in the past to facilitate e-payment of tax, e-filing of returns etc.

146.6 MCQ

Q1. The common portal can be notified based on recommendation of:

A) GST Council B) President of India C) Union Finance Minister D) Supreme Court

Ans. A) GST Council

Statutory provision

147. Deemed Exports

The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

147.1. Introduction

This section deals with notification of certain supplies of goods as deemed exports upon recommendation by the GST Council.

147.2. Analysis

The notified goods would be deemed to be exported although they do not leave India and payments are received in Indian rupees or convertible foreign exchange.

147.3. Comparative Review

This is comparable to the concept of deemed exports in the Foreign Trade Policy and attendant export benefits/incentives are extended.

147.4 Related provisions

Section 2(39) of the CGST Act defines the term ‘deemed exports”. This would be relevant for extending refund benefit under section 54 of the CGST Act.

Statutory provision

148. Special Procedure for certain processes

The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

148.1. Introduction

This section deals with notification of certain classes of registered persons, who would be required to follow certain special procedures.

148.2. Analysis

The Government can notify such persons upon recommendation of the GST Council. Such notified persons would be required to follow certain special procedures inter-alia relating to registration, returns, tax payment and administration aspects.

Statutory provision

149. Goods and Services Tax Compliance Rating

(1) Every registered person may be assigned a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this Act.

(2) The goods and services tax compliance rating score may be determined on the basis of such parameters as may be prescribed.

(3) The goods and services tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.

149.1 Introduction

Compliance rating system is one of the new ways of tax administration. This Section states that every taxable person would be rated based on certain parameters. It also provides that the rating would be published in the public domain.

149.2 Analysis

The compliance rating is a unique form of rating the performance of the taxable persons. The parameters which would be considered for performance rating would be as prescribed.

Amongst others, the rating of a taxable person would be relevant to determine the eligibility of input tax credit in respect of inward supplies, selection for scrutiny and other administrative / monitoring purposes.

This Section provides as follows:

— Every person liable to pay GST shall be rated and will be assigned a GST compliance rating score.

— The rating would be based on his record of compliance with the provisions of CGST, IGST and SGST. The details of parameters and methodology for rating would be as prescribed.

— The compliance rating score will be updated periodically and will be intimated as follows:

  o to the taxable person;

  o will be placed in the public domain.

149.3 Comparative Review

Currently there is no rating system under any of the indirect tax laws.

149.4 FAQs

Q1. What would the compliance rating be used for?

Ans: It would be for determining the eligibility for credit on inward supplies, selection of cases for audit / scrutiny, grant of benefits etc, as may be prescribed.

Q2. What are the parameters which would be considered in compliance rating?

Ans: The parameters and methodology of usage of the same would be as prescribed. These would be contained in the Rules.

149.5 MCQs

Q1. How will the compliance rating be communicated?

  (a) only to the relevant taxable person

  (b) will be put up in the public domain

  (c) neither a nor b

  (d) both a and b.

Ans . (d) both a and b.

Statutory provision

150. Obligation to furnish information return

(1) Any person, being—

(a) a taxable person; or

(b) a local authority or other public body or association; or

(c) any authority of the State Government responsible for the collection of value added tax or sales tax or State excise duty or an authority of the Central Government responsible for the collection of excise duty or customs duty; or

(d) an income tax authority appointed under the provisions of the Income-tax Act, 1961; or

(e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or

(f) a State Electricity Board or an electricity distribution or transmission licensee under the

Electricity Act, 2003, or any other entity entrusted with such functions by the Central Government or the State Government; or

(g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or

(h) a Registrar within the meaning of the Companies Act, 2013; or

(i) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988; or

(j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or

(k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or

(l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or

(m) an officer of the Reserve Bank of India as constituted under section 3 of the Reserve Bank of India Act, 1934; or

(n) the Goods and Services Tax Network, a company registered under the Companies Act, 2013; or

(o) a person to whom a Unique Identity Number has been granted under sub-section (9) of section 25; or

(p) any other person as may be specified, on the recommendations of the Council, by the Government, who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.

(2) Where the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said authority may allow and if the defect is not rectified within the said period of thirty days or, the further period so allowed, then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.

(3) Where a person who is required to furnish information return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the said authority

may serve upon him a notice requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.

150.1 Introduction

This is an administrative provision. This Section requires specified persons to furnish an information return with the prescribed authority.

150.2 . Analysis

A return called an 'information return' would be required to be filed by specified persons. It is expected that this would be used by the Government/s for exchange of information.

Specified persons who would be required to furnish the return:

Nature of persons who would be required to file the return would be:	If the said persons are responsible for maintaining:
• Taxable Person. • Local Authority, Other Public Body or Association. • Authority responsible for collecting VAT, Sales Tax, State Excise Duty, Central Excise Duty or Customs Duty. • Authority appointed under Income Tax. • Banking Company • State Electricity Board • Registrar or Sub-Registrar of Registration Act, 1908 • Registrar of Companies • Registering authority of Motor Vehicles • Collector • Recognised Stock Exchange • Depository of Shares • Officer of Reserve Bank of India • Goods & Service Tax Network • Person to whom Unique Identity Number (UIN) is granted • Any other specified person	• Records of registration • Statement of accounts • Periodic returns • Details of payment of tax • Any other details of transaction of goods or services • Transaction relating to bank account • Transaction relating to consumption of electricity • Transaction of purchase • Sales • Exchange of goods or property • Right or interest in a property • It is not essential that the above should be under the GST Act. It would include the maintenance of the said records / details under any other law.

The periodicity, form and manner of filing such returns will be prescribed by way of Rules / Regulations.

Implications of non-compliance

1. If the details filed are defective:

- Defect should be intimated to the person who has furnished such information return.
- Reasonable opportunity should be given to rectify the defect in the return
- Defect should be rectified within a period of 30 days from the date of such information or within such further period.

If the defect in the return is not rectified within the time prescribed, the information return should be treated as not submitted and penalty of Rs.100/- per day for each day during which the failure continues, would be payable subject to a maximum of Rs.5,000 in terms of section 123 of the CGST Act.

2. If no return is filed:
   - Authority may serve a notice requiring him to furnish such information return.
   - It should then be filed within a period not exceeding 90 days from the date of service of notice.

150.3 Comparative Review

The provision is similar to Section 15A of Central Excise Act, 1944.

150.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 123	Penalty for non filing of Information Return	None

150.5 FAQs

Q1. What type of persons would be required to file the information return?

Ans. Any person who is responsible for maintaining any of the following would be required to file the information return.
- Records of registration
- Statement of accounts
- Periodic returns
- Details of payment of tax
- Any other details of transaction of goods or services
- Transaction relating to bank account
- Transaction relating to consumption of electricity
- Transaction of purchase
- Sales
- Exchange of goods or property
- Right or interest in a property

Q2. Is this return required to be filed by every taxable person?

Ans. No. Only the persons responsible for maintaining any of the above mentioned records / details would be required to file this return.

Statutory provision

151. Power to Collect Statistics

(1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.

(2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected.

151.1 Introduction

This Section authorises the Commissioner for the purpose of administration of the Act, to collect any statistics relating to any matter that may be required.

151.2 Analysis

— The Commissioner may, by way of a notification, direct collection of statistics for the purpose of better administration of the Act.

— After issuance of such notification, the Commissioner or any person authorised by Commissioner in this regard may call all concerned persons to furnish such information or return relating to any matter in respect of which statistics is being collected.

— The form in which the information need to be filed, the authority to whom such return need to be filed, the details that are captured on the return, the periodicity of filing such return shall be prescribed by rules.

151.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 152	Disclosure of information collected under Section 141	None

Statutory provision

152. Bar on disclosure of information

(1) No information of any individual return or part thereof with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act.

(2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.

(3) Nothing in this section shall apply to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information.

152.1 Introduction

This Section discusses about the way in which the information obtained under Sections 150 and 151 needs to be handled.

152.2 Analysis

— Any information obtained shall not be published so as to enable any particulars to be identified as referring to a particular taxpayer, without the previous consent of the tax payer or his authorised representative. This consent should be in writing. Further the information so obtained shall not be used for the purpose of any proceedings under this Act.

— A person who is not engaged in the collection of statistics under this Act or compliance or computerisation for the purpose of Act, shall not be permitted to see or have access to any information or any individual return.

However, for the purpose of prosecution under the Act, or under any other Act, access to such information can be given.

— Any person who is engaged in connection with collection of statistics under Section 151 or compilation or computerisation willfully discloses any information or contents of any return under this Section, or otherwise in execution of his duties shall be punished with imprisonment or fine or both in terms of section 133.

152.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 150	Obligation to file information return	None
CGST	Section 151	Provisions for collection of statistics and filing of returns	None

Statutory provision

153. Taking assistance from an expert

Any officer not below the rank of Assistant Commissioner may, having regard to the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.

153.1 Introduction

This Section enables the Officer not below the rank of an Assistant Commissioner to take assistance of an expert at any stage of scrutiny, inquiry, investigation or any proceedings.

153.2 Analysis

This section will enable the Officer to take assistance of experts like IT professional, Lawyer, Technocrat, CA etc considering the nature and complexity of the case and revenue's interest. These experts would assist the concerned officer in scrutiny, inquiry, investigation or any other proceedings.

Statutory provision

154. Power to take samples

The Commissioner or an officer authorised by him may take samples of goods from the possession of any taxable person, where he considers it necessary, and provide a receipt for any samples so taken.

154.1 Introduction

This Section discusses about authority of the GST officers to draw sample of goods.

154.2 Analysis

Sample of any goods may be drawn by the Commissioner or any officer who is authorised by him.

The samples may be drawn wherever the officer so deems necessary and should be out of the goods in possession of the taxable person.

Once the samples are drawn, the officer should provide a receipt for the same.

154.3 FAQs

Q1. For what purposes can samples be taken?

Ans. There is no purpose which is specified in the law. However, if the specified officer deems necessary, a sample of the goods may be drawn.

Q2. Who can effect samples?

Ans. The Commissioner or any other person who is authorised by the Commissioner may draw samples out of the goods which are in possession of the taxable person.

Statutory provision

155. Burden of Proof

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

155.1 Introduction

This provision places the burden on the taxable person to prove his input tax claims.

155.2 Analysis

Normally, it is for the person to prove a fact which he asserts.

Following this, under this Section, the onus of correctness and eligibility of the following claim has been vested with the taxable person:

- Eligibility to claim input tax credit: Where the taxable person claims any input tax credit under Section 16 of the CGST Act.

155.3 FAQs

Q1. Under what circumstances does the onus of claim by a taxable person lie with him?

Ans. The onus of proving that the taxable person is right in his claims would vest with him, in the following circumstance:

- Where the taxable person has claimed any input tax credit.

155.4 MCQ

Q1. Which of the following proposition is correct?

(a) The Act provides for rule of burden of proof in all situations

(b) The Act places specific burden on the assessee only in one situation

(c) The burden of proof is always on the assessee

(d) None of the above

Ans . (b) The Act places specific burden on the assessee only in one situation

Statutory provision

156. Persons deemed to be public servants

All persons discharging functions under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

156.1. Introduction

This section proclaims that all persons discharging official functions under the CGST Act would be deemed to be public servants within the meaning of section 21 of the IPC.

156.2. Analysis

As the persons discharging official functions are deemed to be public servants, any offences against such persons and offences by such persons would be dealt with in accordance with IPC.

156.3 Related provisions

Section 21 of the IPC defines a public servant. Chapter IX of IPC comprising of sections 166

to 171 deals with offences against and offences by public servants prescribing for punishment including imprisonment. Chapter X deals with contempt's of the lawful authority of public servants – sections 172 to 190 thereof prescribes for punishment including imprisonment.

Statutory provision

157. Protection of action taken under this Act

(1) No suit, prosecution or other legal proceedings shall lie against the President, State President, Members, officers or other employees of the Appellate Tribunal or any other person authorised by the said Appellate Tribunal for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.

(2) No suit, prosecution or other legal proceedings shall lie against any officer appointed or authorised under this Act for anything which is done or intended to be done in good faith under this Act or the rules made thereunder.

157.1 Introduction

This Section protects the GST officers and officers of GST Tribunal from legal proceedings in respect of acts done in good faith.

157.2 Analysis

Immunity from any legal or departmental proceedings is provided to the GST officers and officers of the Tribunal for the acts done in good faith under the provisions of this Act.

157.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 156	Deemed as public servants	All officers performing any function under this Act are designated as 'public servants'.
CGST	Section 158	Disclosure of information by a public servant	None

157.4 FAQs

Q1. Can the Department proceed against the officer for passing any adjudication order?

Ans. No, the Department cannot take any action against the officer who has discharged his duty in good faith.

Statutory provision

158. Disclosure of information by a public servant

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceedings before a criminal

court), or in any record of any proceedings under this Act shall, save as provided in sub-section (3), not be disclosed.

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as otherwise provided in sub-section (3), require any officer appointed or authorised under this Act to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).

(3) Nothing contained in this section shall apply to the disclosure of,—

(a) any particulars in respect of any statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or any other law for the time being in force; or

(b) any particulars to the Central Government or the State Government or to any person acting in the implementation of this Act, for the purposes of carrying out the objects of this Act; or

(c) any particulars when such disclosure is occasioned by the lawful exercise under this Act of any process for the service of any notice or recovery of any demand; or

(d) any particulars to a civil court in any suit or proceedings, to which the Government or any authority under this Act is a party, which relates to any matter arising out of any proceedings under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or

(e) any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by this Act; or

(f) any particulars where such particulars are relevant for the purposes of any inquiry into the conduct of any officer appointed or authorised under this Act, to any person or persons appointed as an inquiry officer under any law for the time being in force; or

(g) any such particulars to an officer of the Central Government or of any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or

(h) any particulars when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or

(i) any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under this Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a

cost accountant, a chartered accountant or a company secretary, as the case may be; or

(j) any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or

(k) any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force; or

(l) any information relating to any class of taxable persons or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

158.1 Introduction

This Section lays down the guidelines for non-disclosure of information obtained during the course of any proceeding and the situations when such information can be disclosed.

158.2 . Analysis

Non-disclosure: The following shall be kept confidential and should not be disclosed:

— All details obtained in any statement / returns / accounts / documents which are submitted as per the act

— All details as per the evidence given during any proceeding under the Act or as per any record of proceedings under the Act

Note: All details obtained from any evidence during the proceedings before a criminal court need not be confidential.

Restrictions on Courts: Courts shall not have the right

— To require any GST officer to produce before it or

— To require the officer to give evidence before it in relation to matters which cannot be disclosed (covered above in Point (i))

Exceptions to non-disclosure: The following details can be disclosed:

— Situation 1 – required under other Law: Statement, return, accounts, documents, evidence, affidavit or deposition, for prosecution under the Indian Penal Code / the Prevention of Corruption Act, 1988 / or any other law in force.

— Situation 2 – for verification purposes: Particulars which are to be given to the Central / State Government or to any person discharging his functions under this Act, for the purpose of carrying out the object of the Act.

— Situation 3 – for service of notice / demand: If such disclosure is necessary for the service of notice or the recovery of demand.

— Situation 4 – for Civil Court / Tribunal proceeding: Particulars to be disclosed to a Civil Court.

Note: The disclosure is in relation to any suit or proceeding. In such proceeding, the Government or any authority under the Act is a party. The disclosure relates to any proceeding as per the Act or under any other law authorising any such authority to exercise such powers.

— Situation 5 – for Audit: Particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax levied under the Act.

— Situation 6 – for inquiry on any GST Officer: Particulars relevant for any inquiry into the conduct of any GST officer, to any person(s) appointed as an inquiry officer under any relevant law.

— Situation 7 – to levy or realise tax / duty: Such facts to an officer of the Central / State Government as necessary for the purpose of enabling that Government to levy or realise any tax or duty.

— Situation 8 – to public servant: Such particulars, if such disclosure is necessary before a public servant or any statutory authority, due to his or its powers under any law.

— Situation 9 – to conduct inquiry on professionals: Such particulars as relevant to any inquiry under the Act conducted into a charge of misconduct against a practising advocate / cost accountant / a chartered accountant, company secretary / tax practitioner to the authority empowered to take disciplinary action against the members practicing such profession. (i.e. ICAI / ICAI (CWA) / ICSI / Bar Council)

— Situation 10 – to data entry agency for department: Disclosures to any agency appointed for the purposes of data entry on any automated system or for operating, upgrading or maintaining any automated system (if such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes)

— Situation 11 – to Government: Particulars to an officer of the Central / State Government necessary for any law for the time being in force.

— Situation 12 – for publication: Information relating to any class of taxpayers / transactions for publication, if, in the opinion of the Competent authority, it is desirable in the public interest, to publish such information.

158.3 Comparative review

There are no specific provisions in the existing law to specifically protect the confidentiality of the information obtained during the course of carrying out any functions as a public servant.

158.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 156	Deemed as public servants	All officers performing any function under this Act are designated as 'public servants'.

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 157	Immunity from legal proceedings	Protection of action taken in good faith by GST officers and officers of Tribunal

158.5 FAQs

Q1. Who is responsible for maintaining confidentiality or non-disclosure of information?

Ans: Every GST Officer must maintain confidentiality or non-disclosure of information obtained by him.

Q2. Can the GST officer disclose the information if required under any law?

Ans: GST Officer shall disclose the information if required under Indian Penal Code / Prevention of Corruption Act or any other law.

Q3. Can the GST officer voluntarily disclose information to professional bodies regarding professional misconduct of any professional?

Ans: No. Voluntary disclosure of information is not covered under the above provision. However, if any inquiry is already underway by the relevant professional regulatory body, then the GST officer can disclose information to such authority relating to the professional misconduct.

Q4. Can information be shared for statistical purposes?

Ans: GST officer can share the information to the Central / State Government regarding compilation of statistics dealing with particular class of taxpayers / class of transactions.

Q5. Can information be shared with Civil Courts?

Ans: GST officer can disclose information in any proceeding before Civil Courts only if the Government is also one of the parties involved and such Courts have been empowered with the power to call for such information.

Q6. Can information be shared with First Appellate Authority?

Ans: GST officer cannot share the information with the First Appellate Authority unless it is authorized under the law to be disclosed before them.

Statutory provision

159. Publication of information in respect of persons in certain cases

(1) If the Commissioner, or any other officer authorised by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published such name and particulars in such manner as it thinks fit.

(2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation.—In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Commissioner, or any other officer authorised by him in this behalf, circumstances of the case justify it.

159.1 Introduction

(i) This provision confers powers on the Competent Authority to publish the names and other details of persons in default, as information to the public.

(ii) This provision also discusses the persons, whose names can be published, if proceedings relate to a company / firm / association of persons.

159.2 Analysis

Powers to publish details:

(i) The Competent Authority may ensure that the following details are published:

- Names of any person (and)
- Other particulars relating to proceedings or prosecutions under the Act, if related to such person.

(ii) The decision to publish is based on the opinion of the Competent Authority that it is essential or beneficial in the public interest to do so.

(iii) As the provision indicates that the Competent Authority "*can decide to publish in such manner as it thinks fit*", Competent Authority can decide:

- the category of proceedings / prosecution cases to be published
- the category of persons whose details to be published
- the extent of particulars to be published
- the manner of publishing,
- the media wherein the information to be published

(iv) In addition, the Competent Authority may also decide to publish the following:

Nature of Organisation	Additional details
In case of Firm	Names of partners
In case of Company	Names of directors / Managing Agents / Secretaries & Treasurers / Managers
In case of Association of Persons	Names of the members

Note: However, the additional details can be published only if the Competent Authority opines that the circumstances of the case justify it.

(v) Exception: However, publication can be made in relation to imposition of penalty, only when the following conditions are satisfied:

- The time for presenting an appeal to the First Appellate Authority (u/s 107) has expired and the persons involved, did not present any appeal (OR)
- The appeal is presented and it is disposed of (against such persons).

159.3 Comparative review

Similar Provisions as above find place in current laws as under:

Law	Distinction in the GST law
Central Excise (Sec.37E)	The provisions are similar to Sec.37E. However, in the present Central Excise Legislation, as there is a provision to appeal directly to CESTAT against the order of Commissioner, the time limit in relation to publishing information about penalty also includes the time for appeals before CESTAT. In the GST law, there is no such provision for direct appeal to Tribunal and so time limit for appeals before Tribunal is omitted.
Central Excise (Sec.9B)	In the Current Excise Law, as per Sec.9B, Courts have powers to publish the information about conviction of the persons and other information (as mentioned in Sec.9B). However, in the present GST legislation, no such powers are conferred on the Courts. In fact, there is a Circular No.1009/16/2015 – CX dt. 23.10.15, which insists that the power to publish information is being exercised very sparingly by the Courts and has given a clear direction that in deserving cases, the department should make a prayer to the Court to invoke this Section in respect of all persons who are convicted under the Act.
Service Tax (Sec.73D)	As per current service tax provisions, the names and the particulars to be published and the manner in which it has to be published *are as prescribed* (by the Service Tax (Publication of Names) Rules 2008).

Law	Distinction in the GST law
	In the above rules, the situations for publication and the detailed process flow along with documentation are prescribed. *The words "as prescribed" do not find place in the GST law.* *This leaves the decision to publish solely to the discretion of the Competent Authority. Further, there are no enabling provisions u/s 164 to confer powers to the Governments to frame rules for such publication. Sec.165 has also not listed out the specific areas wherein the Board / Commissioner SGST can frame regulations.*
VAT Laws	Similar provisions as that of the GST Law are enacted as part of the existing State VAT Laws, but in certain Stat VAT Laws, the powers can be exercised *subject to such conditions as may be prescribed. (For e.g. Sec.79 of the TNVAT Act, 2006)*

159.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 107	Time Limit for appeal before First Appellate Authority	Information on the penalty imposed on a person can be published only if the time limit for appeals before First Adjudicating Authority is over. So Sec.107 is relevant.

159.5 FAQs

Q1. Should prosecution proceedings alone be published?

Ans: No. Sec.159 uses the words "any proceedings or prosecution". Hence, even a normal adjudication proceeding can be published if the competent authority thinks fit.

Q2. Is there any guideline available for deciding the situations in which information must be published?

Ans: No. As per the section, the competent authority may form his own opinion and may decide to publish the name and other particulars in such manner as he thinks fit. It is expected that the Government may frame guidelines on publishing information and manner of such publishing.

Q3. What are the media in which the details must be published?

Ans: Sec.159 is silent on such aspect and it gives the power to the competent authority to decide the manner in which it has to be published *(Unless certain guidelines are spelt out by the government).*

Q4. Whether the publishing is to be done only after the adjudication order is passed?

Ans: Sec.159 indicates that the competent authority may publish names and other particulars, in relation to any proceeding or prosecution. There is no condition that the order needs to be passed to publish the details.

Q5. Can the names of persons alone be published by the competent authority?

Ans: Sec.159 indicates the names of any person and any other particulars relating to such person, in respect of such proceedings may be given. So, it is imperative to give the other relevant particulars of the proceedings also.

159.6 MCQs

Q1. Who can publish the names and particulars

(a) Courts

(b) Appellate Authority

(c) Any Adjudicating Authority

(d) Competent Authority

Q2. Names and particulars relating to prosecutions can be published –

(a) After Courts Approval

(b) After expiry of appeal to First Appellate Authority

(c) At the discretion of the Competent Authority

(d) Cannot be published at all

Q3. In case of proceedings against the Companies, then the details that can be published are

(a) Names and Addresses of the Directors

(b) Only Names of the Directors

(c) Details of Directors and Auditors

(d) Photographs of the Directors

Statutory provision

160. Assessment proceedings, etc., not to be invalid on certain grounds

(1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.

(2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

160.1 Introduction

Very often proceedings under the Act are questioned for their validity even when there are inadvertent errors. This Section saves the proceedings from such challenge when substantive conformity is found but for these errors.

160.2 Analysis

Assessment, re-assessment and other proceedings that are listed in this Section will be valid even though there may be:

- Mistake
- Defect or
- Omission

Provided they are in 'substance' and 'effect' in conformity with the intents, purposes and requirements of the Act.

Proceedings listed in this Section are:

- Assessment
- Re-assessment
- Adjudication
- Review
- Revision
- Appeal
- Rectification
- Notice
- Summons
- Other proceedings

Considering the purpose of this Section, no proceedings under the Act are excluded from the operation of this Section. It is interesting to see how such a determination will be made – whether deficiency in the proceedings was a mistake, defect or omission and that it is in substance and effect in conformity with the Act.

Further, where a notice, order or communication has:

- Been acted upon or
- Not called into question at the earliest opportunity available.

Then the opportunity to call such notice, order or communication into question will not be available in the course of subsequent proceedings. Please note that the deficiency that can be so called into question is limited to – notice, order or communication – and not the documents forming part of the other proceedings listed in sub-section (1). Hence, it is important to note that care needs to be taken while making preliminary objections on jurisdiction and validity of communication.

Statutory provision

161. Rectification of errors apparent on the face of record

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

161.1 . Introduction

While the authority to issue any decision, order, summons, notice, certificate or other document is expected to be free from errors, it is the duty of the authority issuing the same to correct any errors that do not convey the outcome of the process of law resulting in its issuance. This Section provides for an opportunity to make such rectification with some caution and due process being prescribed.

161.2 Analysis

This Section begins with caution in stating that:

- no prejudice will be caused to the validity of proceedings listed in Section 161 from the defects that may be present in the documents concerned;
- but overrides all other provisions of the Act that may permit calling into question any deficiency in the documents.

This Section provides for rectification of error or mistake apparent by the authority who has issued the document or on being brought to attention by CGST / SGST authority or the affected person. So there are three ways in which action can be taken under this Section. No person is entitled to take advantage of such errors or mistakes.

The action permitted to be taken is to rectify an error or mistake apparent. Errors or mistakes apparent can cause difficulty in executing the directions contained in the document. This may require seeking the authority's intervention to rectify.

The power/jurisdiction to rectify is for any error or mistake which is apparent from record. The error must be self-evident and should not be discoverable by a long process of reasoning, where there is a possibility on points on which there may conceivably be two opinions. But the limiting aspect is that the power cannot be exercised to amend substantive part of the document concerned.

The error may be a) factual, b) legal or c) clerical. All of them are rectifiable once it is shown that they are apparent on face of the record and not within the natural understanding of the authority at the time of issuance of the original document but which has crept in due to inadvertence or by reason other than exercise of judgement. Here the assessee, on a literal interpretation, cannot bring any document or evidence, not already available on record, to substantiate his claim for rectification.

A time limit of 3 months is allowed for the affected person to bring to attention any such error or mistake. This time limit does not apply to a CGST / SGST officer from bringing it to the attention to the issuing authority or for making voluntarily rectification. However, no such rectification is permitted after 6 months from the date of its issuance.

If any such rectification adversely affects any person, it is required that principles of natural justice should be complied with.

161.3 Comparative review

Starting from Civil Procedure, all laws have provisions to rectify errors apparent on the face of the records including tax laws such as Income Tax Act, Central Excise, Customs, Service Tax and different Sales tax etc.

161.4 Related provisions

Statute	Section / Rule / Form	Description
Central Excise Act, 1984	Section 35C. Orders of Appellate Tribunal.	The Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it
Chapter V of the Finance Act, 1994	Section 74. Rectification of mistake	With a view to rectifying any mistake apparent from the record, the 4[Central Excise Officer] who passed any order under the provisions of this Chapter may, within two years of the date on which such order was passed, amend the order.
Income-tax Act, 1961	Section - 154	With a view to rectifying any mistake apparent from the record an income-tax authority referred to in Section 116 may,— (a) amend any order passed by it under the provisions of this Act;

Statute	Section / Rule / Form	Description
		(b) amend any intimation or deemed intimation under sub-Section (1) of Section 143; (c) amend any intimation under sub-Section (1) of Section 200A; 61[(d) amend any intimation under sub-Section (1) of Section 206CB.

161.5 FAQs

Q1. What errors may be rectified under the provision?

Ans. Only errors, which are apparent on the face of the record, may be rectified under the provision.

Q2. What is an error apparent on the face of the record?

Ans. An error is apparent on the face of the record if it is evident from the record itself and does not require long drawn out reasoning.

Q3. What are the types of errors, which can be rectified?

Ans. Any error, which is apparent on the face of the record, may be rectified. Such error can be a) factual, b) legal or c) clerical.

Q4. Is there a time limit to apply for rectification?

Ans. The time limit is 3 months but extendable to 6 months. But in case of clerical or arithmetic mistakes, the 6 months outer limit is not applicable. Such clerical error must be due to accidental slip or omission.

Q5. Who can seek rectification?

Ans. The authority itself, an officer or the affected person can seek rectification.

Q6. If a proceeding is pending before a higher forum can rectification be sought for?

Ans. As the provision is applicable notwithstanding other provisions, pendency of proceeding before higher forums is not a bar to seek rectification.

Q7. If there is a material found out which has bearing on the decision whether rectification can be sought?

Ans. No. For that purpose, the error must be apparent on the face of the record. Therefore, outside material cannot be produced to rectify the decision.

Q8. What is the scope of rectification? Whether any part of the order can be rectified?

Ans. The provision expressly states that it cannot amend the substantive part of the decision etc.

Q9. Whether the assessee is to be given notice?

Ans. If there is an adverse effect then principles of natural justice has to be complied with.

161.6 MCQs

Q1. What errors may be rectified under the provision?

(a) Only errors which are apparent on the face of the record

(b) All errors of law and fact

(c) Only clerical error can be rectified

(d) Only if the error is by accidental slip or omission

Q2. What is an error apparent on the face of the record?

(a) If it can be proved by additional evidence not available at the time of passing the order

(b) If it is evident from the record itself and does not require long drawn out reasoning

(c) If it is error on points of law

(d) If it is only a clerical or arithmetic error

Q3. What is the time limit to apply for rectification?

(a) Normally 3 months extendable to 6 months in all cases

(b) Normally 3 months and on sufficient cause shown the delay can be condoned

(c) Strictly 3 months

(d) Normally 3 months extendable to 6 months, but in case of clerical or arithmetic mistakes, the 6 months outer limit is not applicable.

Q4. Who can seek rectification?

(a) Only the authority itself

(b) The authority itself, an officer or the affected person

(c) Only an officer

(d) Only the affected person

Q5. If a proceeding is pending before a higher forum can rectification be sought for?

(a) No

(b) Yes

(c) With the permission from the Appellate Authority

(d) None of the above

Q6. What is the scope of rectification? Whether any part of the order can be rectified?

(a) Once it is proved that there is error apparent any part of the decision can be rectified

(b) Only the part dealing with legal aspect can be rectified

(c) Only the part dealing with clerical or arithmetic aspect can be rectified

(d) The authority cannot amend the substantive part of the decision etc.

Q7. Whether principle of natural justice to be followed?

(a) As it is a quasi-judicial function the authority must give notice and follow principles of natural justice

(b) As it is only a rectification of apparent error principles of natural justice is not applicable

(c) If there is an adverse effect then principles of natural justice have to be complied with

(d) If it relates to assessment principles of natural justice have to be complied with

Statutory provision

162. Bar on jurisdiction of civil courts

Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.

162.1 Introduction

With the advent of administrative law whereby the departmental machinery has been created to deal with disputes, civil court jurisdiction is restricted. Presently whenever a new tax liability is created machinery provisions to deal with disputes is also in-built. Otherwise, civil court has a jurisdiction to deal with all disputes of civil nature. Under Sections 116 and 117, appeal to High Court and Special leave to the Supreme Court are provided. These are the only instances when this bar to approach Court is not applicable, as it is a statutory appeal and only questions of law could be raised.

162.2 Analysis

The basic principle is that every dispute of civil nature can be tried by the civil court. Tax being civil liability its levy, imposition and collection can be challenged before the Civil Court.

Over a period of time, tribunals were created for trying disputes arising under each legislation without the rigours of Civil Procedure Code to be followed, where non-judicial members preside and persons representing are well versed in the specific domain though not always Advocates. Thus, the civil court jurisdiction has been barred. The principle is that if a statute creates a new liability or obligation and provides for machinery, then this impliedly bars civil court's jurisdiction. Under GST law, it is expressly barred.

The clause "any question arising from or relating to anything done or purported to be done under the Act;" makes a strict rule barring even those which are purportedly done under Act. Except to sit in judgement about the vires of the law itself, the appellate machinery created by the law can go into any question of fact or law. However, the clause does not bar the

Constitutional powers of High Court under Art.226 & 227 or Supreme Court under Article. 32,136 etc.

Section 116 relates to appeal on substantial question of law to High Court and Section 117 a leave to appeal therefrom to Supreme Court.

162.3 Comparative Review

All existing indirect tax laws bar exercise of jurisdiction by Civil Courts as the tax laws provide for an alternative and effective mechanism to deal with tax disputes.

162.4 FAQs

Q1. Why a civil suit cannot be filed against an order passed under the Act?

Ans. Remedies of different nature are provided under the Act. Further, there are constitutional remedies also. Therefore, the Act bars filing of civil suits against any order passed under the Act.

Statutory provision

163. Levy of Fee

Wherever a copy of any order or document is to be provided to any person on an application made by him for that purpose, there shall be paid such fee as may be prescribed.

163.1 Introduction

This provision empowers the Central Government to collect fees for supplying photo copy of the orders / documents.

163.2 Analysis

Document or order must be served on the party concerned. But to receive an authentic copy of such document or order, a fee is being prescribed. It is important to note that a new procedure of securing an authenticated copy of the document or order is provided for. This is similar to the procedure prescribed under CPC for receiving documents.

163.3 Comparative review

(i) Under the current legislations (Central Excise / Service Tax / VAT Laws), there is no exclusive provision to give copies of any document or order against payment of fees.

(ii) This provision will lead to issuance of a separate notification, indicating the fees to be paid for obtaining the copies of the various orders / documents.

(iii) This could indirectly convey the intention of the Government to give copies of any document / order against the fees.

(iv) For E.g. If Form ARE 1 (present format for export application) is submitted to the department and the exporter does not have a copy, the exporter may obtain its copy from the department against fixed fees.

(v) Interestingly the Right to Information law also deals with provision of information/ documents for a prescribed fee.

163.4 FAQ

Q1. Should a person pay fees for obtaining copy of Show Cause Notice?

Ans: 'Document' is not defined. It can include Show Cause Notices also.

Q2. How much fees is to be paid?

Ans: It shall be prescribed by a separate notification.

Q3. Should a person pay fees to obtain the application?

Ans: The person may have to pay fees, if prescribed by the notification.

Q4. Will this provision cover the fees for submission of appeals?

Ans: No. This provision deals only with obtaining copies of pre–existing orders / documents and not filing appeal related documents. For appeals fees, the relevant Sections must be referred to.

Q5. Can a person obtain a copy of an internal document of the department?

Ans: The intention of the provision is to obtain the copy of any order / document, to which a person is normally entitled to. He cannot access the internal communication through this provision. However such information/document can be obtained under RTI law.

163.5 MCQ

Q1. A person need not pay fees for:

(a) Primary Copy of the Appellate Order

(b) Copy of the Show Cause Notice (lost by the assessee)

(c) Copy of the Adjudication Order

(d) All of the above

Q2. Fees must be paid

(a) Before obtaining Copy of Order

(b) After obtaining Copy of Order

Statutory provision

164. Power of Government to make rules

(1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.

(3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

(4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

164.1 Introduction

This is delegation of legislation to the administrative authority, which has become a regular practice and standard feature of modern legislation. This has to be read with the other Section 165 regarding regulations. While under this Section the Government is given the power to make rules, under Section 165 power to make regulation is given to the Board and Commissioner of SGST. There is a general power under sub-section (1) and specific power under sub-section (2) which is also a standard structure.

164.2 Analysis

The reason for the delegation of legislation is that the Legislature cannot take care of all aspects of creating law, due to the enormous responsibility and also that it is better to leave it to the bureaucracy to fill in the gaps, after laying down general principles.

Two important principles are:

a) The essential legislative function i.e., laying down the policy, has to be carried out by the legislature and only lesser aspects can be left to the administration.

b) The legislative policy behind the areas where it is delegated must be known from the legislation itself, so that the administrative authority remains within bounds while making the rules.

It is part of the separation of powers that legislative power is exercised by the legislature and executive only administers it. Delegation requires superintendence of the legislature. Although all though express supervisory provisions are not contained in this Section, the boundaries of delegation must be identified by the limits set from the words used to describe the topics on which rules (or regulations) are to be notified.

The general rule making power is granted to the Central and State Governments. The rule making power is subject to a procedural limitation that it can be made only when there is a recommendation by the Council. Such rule making power also includes power to issue notifications with retrospective effect under the rules.

General powers to carry into effect the purposes of this Act are provided by vesting the appropriate Government with the rule making power to fill in the gaps with expression “as may be prescribed”. This does not limit the general rule making power to carry out the purposes of the Act.

Legislature has an inherent power to make retrospective laws but the delegated authority can make retrospective rules but not earlier that the date of commencement of this Chapter XXI.

Finally, in order to ensure the rules are enforceable, breach of the rules are recognized as a cause for imposing penalty not exceeding Rs.25,000/-. It is interesting that a particular breach while being a breach of the specific rule attracting penalty may also be the breach of the substantive provision of law attracting penalty under Sections 73/74 of the Act.

164.3 Comparative review

Rule making power is an important adjunct of modern Administrative legislation. It features in Income Tax Act, Central Excise, Customs, Service Tax and Different Sales tax and other laws as well.

164.4 Related provisions

Statute	Section / Rule / Form	Description
Central Excise Act, 1984	Section 37. Power of Central Government to make rules.	(1) The Central Government may make rules to carry into effect the purposes of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for specific matters.
Chapter V of the Finance Act, 1994	94. Power to make rules. -	(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter. 7(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the specific matters stated therein.

164.5 FAQ

Q1. What is the purpose of making rules?

Ans: The principal legislation lays down policy in general. It requires specifics and details for implementation. These are taken care of by the Rules.

164.6 MCQ

Q1. Whether the rules can be made with retrospective effect?

(a) Yes

(b) No

(c) Yes. Subject to the limitation that it cannot be made beyond the date on which the chapter comes into force

(d) None of the above

Statutory provision

165. Power to make regulations

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

165.1 Introduction

While topics for rule making are listed under Section 164 leaving the domain to the

appropriate Government, topics for making regulation listed under Section 165 are reserved for the Board. These are mutually exclusive domains.

165.2 Analysis

The Board is empowered to notify regulations consistent with the objects of the Act. No recommendation of the GST Council is called for in this case.

Specific topics to issue regulations are also provided for though not listed for the time being.

165.3 Comparative review

Section 156 and 157 of Customs Act where topics are allocated to Central Government and Central Board of Excise and Customs.

Section 37 of the CE Act

Statutory provision

166. Laying of rules, regulations and notifications

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

166.1 Introduction

This Section lays down the general procedure of laying delegated legislations before the Parliament for a prescribed duration.

166.2. Analysis

(a) The Act permits making of rules by Government, issuance of regulation by Board and issuance of notification by the Government.

(b) Such rule, regulation and notification, which is a part of delegated legislation is placed before the Parliament.

(c) It is laid before the Parliament, as soon as may be after it is made or issued, when the Parliament is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions

(d) Before the expiry of the session or successive sessions both Houses may make suitable modifications and would have effect in such modified form.

(e) However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

166.3. Comparative Review

Similar provisions are there in the existing tax laws as well.

Statutory provision

167. Delegation of Powers
The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.

167.1 Introduction

This enables the Competent Authority to delegate the power exercisable by one authority to another.

167.2 Analysis

The power conferred on one officer or authority under the Act can be exercised by another authority or officer if directed by the Competent Authority. This direction of the Competent Authority must be notified in the Gazette. Such power can be limited by conditions specified in the notification. Significantly, there is no condition, criterion or circumstance stated for exercising this power by the Competent Authority. It is important to note that upon notification of such direction by the Competent Authority, it does exclude the first authority or officer who was originally delegated from exercising such power.

This is an administrative power to ensure swift response to situations where an authority or officer better placed to carry out the duties (by exercising the power) has not been originally conferred with the power by delegation. In such cases, instead of awaiting the revision in delegation, the delegation is permitted to be redirected at the discretion of the Competent Authority for purposes of the Act.

167.3 Comparative review

Delegation of powers for administrative exigencies is part of laws dealing with administrative powers

167.4 Related provisions

Statute	Section / Rule / Form	Description
Central Excise Act, 1944	Section 37A. Delegation of powers	The Central Government may, by notification in the Official Gazette direct that subject to such conditions, if any, as may be specified in the notification - (a) any power exercisable by the Board under this Act may

Statute	Section / Rule / Form	Description
		be exercisable also by a Chief Commissioner of Central Excise or a Commissioner of Central Excise empowered in this behalf by the Central Government; (b) any power exercisable by a Commissioner of Central Excise under this Act may be exercisable also by a Joint Commissioner of Central Excise or an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise empowered in this behalf by the Central Government; (c) any power exercisable by a Joint Commissioner of Central Excise under this Act may be exercisable also by an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise empowered in this behalf by the Central Government; and (d) any power exercisable by an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under this Act may be exercisable also by a gazetted officer of Central Excise empowered in this behalf by the Board.

167.5 FAQs

Q1. How does the assessee know whether an officer is properly delegated?

Ans. As the delegation has to be through notification, by referring to the notification it can be ascertained whether the officer is properly delegated or not.

167.6 MCQs

Q1. Which of the following statements is correct?

(a) An officer may delegate his powers to his subordinate

(b) The delegation can be done by way of an internal memo

(c) No conditions can be imposed

(d) The delegation can be done only by a competent authority by way of a notification

Q2. Who can delegate the powers?

(a) The officer who is exercising the power

(b) Appropriate Government

(c) The Competent Authority

(d) All of the above

Statutory provision

168. Power to issue instructions or directions

(1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.

(2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

168.1 Introduction

This Section empowers the Competent Authority to issue orders, instruction or directions to the lower authorities to bring in uniformity in the implementation of the Act.

168.2 Analysis

There are three aspects to the provision, namely:

— authority issuing the instruction

— persons whom it binds, and

— its efficacy

It is the Competent Authority who is empowered to issue the orders, instruction or directions. The purpose is to bring in uniformity in the implementation of the Act; and it is binding on all GST officers.

Thus, any circular which is general or administrative in nature is binding on the assessing officer and other officers at basic level. Once the circular is cited they cannot ignore it and decide the matter independently. The circular or instruction is not binding on the assessee. As regards contrary views regarding binding force of a Circular which is against the legal provisions on the assessee or the Authorities is not expressly addressed in this Section. However, officers are not liable for passing orders contrary to law involving interpretation by higher judiciary if it can be shown that such orders are in conformity with orders, instruction or directions issued under this Section.

Sub-section (2) designates the Commissioner or Joint Secretary posted in the Board for exercising certain powers conferred under specific provisions. Such powers would be exercised with the approval of the Board.

168.3 Comparative review

Central Excise, Customs, majority of the State VAT enactments and Income Tax contain similar provisions.

168.4 Related provisions

Statute	Section / Rule / Form	Description
Central Excise Act, 1984	Section37B. Instructions to Central Excise Officers. -	The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board : *Provided* that no such orders, instructions or directions shall be issued, so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or b) so as to interfere with the discretion of the Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.

168.5 MCQs

1. The Competent Authority can issue instruction to the field formation to bring in uniformity to all officers
   (a) True
   (b) False

Statutory provision

169. Service of notice in certain circumstances

(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—

(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in

connection with the business, or to any adult member of family residing with the taxable person; or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or

(c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or

(d) by making it available on the common portal; or

(e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

(f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.

(2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).

(3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

169.1 Introduction

Service of communication is an essential step of any process of law. This Section details the mode of service that is considered valid.

169.2 Analysis

(i) Communication: Any decision, order, summons, notice or other communication under the Act or the rules.

(ii) Modes of Communication: The above documents can be served on the assessee in the following modes:

(a) Mode 1 – Physical Delivery:

— Giving or tendering it directly or

— Delivery through a messenger including a courier

— The documents can be delivered to:

(i) The addressee / the taxpayer / to his manager /

(ii) The agent duly authorized / an advocate / a tax practitioner (who holds authority to appear in the proceeding on behalf of the taxpayer)/

(iii) A person regularly employed by him in connection with the business /

(iv) Any adult member of family residing with the taxpayer or

(b) Mode 2 – Regd. Post /speed post or Courier with acknowledgement due:

It should be sent to intended person or his authorised representative at his last know place of business or residence.

(c) Mode 3 – Electronic Means

— Email or notifying in common portal (GSTN).

(d) Mode 4 – Media: Publication in a newspaper (in the locality in which the taxpayer or the person to whom it is issued is known to have resided, carried on business or personally worked for gain)

(e) Mode 5 – Other Modes: If above modes fail, then it can be served by

— Affixing it in some conspicuous place at his last known place of business or residence or

— If above mode is not practicable, service of notice can be by affixing a copy on the notice board of the officer or authority issuing such communication.

(iii) Date of service

— Normal Cases: The above communications shall be treated as served on the date on which it is tendered or published or a copy thereof is affixed (as mentioned above)

— Registered or Speed Post: If such communications are sent by registered/ speed post, it shall be treated as received by the addressee at the expiry of the normal period taken by such post in transit (unless the contrary is proved).

169.3 Comparative review

The following are the major improvements / inclusions made in the GST Law as against the existing provisions available in Central Excise / Service Tax:

Points of Distinction	Remarks
New Modes of Service included	— Delivery through a messenger including a courier — Courier (no specific mention about whether it is approved by CBEC) — Electronic Means (E-mail/common portal) — Publication in Newspaper
Additional Addressees (if main addressee is	Delivery through messenger or by courier to following persons are accepted:

not available)	A person regularly employed by him in connection with the business / Any adult member of family residing with the taxpayer
Deemed Delivery under registered post	A specific clause is added under the GST Law which indicates that if communications are sent by registered/speed post, ***it shall be treated as received by the addressee at the expiry of the normal period taken by such post in transit***.
Type of communication	The proposed Section covers any communication issued under the law. In the present Central Excise Law, Section 37C covers *decision / order / summons / notice.* Any communication might include intimation letters sent under the law, trade letters issued, acknowledgments issued etc.

169.4 Related provisions

Section 169 relates to all communications issued under the law and hence any communication given under any provision, shall be governed by this provision.

169.5 FAQs

Q1. What are the approved modes of communication?

Ans: Physical Delivery, Registered Post, Courier, Email, common portal, publication in newspaper, affixing of notice on place of business or residence of the addressee, notice board of the Authority which has issued notice.

Q2. If post is used but acknowledgment due is not given, is it approved?

Ans: Post with Acknowledgment due is essential to make it valid.

Q3. If mail is sent to an invalid mail ID, is it valid?

Ans: Mail sent to the last known Mail ID of the Addressee shall be considered valid communication. However, if the addressee is able to prove that such communication is not received by him, it can be invalid.

Q4. Whether notice must be sent to the person intended and to his authorized agent also or any one of them is sufficient?

Ans: The provision provides that if the notice is sent by courier or physical delivery to the person to whom it is intended or his authorized agent, it is sufficient.

Q5. Whether advertisement in local talks is considered valid service?

Ans: The provision provides that display in the newspaper shall be a valid service of notice. Hence, local talks prevalent in the place where the addressee normally resides or has place of business shall be treated as valid.

169.6 MCQs

Q1. Among the following, which method is not approved?

(a) Post

(b) Courier

(c) Email

(d) Notice to Addressee's Debtors

Q2. Among the following, to whom the notice cannot be served?

(a) Authorised Agent

(b) Family Member

(c) Employee

(d) Partner

Q3. In case of registered post, if acknowledgment is not received within time, what shall be the date of service of notice?

(a) Reasonable Time

(b) Not considered as delivered

(c) 30 days from sending the registered post

(d) 45 days from sending the registered post

Statutory provision

170. Rounding off of tax, etc.

The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

170.1 Introduction

This provision enables the tax payers and also the departmental authorities to round off the amounts calculated as per the law, if the amounts are in fraction of a rupee.

170.2 Analysis

(i) Amounts covered: Tax, interest, penalty, fine or any other sum payable, and refund or any other sum due, under the Act.

(ii) The above amounts shall be rounded off as under:

If amount contains a part of the rupee	Effect
≥ 50 paise	Must be increased to one rupee
< 50 paise	Part to be ignored

(iii) In case of the assessee, the rounding off must be done for every part of the tax contained in the invoice.

(iv) The above provision is applicable for the assessee, for the department (while issuing show cause notice or passing the order, etc.) and also for the Appellate Authorities.

170.3 Comparative review

Similar enabling provisions are available in Central Excise Act (Sec.37D), Service Tax Provisions (Sec.83 of the Finance Act 1994) and also in State VAT Provisions.

170.4 Related provisions

This provision shall apply to any amount calculated under the other provisions of the Act.

170.5 FAQs

Q1. If the Show Cause Notice mentions the tax as Rs.102.30 and penalty as Rs.102.30, then what is the amount payable?

.Ans: As per Sec.170, if the paise is less than 50 then that part has to be ignored. Total amount payable is Rs.102 + Rs.102 = Rs.204.

Q2. Whether the rounding off provision applies to Pre–deposit?

Ans: Yes, any amount payable under the act is subject to rounding off provisions. Hence, even Pre–Deposit is rounded off as per the above Section.

Q3. If the assessee has raised multiple invoices, then the rounding off is to be made for the consolidated amount of tax or for the tax amount mentioned in each invoice?

Ans: Rounding off must be made for the tax payable under the Act. It applies to each invoice as tax is payable on each invoice. Further, the rounding off must be made for each part of tax (CGST and SGST separately).

170.6 MCQs

Q1. If the amount of tax is Rs.2,15,235.50, then the amount shall be rounded off as:

(a) 2,15,236

(b) 2,15,235

(c) 2,15,235.50

(d) 2,15,240

Q2. What are the amounts that can be rounded off as per this Section?

(a) Interest

(b) Tax

(c) Penalty

(d) All of the above

Q3. Which of the following shall be rounded off?

(a) CGST

(b) SGST

(c) Both

(d) None of the above

Statutory provision

171. Anti-profiteering measure

(1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

(2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

171.1 Introduction

The objective of this section is to ensure that with the introduction of GST, taxable persons are not getting excessive profits, but shall pass on the reduction in price to the consumers.

The Central Government may by law constitute an Authority or entrust an existing authority for this purpose.

171.2 Analysis

The registered person is expected to reduce the price on account of availment of input tax credit or reduction in tax rates. An authority would be notified for this purpose, who would exercise powers and discharge functions in a prescribed manner.

171.3 Comparative Review

There is no such provision in the existing tax laws. Similar provisions are there in other countries.

171.4 FAQs

Q1. Who will constitute the authority for anti profiteering measure?

Ans. The Central Govt. would notify.

Q2. What is the responsibility of the authority?

Ans. To examine whether a. Input tax credit availed by a taxable person have actually resulted in commensurate reduction in price of goods/services;

The reduction in price on account of reduction in tax rate has actually resulted in a commensurate reduction in price of goods/services.

Statutory provision

172. Removal of difficulties

(1) If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

172.1 Introduction

The responsibility to implement the legislatures' will is of the appropriate Government. In doing this, the Act empowers the appropriate Government with the necessary power to remove any difficulty that may arise.

172.2 Analysis

(i) If the Government identifies that there is a difficulty in implementation of any provision of the GST Legislations, it has powers to issue a general or special order, to carry out anything to remove such difficulty.

(ii) Such activity of the Government must be consistent with the provisions of the Act and should be necessary or expedient.

(iii) Maximum Time limit for passing such order shall be 3 years from the date of effect of the CGST Act.

172.3 Comparative review

The above provisions are present in all tax legislations, to ensure that any practical difficulties in implementation can be addressed.

172.4 Related provisions

This is an independent Section and would be applicable for implementation of all provisions of the GST Law.

172.5 FAQs

Q1. Will the powers include the power to notify the effective date for implementation of particular provisions?

Ans. Yes. All powers regarding implementation of any provision of the GST law is covered.

Q2. Will the powers include bringing changes in any provision of law?

Ans. No. The Government has power only to decide on the practical implementation of law. But it cannot amend the legislation through this Section.

Q3. What is the maximum time limit for exercising the powers under Section 172?

Ans. The maximum time limit is 3 years from the date of effect of CGST Act.

Q4. Whether the reasons be mentioned in the order?

Ans. The order is issued only when there is a necessity or expediency for it. Specific reasons may not be mentioned in the order.

172.6 MCQs

1. Who can issue the Order?
   (a) Central Government
   (b) State Government
   (c) Either
   (d) None
2. Whether Prior approval of the Parliament is necessary?
   (a) Yes
   (b) No
3. What is the maximum period for exercising this power?
   (a) 4 years
   (b) 3 years
   (c) 2 years
   (d) 1 year

Statutory provision

173. Amendment of Act 32 of 1994
Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.

Statutory provision

174. Repeal and Saving

(1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.

(2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—

(a) revive anything not in force or existing at the time of such amendment or repeal; or

(b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts: Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or

(d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or

(e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;

(f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.

(3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

174.1 Introduction

These provisions indicate the extent of current indirect tax laws, which would continue upon introduction of CGST Act. It also provides for exceptions as to continuation of certain provisions of the existing laws for the sake of smooth transition. Further certain Acts would be repealed upon introduction of CGST Act.

174.2 Analysis

(a) These provisions have to be read along with the Transition provisions in chapter XX.

(b) It would come into force on the date of enactment of the CGST Act.

(c) Whenever an enactment is repealed or substituted by a new enactment then the new enactment should provide for a clause relating to repeal or saving of certain provisions under the old law.

(d) This would ensure that the rights, powers, liabilities, duties, privileges, obligations etc created under the old laws are intact and are not affected by the enactment of new law by repealing the old laws.

(e) Entry 84 of the Union List and Entry 54 of the State List, both forming part of the VII Schedule to the Constitution as amended by the Constitutional (101st Amendment) Act 2016 would continue to apply to certain goods.

(f) For the said purpose, the General Sales Tax/VAT / CST laws and Central Excise Act, 1944 and Central Excise Tariff Act, 1985 would continue to apply – Eg. Certain petroleum products, tobacco products.

(g) Thus these laws would operate even after the GST is introduced and are not repealed.

(h) In other words its application is restricted to few products/goods only.

(i) The following laws would be repealed, as the taxes are subsumed by GST law:

- *State laws:*
  - *(i) Entry Tax laws.*
  - *(ii) Entertainment Tax laws.*
  - *(iii) Luxury Tax laws.*
- *Central laws:*
  - *(i) Duty of Excise on Medicinal and Toilet Preparation Act.*
  - *(ii) Chapter V of the Finance Act, 1994 (Service Tax law).*

(j) However such restricted application or repeal of old laws would not affect or revive the following:

- Revive anything not in force or existing at the time at which the amendment or repeal takes effect. *To illustrate, if a person has not taken credit in the earlier regime due to restrictions on time limit, he does not get a chance to claim it after such time limit is removed due to repeal of ST law.*

- Affect the previous operation of the amended/repealed Acts or anything duly done or suffered there under. *To illustrate, if a person has duly filed returns under the old regime it cannot be questioned now by the department. Similarly, if a person has been penalised earlier for delay in filing returns and has paid late filing fee, it cannot be questioned now by the assessee.*
- Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended/repealed Acts. *To illustrate, a right of appeal, which accrues under the old regime and duly exercised before the CESTAT or Commissioner (Appeals) does not fail due to restricted application of the old laws. Similarly, the mandatory pre-deposit made under section 35F of the Central Excise Act, 1944, to pursue an appeal cannot be claimed as refund after GST is introduced.*
- Affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the amended/repealed Acts. *For example, if a Central Excise case is decided by the Supreme Court after enactment of GST and the party's appeal is rejected then the liabilities can still be enforced even though the CE Act may be repealed or applied in a restricted manner.*
- Affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, enquiry, assessment proceeding, adjudication and other legal proceeding or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so restricted or not so enacted. *To illustrate, if on the date of enactment of GST law, the matter is under investigation, it can be continued and the SCN can be issued subsequently invoking the old provisions.*
- Affect any proceeding including that relating to an appeal, revision, review or reference, instituted before the appointed day under the earlier law and such proceeding shall be continued under the earlier law as if this Act had not come into force and the said law had not been repealed. *To illustrate, all the pending matters before the Commissioner (Appeals), Revisionary Authority, CESTAT, High Court and Supreme Court, would be continued and would not abate due to introduction of GST law.*

174.3 Comparative review

It would be interesting to refer to the Supreme Court decision in Kolhapur Canesugar Works Limited Vs UOI, 2000 (119) ELT 257 (SC), which has explained the effect and importance of repeal or saving clause by referring to section 6 of the General Clauses Act, 1887. Since there is a special provision in the GST Act, it would apply. Wherever the specific provision does not address a particular issue relating to repeal or saving, it is necessary to fall back on the provisions of General Clauses Act.

174.4 FAQs

Q1. Which are the State laws repealed after introduction of GST?

Ans. Entry Tax laws, Entertainment Tax laws and Luxury Tax laws.

Q2. Which are the Central laws repealed after introduction of GST?

Ans. (i) Duty of Excise on Medicinal and Toilet Preparation Act.

(ii) Chapter V of the Finance Act, 1994 (Service Tax law).

Q3. Which are the State laws applied in a restricted manner after introduction of GST?

Ans. General Sales Tax/VAT would continue to apply – Eg.certain petroleum products.

Q4. Which are the Central laws not repealed after enactment of GST?

Ans. CST Act, 1956, CE Act, 1944 and CE Tariff Act, 1985, would continue to apply – Eg. Certain petroleum products.

Q5. Central Excise law would apply to which goods after introduction of GST?

Ans. Certain petroleum products and tobacco products.

Q6. Which are the goods or products to which VAT laws would apply even after GST is introduced?

Ans. Entry 84 of the Union List and Entry 54 of the State List, both forming part of the VII Schedule to the Constitution as amended by the Constitution (101st Amendment) Act, 2016, would continue to apply to certain goods. Consequently VAT laws would continue to that extent.

Q7. After introduction of GST what is the fate of all departmental appeals filed during the pre-GST regime?

Ans. It would continue and would not abate.

Q8. After introduction of GST whether Department can continue to investigate the offences allegedly committed under the old regime?

Ans. Investigation can continue and SCN can be issued later.

Q9. Can the Supreme Court dismiss all indirect tax appeals pending before it on the ground that GST Act has been introduced?

Ans. The appeals already instituted would be heard by the Supreme Court and would not abate or be dismissed.

174.5 MCQs

Q1. The _____ law is repealed after enactment of GST.

(a) Entry Tax law

(b) VAT law

(c) Company law

(d) Central Excise law.

Ans. (a) Entry Tax law.

Q2. Central Excise law would continue to apply in respect of goods covered by Entry _____ of Union List of VII Schedule to the Constitution.

(a) 84

(b) 85

(c) 54

(d) 47

Ans. (a) 84

Q3. State sales tax and VAT laws would continue to apply in respect of goods covered by Entry _____ of State List of VII Schedule to the Constitution.

(a) 84

(b) 85

(c) 54

(d) 47

Ans. (c) 54.

Q4. After enactment of GST law, all departmental appeals filed in respect of Central Excise and Service Tax would _____

(a) continue

(b) abate

(c) fail

(d) none of the above.

Ans. (a) continue

THE INTEGRATED GOODS AND SERVICE TAX ACT, 2017

Statement of Objects and Reasons:

Currently, the States effecting inter-State sale of goods are empowered to collect and retain Central Sales Tax (CST) under the Central Sales Tax Act, 1956.

The difficulties faced in the current indirect tax system are:

(i) The levy is non-vatable i.e. the credit of CST is not available as a set-off in the hands of the purchaser.

(ii) CST directly gets added to the cost of the goods resulting in cascading effect of the taxes on the cost of production of products.

(iii) Creation of tax arbitrage on account of the rate of CST being different from VAT levied on intra-State sale.

(iv) Several businesses are not in a position to procure goods in the course of inter-State trade or commerce after concessional rate of tax against the declaration forms.

To usher in the GST regime, levy of a single tax called Integrated Goods and Service Tax is considered necessary on the supply of goods or services or both taking place in the course of inter-State trade / commerce. The rate of tax is proposed to be more or less equal to the sum total of Central Tax (CGST) and State Tax (SGST) or Union Tax (UTGST). The new legislation, among others, broadly:

(i) Provides for levy of tax on all inter-State supplies of goods or services or both (except alcoholic liquor for human consumption) at a rate recommended by the GST Council (not exceeding 40%);

(ii) Provides for levy of tax on goods imported into India;

(iii) Provides for levy of tax on import of services on a reverse charge basis;

(iv) Empowers the Central Government to grant exemptions on the recommendation of the GST Council;

(v) Provides for determination of nature of supply (intra-State or inter-State) and place of supply

(vi) Provides for payment of tax by a supplier of Online Information and Database Access or Retrieval Services (OIDAR)

(vii) Enables apportionment of tax and settlement of funds on account of transfer of input tax credit between the Central Government, State Government and Union Territory; `

(viii) Provides for application of certain provisions of the Central Goods and Service Tax Act, 2017 to the extent relevant for the purposes of this Act;

(ix) Provides for transitional transactions in relation to import of services.

Chapter I
Preliminary

Statutory Provision

1.	**Short title, extent and commencement**
(1)	This Act may be called the Integrated Goods and Services Tax Act, 2017.
(2)	It extends to the whole of India except the State of Jammu and Kashmir.
(3)	It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint: Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Title

All Acts enacted by the Parliament since the introduction of the Indian Short Titles Act, 1897 carry a long and a short title. The *long title*, set out at the head of a statute, gives a full description of the general purpose of the Act and broadly covers the scope of the Act.

The *short title*, serves simply as an ease of reference and is considered a statutory nickname to obviate the necessity of referring to the Act under its full and descriptive title. Its object is identification, and not description, of the purpose of the Act.

Extent

Part I of the Constitution of India states: "India, that is Bharat, shall be a Union of States". It provides that territory of India shall comprise the States and the Union Territories specified in the First Schedule of the Constitution of India. The First Schedule provides for twenty-nine (29) States and seven (7) Union Territories.

Part VI of the Constitution of India provides that for every State, there shall be a Legislature, while Part VIII provides that every Union Territory shall be administered by the President through an 'Administrator' appointed by him. However, the Union Territories of Delhi and Puducherry have been provided with Legislatures with powers and functions as required for their administration.

India is a summation of three categories of territories namely – (i) States (29); (ii) Union Territories with Legislature (2); and (iii) Union Territories without Legislature (5).

The State of Jammu and Kashmir enjoys a special status in the Indian Constitution in terms of Article 370 of the Indian Constitution. The Parliament has power to make laws only on Defence, External Affairs and Communication related matters of Jammu and Kashmir. As regards the laws related on any other matter, subsequent ratification by the Government of Jammu and Kashmir is necessary to make it applicable to that State.

Therefore, the State of Jammu & Kashmir will have to pass special laws to be able to implement the Goods and Services Tax Acts as its current Constitutional status does not mandate the applicability of the Goods and Services Tax Acts in the state. Once the laws are passed by the State of Jammu & Kashmir, the Union Government will have to amend the Integrated Goods and Services Act, 2017 to delete the phrase that such provisions do not apply to the State of Jammu & Kashmir.

Commencement:

The IGST Act will come into operation on the date appointed by the Central Government by means of a notification in the Official Gazette (tentatively 1st July 2017). A provision has been made to notify different dates for commencement of different provisions of the Act.

It is expected that a notification with a prospective date of commencement of the IGST Act i.e. a specific date succeeding the date of notification in the Official Gazette would be issued. A notification providing for a retrospective date for commencement of the IGST Act cannot be issued, since that would result in simultaneous operation of two laws governing the same subject matter i.e. the existing law (s) and the IGST Act being in force during the period starting from such date of commencement until the date of notification in the Official Gazette.

Statutory Provision

2. Definitions

In this Act, unless the context otherwise requires-

(1) "Central Goods and Services Tax Act" means the Central Goods and Services Tax Act, 2017;

It refers to the Act under which tax is levied on intra-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption).

(2) ''central tax" means the tax levied and collected under the Central Goods and Services Tax Act;

Tax levied under the CGST Act is referred to as "Central tax" as opposed to "CGST" as used in the model GST laws. It refers to the tax charged under the CGST Act on intra-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 20% and thereafter, the rates for goods and services will be notified by the Central Government based on the recommendation of the Council.

It is relevant to note that the term 'central tax' under the IGST Act is defined to include tax levied and collected under the CGST Act whereas the term 'central tax' under the CGST Act is defined to include tax levied only. Therefore, the phrase 'central tax' has a wider connotation under the IGST Act as it includes taxes collected in addition to what is levied under CGST Act.

(3) "continuous journey" means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation.—For the purposes of this clause, the term "stopover" means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time;

This is relevant to determine the place of supply of passenger transport services.

Continuous journey refers to a journey where:

(a) A single or more than one ticket or invoice is issued at the same time;

(b) Service is provided by one service provider or by an agent on behalf of more than one service providers

(c) Journey does not involve any stopover at any of the legs of the journey for which one or more separate tickets or invoices are issued ("Stopover" means a place where a passenger disembarks from the conveyance).

The following aspects need to be noted:

- All stopovers will not cause a break in the journey. Only those stopovers for which one or more separate tickets are issued will be relevant. A travel involving Bangalore-Dubai-New York-Dubai-Bangalore on a single ticket with a halt at Dubai (onward and return) will be covered by the definition of continuous journey. However, if the passenger disembarks at Dubai or breaks his journey for a certain period in order to resume it at a later point of time, it will not be considered a continuous journey.
- All the above conditions should be cumulatively satisfied to consider the journey as continuous journey.
- A return journey will be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

(4) "customs frontiers of India" means the limits of a customs area as defined in section 2 of the Customs Act, 1962;

The customs frontiers of India include the following:

(a) Customs Port;

(b) Customs Airport;

(c) International Courier Terminal;

(d) Foreign Post Office;

(e) Land Customs Station;

(f) Area in which imported goods or goods meant for export are ordinarily kept before clearance by Customs Authorities

The following aspects need to be noted:

- Bonded Warehouses would now be covered under this definition.

- A person importing goods into the territory of India from an overseas exporter would be liable to pay IGST on such supply of goods.
- Where a transfer of documents of title takes place during import, the question of payment of tax by the importer would not arise since the documents of title would be transferred before the goods cross the customs frontier of India.
- Supplies made by an importer after the goods have crossed the customs frontier of India would be liable to CGST, SGST or IGST, depending on the facts of each case.

(5) "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Export of goods will be treated as 'zero-rated supplies'. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if the supplies were exempt supplies so long as the eligibility of the input taxes is established.

Following aspects need to be noted:

- Unlike export of services which requires fulfilment of certain conditions for a supply to qualify as 'export of services' like the nature of currency in which payment is required to be made, location of the exporter etc., export of goods doesn't require fulfilment of any such conditions.
- The movement of goods is alone relevant and not the location of the exporter/ importer.
- The exporter may utilise such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.
- The exporter will be eligible to claim refund under the following situations:
  - (i) He may export the goods under a Letter of Undertaking, without payment of IGST and claim refund of unutilized input tax credit; or
  - (ii) He may export the goods upon payment of IGST and claim refund of such tax paid.

(6) "export of services" means the supply of any service when, ––

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

The concept of export of services is broadly borrowed from the provisions of the current Service Tax law.

Under the GST regime, Export of service will be treated as 'zero-rated supplies'. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if supplies were exempt supplies as long as the eligibility of the input taxes as input tax credits is established.

The exporter may utilise such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.

The exporter will be eligible to claim refund under the following situations:

(a) He may export the services under a Letter of Undertaking, without payment of IGST and claim refund of unutilized input tax credit; or

(b) He may export the services upon payment of IGST and claim refund of such tax paid.

The following aspects need to be noted:

- The requirement under the Service Tax law was that the supplier should be located in the taxable territory i.e. India, excluding Jammu and Kashmir. Under the GST law, the requirement is that the supplier is located in India (which includes Jammu and Kashmir). It seems fairly reasonable to interpret that the Jammu and Kashmir is expected to pass appropriate legislations to implement the GST laws and therefore, the word 'India' finds a mention here and not 'taxable territory'. Considering this, unlike the present situation where the service tax law is not applicable to the State of Jammu and Kashmir, an exporter from Jammu and Kashmir would be able to claim input tax credit on such exports.
- However, assuming that the State of Jammu and Kashmir does not pass the necessary law, the above provisions would not be applicable in the State of Jammu and Kashmir.
- Although overseas establishment of a person in India is treated as a distinct person for purposes of levy of integrated tax, as regards export of services, this overseas establishment must demonstrate substance in its activities to qualify as recipient of the export of the services from India and establish itself as more than just a mere establishment of the person.
- Establishments will be treated as establishment of distinct persons under the following situations:

Situation	Location of one establishment	Location of the other establishment
I	India	Outside India
II	State or Union Territory	Outside that State or Union Territory
III	State or Union Territory	Business vertical registered in that State or Union Territory

Therefore, where both the establishments are located in a State/ Union Territory, the establishments will not be considered as distinct persons.

(7) "fixed establishment" means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs;

Fixed Establishment refers to a place:

(a) Having a sufficient degree of permanence

(b) Having a structure of human and technical resources

(c) Other than the registered place of business

The following aspects need to be noted:

- Not every temporary or interim location of a project site or transit-warehouse will (*ipso facto*) become a fixed establishment of the taxable person.
- The person should undertake supply of services or should receive and use services for own needs
- Temporary presence of staff in a place by way of a short visit to a place or so does not make that place a fixed establishment.
- Liaison Offices meant to undertake liaison activities cannot render services that are commercial in nature, in the garb of rendering liaison services. For e.g.: If a liaison office were to render marketing service to its parent entity outside India, for a customer located in India and the said liaison office staff receive a fee/ commission, then the concept of liaison office stands to test. In such a scenario, the reimbursements received by the liaison office could be subject to tax notwithstanding the fact that the entire transaction can be subjected to valuation as a permanent establishment.

(8) "Goods and Services Tax (Compensation to States) Act" means the Goods and Services Tax (Compensation to States) Act, 2017;

The Goods and Services Tax (Compensation to States) Act (for brevity "Compensation Act") provides for compensation to the States for the loss of revenue arising on account of implementation of GST for a period of 5 years from the said date of implementation. The cess paid on the supply of goods or services will be available as credit for utilization towards payment of said cess on outward supply of goods and services on which such cess is leviable.

(9) "Government" means the Central Government;

(10) ''import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

Import of goods into India would be treated as supply of goods in the course of inter-State trade/ commerce and would be liable to integrated tax under this Act.

The following aspects need to be noted:

- The place of supply of goods in case of imports would be the location of the importer. E.g.: If goods are imported at Mumbai port but the importer is at Delhi, the place of supply shall be Delhi.;
- The integrated tax would be levied on the value of goods as determined under the Customs law in addition to the custom duties levied on such imports. In other words, levy of Basic Customs Duty (BCD) will continue and the component of Countervailing Duty (CVD) and Special Additional Duty (SAD) will be replaced by Integrated tax;
- The time at which the customs duties are levied on import of goods would also be the time when integrated tax is levied;
- The importer will be liable to pay integrated tax on a reverse charge basis and the same will have to be discharged by cash only and credit cannot be utilized for discharging such a liability;
- Merchant Trading Transactions (MTT) i.e. where the supplier of goods will be resident in one foreign country, the buyer of goods will be resident in another foreign country and the merchant or intermediary will be resident in India, would primarily not come under the ambit of GST since they do not involve entry of goods into India.

(11)	''import of services" means the supply of any service, where—
(i)	the supplier of service is located outside India;
(ii)	the recipient of service is located in India; and
(iii)	the place of supply of service is in India;

The phrase "import of service" is very broad and covers all such supplies where:

(a) The supplier is located outside India,

(b) The recipient is located in India

(c) Place of supply is in India.

The following aspects need to be noted:

- Supplies, where the supplier and recipient are mere establishments of a person, would also qualify as "import of service".
- The importer will be liable to pay integrated tax on a reverse charge basis and the same will have to be discharged by cash only and credit cannot be utilized for discharging such a liability;
- Import of service made for a consideration alone would be taxable, whether or not in the course of business. Therefore, import of service for personal consumption for a consideration would qualify as 'supply' and would be liable to integrated tax. However, the recipient will not be required to obtain a registration for that purpose;
- The threshold limits for registration would not apply and the importer would be required to obtain registration irrespective of his turnover;

- Import of services from related persons or establishments located outside India without consideration also would be liable to integrated tax.

(12) "integrated tax" means the integrated goods and services tax levied under this Act;

It refers to the tax charged under this Act on inter-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 40% and will be notified by the Central Government based on the recommendation of the Council.

(13) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

The following aspects need to be noted:

- An intermediary arranges or facilitates supply of goods or services or both, or securities between two more persons. For e.g.: Travel Agent
- Two supplies are generally involved:
  - Supply between the principal and the third party; and
  - Supply of his own service to his principal – generally for a fee or commission;
- An intermediary cannot alter the nature or value of supply, which he facilitates on behalf of his principal;
- The consideration for an intermediary's supply is separately identifiable from the main supply that he is arranging and is in the nature of fee or commission charged by him;
- The test of agency must be satisfied between the principal and the agent i.e. the intermediary;
- The place of supply in relation to intermediary services is the location of the service provider.

(14) "location of the recipient of services" means, —

(a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient;

The phrase 'location of the recipient of services' is essential to determine the place of supply of service and can be understood in the following 4 sub-clauses:

(a) Services received at a place of business where registration is obtained – Location of such place of business;

(b) Services received at a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources) – Location of such fixed establishment;

(c) Services received at more than one establishment – Location of the establishment most directly concerned with the receipt of the supply;

(d) Services received at a place other than above – Location of the usual place of residence of the recipient (address where the person is legally registered/ constituted in case of recipients other than individuals).

Note: The definition uses the term "place", and not the phrase "State or Union Territory". Therefore, a view may be taken that the location of the recipient of the service could be determined under the residuary clause (i.e., usual place of residence), merely because it is received in a place of business which is neither registered as an additional place of business, nor a fixed establishment, although the place of receipt is in the same State as another place of business which is registered.

E.g.: Event management services received in the Mangalore unit of M/s. ABC Ltd. M/s. ABC Ltd has its registered office in Mumbai (having a GST registration) and has a branch office in Bangalore (having a GST registration). Mangalore unit is neither an additional place of business nor a fixed establishment. In such a case, a view may be taken that the location of the recipient of service is the Mumbai office, and not the Bangalore office, although Bangalore and Mangalore are located in the same State.

(15) "location of the supplier of services" means, —-

(a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier;

The phrase 'location of the supplier of services' is essential to determine the place of supply of service and can be understood in the following 4 sub-clauses:

(a) Services made from a place of business where registration is obtained – Location of such place of business;

(b) Services made from a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources) – Location of such fixed establishment;

(c) Services made from more than one establishment – Location of the establishment most directly concerned with the receipt of the supply;

(d) Other than the above – Location of the usual place of residence of the supplier (address where the person is legally registered/ constituted in case of recipients other than individuals).

Note: The definition uses the term "place", and not the phrase "State or Union Territory". Therefore, a view may be taken that the location of the provider of the service could be determined under the residuary clause (i.e., usual place of residence), merely because it is provided from a place of business which is neither registered as an additional place of business, nor a fixed establishment, although the place of provision is in the same State as another place of business which is registered.

Where services are provided from more than one establishment i.e. principal place of business and fixed establishment, the location of the establishment with which the service receiver is directly concerned will be considered for the purpose of determining the location of supply.

(16) "non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Explanation. —For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body, —

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

The phrase "non-taxable online recipient" covers the following persons:

(a) The Central Government

(b) Local Authority

(c) Governmental Authority i.e. an authority established with 90% or more participation by the Government and set-up to undertake functions entrusted to a municipality under Article 243W of the Constitution like:

- Preparation of plans for economic development,
- Urban planning,
- Fire Services,
- Water supply, etc.

Following aspects need to be noted:

- In case of supply of Online Information and Database Access or Retrieval (OIDAR) services by a person located in a non-taxable territory (outside India) to a non-taxable online recipient, the supplier would be liable obtain registration and pay integrated tax by providing the details of the state of consumption;
- Examples of such services are e-downloads of games, movies by an individual from a foreign entity.

(17) "online information and database access or retrieval services" means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as, —

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) online gaming;

The definition has very wide coverage of activities/ services delivered in the digital economy and is drafted in line with the provisions under the Service Tax laws to include services like e-downloads of games, movies etc., web-hosting services, online supply of on-demand disc space, distance teaching, etc.

An indicative list of services that would not be covered under Online Information and Database Access or Retrieval (OIDAR) services are:

- Legal services or Financial services advising clients through e-mail
- Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network (using a remote link)

Following aspects need to be noted:

- Supply of Online Information and Database Access or Retrieval (OIDAR) services by a person located in a non-taxable territory (outside India) to a non-taxable online recipient, would be liable to tax in the hands of the supplier;
- The supplier would be responsible for collection and remittance of service tax to the Government of India;

- The supplier can take a single registration under the Simplified Registration Scheme (yet to be notified by the Government);
- Alternatively, a person located in India (other than J&K) representing the supplier can obtain registration and pay the tax on behalf of the supplier. If the supplier does not have a representative/ physical presence in India (other than J&K), he can appoint a person who will be liable to pay the integrated tax on such transactions by providing the details of the state of consumption;
- Business-to-Business (B2B) transactions w.r.t. OIDAR will be taxable in the hands of the recipient itself under reverse charge mechanism.

(18) "output tax", in relation to a taxable person, means the integrated tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

The output tax i.e. integrated tax chargeable on inter-State taxable supply of goods or services can be summarised as under:

Type of Supply	Reference
Supplies between 2 States (or UT with Legislature)	Section 7(1) and 7(3) of the IGST Act
Import of goods or service	Section 7(2) and Section 7(4) of the IGST Act
Supplies to/ by a SEZ developer or unit	Section 7 (5) (b) of the IGST Act
Supplies made by a person located in India and where the place of supply is outside India	Section 7 (5) (a) of the IGST Act

Following aspects need to be noted:

- While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the law from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but who have failed to obtain registration.
- The amount covered under this term is the amount of tax that is 'chargeable', and not the amount that is 'charged'. Therefore, in case a person wrongly charges tax, or charges an excess rate of tax, as compared to the applicable tax rate, such excess would not qualify as output tax.
    - Some experts are of the view that taxes payable by recipient of supply, on account of making inward supplies of such categories of supply as are notified for the purpose of reverse chargeability of tax, or making inward supplies from unregistered persons, would also be out of the scope of 'output tax'.
- The implication of the exclusions mentioned above is that the input tax credit cannot be utilised for making payment of any amount that does not qualify as output tax.

Discharge of liability in such cases has to be by way of cash payments (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).

- The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the tax paid on such supplies as output tax in the hands of the supplier.

(19) "Special Economic Zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;

It covers two categories of zones as under:

(a) Zones which are existing as on 10.02.2006 i.e. the date when SEZ Act was made effective

(b) Zones which have been notified under Section 3(4) and Section 4(1) of the SEZ Act, 2005

Notifications under Section 3(4) are issued when the State Government wants to set up a SEZ and the Notifications under Section 4(1) are issued when any other person (except State Government) wants to set-up a SEZ. The notifications issued therein specify the SEZ area.

(20) "Special Economic Zone developer" shall have the same meaning as assigned to it in clause (g) of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co-Developer as defined in clause (f) of section 2 of the said Act;

The term "Special Economic Zone developer" covers the following persons:

(c) Person/ State Government who has been granted a letter of approval by the Central Government

(d) Special Economic Zone Authority

(e) Co-developer

Where the State Government/ person wants to set up a SEZ, notifications are required to be issued under Sections 3(4) and Section 4(1), respectively and after fulfilment of the prescribed conditions and procedures, a letter of approval is granted. Such a person who has been granted a letter of approval is regarded as a developer.

A co-developer is a person who has been granted a letter of approval for providing infrastructure facilities or for carrying out authorized operations in a notified SEZ. The Board of Approval (BoA) may specify the facility required to be developed by such a co-developer and in such a case, the co-developer will enter into an agreement with the developer for the specified purpose.

Supplies made to SEZ developer/ unit would be regarded as zero-rated supplies.

(21) "supply" shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act;

The concept of 'supply' has been discussed in detail in the analysis of 'Supply'.

(22) "taxable territory" means the territory to which the provisions of this Act apply;

It covers the whole of India except the State of Jammu and Kashmir.

(23) "zero-rated supply" shall have the meaning assigned to it in section 16;

The following taxable supplies of goods and/or services are considered as 'zero rated supplies':

(a) Export of goods or services or both

(b) Supply of goods or services or both to a SEZ developer or SEZ unit

Input tax credit can be availed for making zero-rated supplies, even though such zero-rated supplies may be an exempt supply. This would however be subject to section 17 of the CGST Act.

A taxable person exporting goods or services would be eligible for refund under the following two options:

- Export under bond without payment of integrated tax and claim refund of unutilised input tax credit; or
- Export on payment of integrated tax which can be claimed as refund accordingly.

(24) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;

Certain words and expressions like person, supplier, recipient, reverse charge, time of supply, value of supply etc. defined in the CGST/ SGST/ UTGST laws will have the same meaning for the purpose of IGST law.

(25) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.

Chapter II
Administration

Statutory Provision

3. Appointment of officers The Board may appoint such central tax officers as it thinks fit for exercising the powers under this Act. 4. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.

3.1/4.1 Introduction

Although CGST and IGST are both taxes of the Union, it is required that lawful authority be vested in certain persons to discharge duties for purposes of Integrated Tax.

3.2/4.2 Analysis

It is for this reason that the board has been empowered to appoint Central tax officers to discharge duties under the IGST Act. Please note of appointment of officers remains with the government but confirmation of responsibility to act as integrated tax officers is left with the board.

In suitable enabling provision has also been made where by officers of State / UT Tax can be authorised to discharge functions under the IGST Act. Such a provision is necessary in order to maintain uniformity in administration of notified supplies or notified category of taxable persons which are exclusively left under the CGST act to be administered by officers of State / UT Tax. If appreciable that careful consideration has been given to ensure that there is no duplication of administrative power at the same time sufficient flexibility is enabled to ensure smooth and seamless tax compliance experience for trade and industry in GST regime.

Chapter III
Levy and Collection of Tax

Statutory provision

5. Levy and collection of Integrated Goods and Services tax

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both; except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

(2) The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) The integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax

5.1 Introduction

The Constitution mandates that no tax shall be levied or collected by a taxing Statute except by authority of law. While no can be taxed by implication, a person can be subject to tax in terms of the charging section only.

This is the charging provision of the IGST Act. It provides that all inter-State supplies would be liable to IGST at rate recommended by the council and notified subject to a ceiling rate of 40%. The provision of this section is comparable to the provision under Section 9 of the CGST Act and Section 7 of the UTGST Act.

The levy is on all goods or services or both except alcoholic liquor for human consumption. Further, GST may be levied in supply of petroleum crude, high spirit diesels, motor spirit (petrol), natural gas and aviation turbine fuel with effect from the date notified by the Government on the recommendation of GST Council.

The levy of tax on supply of goods and / or services is in three parts - (i) in the hands of the supplier and (ii) in the hands of the recipient of goods / services under reverse charge mechanism and, (iii) in case of specified services, in the hands of electronic commerce operator

5.2 Analysis

In terms of Section 2(24) of the Act, any words or expression which are used in this Act, but are not defined should be assigned the meaning as given to such words or expressions in the CGST Act, the UTGST Act, and the GST (Compensation to States) Act.

With specific reference to this Section, the following words / expressions would be relevant.

- Supply
- Inter-State supply
- Goods
- Services
- Taxable person

The meaning to the expression 'inter-State supply' can be understood from Section 7 of this Act. However, the meaning of 'supply' and 'taxable person' should be borrowed from the CGST Act. Reference may be made to the CGST Act for an in-depth understanding of such expressions and words.

Levy of tax: Every inter-State supply will be liable to tax, if:

(i) There is a Supply either of goods or services or both, even when a supply involves goods or services or both the law provides that such supply would be classifiable only as goods or services in terms of Schedule II of the Act.

(ii) The supply is an inter-State supply – viz. ordinarily, the location of the supplier and the place of supply are in different States. (Refer Section 7 of the IGST Act to understand the meaning of inter-State supply);

(iii) The tax shall be payable by a 'taxable person' as explained in Section 2(107) read with Section 22 and Section 24 of the CGST Act.

Supply: Refer discussion under Section 7 the CGST Act for a detailed understanding of the expression 'supply'. Additionally, the comments relating to 'composite supply' and 'mixed supply' will equally apply for supplies taxable under IGST Act.

Tax shall be payable by: The tax shall be payable by a 'taxable person' as defined under Section 2(107) read with Section 22 and Section 24 of the CGST Act. Broadly, a taxable person is one who is registered or who is required to be registered under the GST law. Please refer to the discussion under the CGST Act for a thorough understanding of this concept.

Tax payable: Every inter-State supply falling under Section 7 of the IGST Act will attract IGST, if gets covered by section 5.

Tax on import of goods: This Act provides that IGST shall be levied on import of goods in terms of Section 3 of the Customs Tariff Act, 1975. It implies that on such importation of goods IGST will be payable in addition to the Basic Customs Duty (BCD). The proviso to Section 5(1) of the IGST Act also clarifies that the value and point at which IGST would payable will be determined in accordance with Section 12 of the Customs Act, 1962.

Rate and value of tax: The rate of tax will be notified separately, but shall not exceed 40%, and the value of supplies would be as determined under Section 15 of the CGST Act.

Applicability in respect of e-commerce operators: Refer discussion under section 9(5) of the CGST Act for an understanding of the applicability of this provision for e-commerce operators.

Reverse charge mechanism: Normally, the supplier of goods and / or services will be liable to discharge tax on the supplies effected. However, the Central Government is empowered to specify categories of supplies in respect of which the recipient of goods and / or services will be liable to discharge the tax.

Similarly, registered person shall be liable to discharge the tax in respect of supply of taxable and / or services by unregistered person.

Accordingly, all other provisions of this Act and CGST Act, as applicable, will apply to the recipient of such goods and / or services, as if the recipient is the person liable to pay tax in relation to supply of such goods and / or services.

E-commerce: Where any supply of services is effected through e-commerce operators, the law provides that the Central Government may on recommendation of the Council notify that the e-commerce operator will be liable to discharge the tax on such supplies. In case where the e-commerce operator:

(a) Does not have a physical presence then the person who represents the e-commerce operator will be liable to pay tax.

(b) Does not have a physical presence or a representative, then the e-commerce operator is mandatorily required to appoint a person who will be liable to pay tax.

In so far as e-commerce operators are concerned, care must be exercised to determine the nature of business of such operators. Essentially, there are four models of e-commerce business:

(a) Market-place – the question of supply by the e-commerce operator does not arise. For this reason, they are liable for TCS under section 52.

(b) Fulfillment center – here States have been contesting that this model is one involving 'buy-sell' and accordingly liable to GST. The test here is to establish the fact that the supply is by supplier directly to the end customer and not 'through' the e-commerce operator.

(c) Hybrid (of above 2) – although not widely prevalent, this is a case where both buy-sell as well as market-place models are employed. It is important for such business to clearly demarcate the two lines-of-business or choose to merge into either of the two so that the respective incidence of tax follows.

(d) Agency – this is employed by few business involving supply of industrial inputs. The *modus operandi* is that the principal logs in to the portal and routes the supplies to the end customer. The agreements are so framed that the e-commerce operator becomes responsible for the delivery and collection of payment. This renders the e-commerce Operator to constitute an agency involving handling of the inventory themselves. Such arrangements may be reviewed to ensure the inference of agency . And where such transactions *inter se* come within the operation of entry 3 of Schedule I of the CGST Act states that transactions between Principal and Agent are treated be a supply and liable to tax. This consequence may be borne in mind even by e-commerce businesses.

5.3 Comparative review

Under the current tax laws, Central Excise is on 'manufacture of goods', VAT / CST is on 'sale of goods' and Service tax is on 'provision of service'. Unlike different industries under current law in a GST regime, 'it is supply which is a taxable event'. Further, free supplies would be liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit; Unlike different incidences, under the GST law, it is 'supply' which would be the taxable event. Under the current law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST. However, under the GST law, it would be taxable as a 'supply.

Under the current law, there are multiple transactions which apparently qualify as both 'sale of goods' as well as 'provision of services'. E.g. license of software, providing a right to use a brand name, etc. Unlike this situation, GST clarifies as to whether a transaction would qualify as a 'supply of goods' or as 'supply of services'. A transaction would either qualify as goods or as services, under the GST law. Even in respect of composite contracts, it has been clarified under Schedule II, Definition of composite supply and mixed supply in the CGST law.

The payment of VAT by the purchaser (registered dealer) on purchase of goods from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism, in respect of say, import of services, sponsorship services etc., are comparable to the 'reverse charge mechanism' prescribed herein. However, under GST law, the Central Government can notify class of goods which are subject matter of reverse charge.

5.4 Related provisions

Statute	Section	Description
IGST	Section 7	Meaning of inter-State supplies
CGST	Section 9	Levy and collection of CGST /SGST
CGST	Section 7 read with Schedule I II and III	Definition of 'supply'
CGST	Section 2(107) read with Section 22 and Section 24	Meaning of 'taxable person'
CGST	Section 2(17)	Definition of 'Business'

5.5 FAQs

Q1. Will sale of business as a whole be liable to tax?

Ans. Clause (d) of Section 2(17) of the CGST Act provides that supply or acquisition of goods including capital goods and services in connection with commencement or closure of business is also included in the term "business". Therefore, the goods element in the sale of business, would be regarded as 'supply' and therefore, liable to tax.

One may also refer to Schedule II which specifies listed number of issues when it will not be taxable.

Q2. Is the reverse charge mechanism applicable only to services?

Ans. No, Section 5(3) or 5 (4) of the IGST Act and Section 9(3) or (4) of the CGST Act does not limit reverse charge to services, it applies to goods also.

Q3. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. The recipient of supply will be the person liable to pay the tax – i.e., reverse charge mechanism would operate.

Q4. In respect of exchange, will the transaction be taxable as two different supplies or will it taxable only in the hands of the main supplier?

Ans. Taxable as two different supplies. Exchange from point of view of each party will need to be examined if it attracts the requirements of levy of tax.

Q5. In respect of exchange or barter, if one supply is intra-State and another is inter-State, how will the taxes be applicable?

Ans. As two separate supplies and taxes as applicable (as inter-state and / or intra-state respectively)

Q6. What are examples of 'disposals' as used in supply?

Ans. Sale of old furniture by a garment manufacturer.

Note: Disposal is where the articles are being cleared up and not necessarily as the main object of the business)

Q7. Will recovery towards food and conveyance from employees be liable to tax as supply by the employer to the employee?

Ans. Yes, as the exclusion in Schedule-III is only in respect of services 'by employee' to the employer and not other way around.

Q8. Will a Bank qualify as a taxable person for sale of hypothecated / pledged goods (auction)?

Ans. Yes. Nature of business as a bank does not affect tax liability. GST is payable if there is any supply of taxable goods or services even by a bank

Q9. Will an Insurance company be a taxable person for sale of repossessed goods?

Ans. Yes. Although not the principal source of income, sale of repossessed goods is key aspect of insurance business

Q10. Will a "not for profit entity" be liable to tax on any sales effected by it – e.g.: sale of assets received as donation?

Ans. Yes. NPEs do not distribute profit to promoters but that does not exclude from doing activities that conform to definition of business.

Statutory provision

6. Power to grant exemption from tax

(1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an Explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such

Explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation. –– For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

6.1 Introduction

This provision states that the Central Government may grant exemptions for inter-State supply of certain goods and / or services. Reference may also be made to Section 11 of the CGST Act and Section 8 of the UTGST Act for a better understanding.

6.2 Analysis

The Central Government will be empowered to grant exemptions from payment of IGST on inter-State supplies, subject to the following conditions:

(i) Exemption should be in public interest

(ii) By way of issue of notification

(iii) On recommendation from the Council

(iv) Absolute / conditional exemption may be for any goods and / or services

(v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature.

With specific reference to the fourth condition indicated above, it is important to note that the exemption would only be in respect of goods and / or services, and not specifically for classes of persons.

E.g.: An absolute exemption could be granted in respect of supply of fertiliser. A conditional exemption could be supply of fertiliser subject to the condition that no Input tax credit has been claimed in respect of inputs and capital goods.

Exemption by way of special order is where the exemption is issued for a specific purpose. E.g. Exemption to imports made for a defence project during the times of emergency.

Mandatory nature of absolute exemptions has been litigated in the past and where tax is paid even though exemption is available, credit becomes admissible. For this reason, absolute exemptions have been made compulsory. As such, credit denial also becomes absolute. No plea of equity or revenue neutrality becomes admissible.

There is generally not much doubt about exemptions – whether absolute or conditional – because the condition associated may be examined at one-time or continuously to be satisfied. Conditional exemptions abate if the associated condition is not complied. Care should be taken not to mistake conditional exemption with absolute exemption having specific applicability.

From the explanation provided after sub-Section (2), there is one school of thought wherein it is opined / understood that in case of conditional exemptions, there is an option available to the taxable person to pay the tax (by which way, there would be no requirement for input tax credit reversals). However, an absolute exemption is required to be followed mandatorily. The other view is that exemptions would never be optional, and would be mandatory automatically when the conditions relating to the exemption are satisfied. This provision does not bring in any clarity on this issue.

In terms of sub-Section (2), the Government may issue a special order on a case-to-case basis. The circumstances of exceptional nature would also have to be specified in the special order. While this provision is welcome, industry is apprehensive that this could be used without necessary superintendence.

To provide more clarity to the exemption notification or the special order, it is provided that the Government may issue an "Explanation" at any time within a period of 1 year from the date of notification or special order. The effect of this "Explanation" would be retrospective, viz., from the effective date of the relevant notification or special order.

The law mandates that when the exemption is absolute (i.e., if whole or part of tax leviable is exempt) the registered person cannot collect taxes in excess of the effective rate.

Exemption under section 11 of the CGST/SGST Act equally applicable

Any exemption notification or special order issued under Section 11 of the CGST Law will apply equally for inter-State supplies, viz., any supply of goods or services or both which are exempt under CGST Law will be exempt even under the IGST Law

Effective date of the notification or special order

The effective date of the notification or the special order would be date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would come into force on the date of its issue by the Central Government for publication in the Official Gazette. It follows that such notification/ order shall be made available on the official website of the department of the Central Government.

Exemption under CGST Act	Deemed to exempt under SGST Act
	Deemed to exempt under UTGST Act
Exemption under IGST Act	No auto-application of exemption

6.3 Comparative review

The provisions relating to exemption are broadly similar to the exemption provisions under the current tax regime. There are no significant differences.

6.4 Related provisions

Statute	Section	Description
CGST	Section 11	Exemption from payment of CGST / SGST
UTGST	Section 8	Power to grant exemption from tax

6.5 FAQs

Q1. Can an exemption be granted for inter-State supplies when such an exemption is not granted for intra-State supplies?

Ans. Yes.

Q2. Can the Central Government issue a special order for exemptions that are only meant for transactions liable to IGST?

Ans. Yes.

Q3. Is the State Government empowered to grant exemption by way of a special order for inter-State supplies?

Ans. No. The State Government is not empowered to grant exemptions on any inter-State supplies.

Chapter IV
Determination of Nature of Supply

Statutory provision

7. Inter-State Supplies

(1) Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in—

(a) two different States;

(b) two different Union territories; or

(c) a State and a Union territory,

shall be treated as a supply of goods in the course of inter-State trade or commerce.

(*2*) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.

(*3*) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in—

(a) two different States;

(b) two different Union territories; or

(c) a State and a Union territory,

shall be treated as a supply of services in the course of inter-State trade or commerce.

(*4*) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

(*5*) Supply of goods or services or both, —

(*a*) when the supplier is located in India and the place of supply is outside India;

(*b*) to or by a Special Economic Zone developer or a Special Economic Zone unit; or

(*c*) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

7.1 Introduction

Having examined levy and the scope and coverage of supply, the next aspect to determine is the nature of supply so as to identify the right kind of tax applicable in a given case. It is important to note that nature of supply is not a question of fact but the result of application of

the law to the fact, which provides us the answer. Concluding the answer about the nature of tax is paramount not only for the selection of the right kind of tax but also to recognise the departure of GST from the well understood principles under the current law.

Nature of supply does not refer to 'place of supply'. The next chapter deals with place of supply but before getting to place of supply it is important to understand the nature of supply. There are very specific principles laid down that need to be identified from the facts in each transaction in order to determine the nature of supply that is involved.

7.2 Analysis

Inter-State supply of goods

At the outset one may need to bear in mind the treatment extended to the subject matter of supply, that is, whether the supply is of goods or services or both or supply involving goods but treated as supply of services in terms of the fiction specified in schedule II. In respect of goods (treated as goods), if the location of the supplier and the place of supply are in two different States or UT or either, then the supply will be in the course of inter-State trade or commerce.

We need to pause here and examine the two terms that have been used, namely:

(a) Location of supplier – Unlike in the case of services, location of supplier of goods is a term that is not defined in the law. This is not an oversight of the draughtsman but a deliberate intention of the lawmaker to leave it to the facts of each case to determine the 'location of supplier of goods'. For example, If a company incorporated in Delhi were to place purchase order on a manufacturer in Maharashtra to produce certain articles and sell it on Ex-Works basis with instructions to retain it until further instructions. This would be a case where the manufacturer in Maharashtra would like to charge IGST because the purchase order is from a customer in Delhi. In this supply, the location of supplier is Maharashtra and place of supply in is also Maharashtra. Therefore, the manufacturer is required to charge CGST-SGST because these goods do not involve any movement and after lapse of time the delivery is deemed to be complete in Maharashtra itself. Now, instructions are received to dispatch the goods to a warehouse in Madhya Pradesh, the supply by the manufacturer having been completed long before these dispatch instructions are received, there is a new supply emerging from Maharashtra to Madhya Pradesh caused by the Company in Delhi. In this new supply, the location of supplier can either be Delhi – registered place of business – or Maharashtra – the physical point where the goods are situated. The location of the registered place of business cannot be guiding the nature of supply to such an extent that transactions that ought to be taxed when the goods somehow escape the incidence. The point where goods are situated more accurately represents the location of supplier. The location of supplier is therefore the physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied. This interpretation augurs well with the concept of casual taxable person. The company in Delhi that collects delivery of the goods in Maharashtra and supplies

them from Maharashtra to Madhya Pradesh must be regarded as casual taxable person in Maharashtra liable to pay IGST on this supply.

If however, the delivery by the manufacturer is not completed Ex-Works but retained to be delivered to Madhya Pradesh at the instruction of the customer in Delhi then it would be a case of supply from Maharashtra to Delhi and from Delhi to Madhya Pradesh. We can identify the examples where the location of supplier of goods is more accurately determined by the physical point where the goods are located under the control of the person wherever incorporated or registered, ready to be supplied instead of relying on a superfluous fact of the registered place of business.

(b) Place of supply – It appears to be a phrase that is easily understandable but due to the presence of chapter V (i.e. place of supply of goods or services or both) in this Act demands that the commonsense understanding be avoided but the meaning ascribed to place of supply from section 10 to 13 of this Act be applied. Place of supply, therefore, is a phrase of legal significance whose meaning is to be determined by examining the respective section in chapter V and brought to bear while determining nature of supply. For example, manufacture in Maharashtra and supply to a company in Delhi on Ex-Works basis, its place of supply has to be the location of completion of delivery. And in respect of the new supply from Maharashtra to Madhya Pradesh, the place of supply is where the movement terminates for delivery – Madhya Pradesh.

It is therefore important to identify the location of supplier of goods and not based on a statutory definition but by inquiring into the facts of a transaction of supply and comparing this with the place of supply appointed by the statute in chapter V. Now, if these two are situated in different States or UTs or either, then the nature of supply is declared by section 7 to be in the course of inter-State trade or commerce.

This provision is subject to the provisions of section 10 because any interpretation or application of this section 7 cannot be in derogation of the place of supply dictated by section 10. Section 7 can be correctly interpreted only by identifying the location of supplier of goods based on the physical point where the goods are situated and comparing that with the answer from referring to section 10 regarding place of supply of goods.

> 2(10) import of goods with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

With regard to supply of goods that are imported into the territory of India, by legislative override it is declared that if the goods crossed the customs frontiers of India, the supply will always be in the course of inter-State trade or commerce. Reference may be made to the definition of import of goods (s. 2(10)) which adverts to the physical movement of goods into India from a place outside India by the active efforts on the part of any person (who may be situated in India or outside India).

The use of the word 'bringing' in sec 2(10) excludes naturally and involuntarily occurring phenomena causing the relocation of goods into India from a place outside India. There may be any number of supplies taking place between persons who are incorporated outside India

and persons who are incorporated and even registered in India – they will all be transactions of supply in the course of inter-State trade or commerce – till such time the goods cross the customs frontiers of India.

Import of goods

We need to pause here again and examine two kinds of transactions – those that commence outside the territory of India and are concluded also outside territory of India and those that commence outside but conclude by entering the territory of India. For example, company in Germany supplies goods from Germany to another company in Sri Lanka – this is not a supply in the course of inter-State trade or commerce because it commences and concludes outside the territory of India. It would be so, even if the goods were supplied by the company in Germany from Germany to a customer incorporated in India if the goods are not 'brought' into India but sold in high seas to yet another company in Singapore. In order for every supply to come within the operation of subsection 2 to section 7 it requires that the resultant effect of the supply must cause the goods to enter the territory of India. This Act does not enjoy extraterritorial jurisdiction and is limited to imposing tax if the goods are imported into the territory of India.

> 2(4) customs frontiers of India mean the limits of a customs area as defined in section 2 of the Customs Act, 1962;

Further, if goods have been brought into India but have not left the customs frontiers of India, that is, the limits of a customs area, any supplies that are taking place after being brought into India until they cross the customs frontiers of India even though the place of entry into India and the place that comprises the customs frontier may be in the same State will continue to be supply is in the course of inter-State trade or commerce. For example, goods have been imported from France by a company incorporated and registered in Nasik have landed at Mumbai port but during their clearance are supplied by the Nasik company to a company in Pune, this supply continues to be in the course of inter-State trade or commerce. Even though the supplier is in Nasik and the recipient is in Pune, since the goods have not yet crossed the customs frontiers of India at the time of supply. This supply comes within the operation of sub-section 2of section 7. A test that can be applied to determine whether the supply has been concluded before the goods crossed the customs frontiers of India or not crossed the customs frontiers of India is – who has filed a bill of entry in respect of the goods imported as required under the Customs Act. In the above example, a bill of entry is filed by the company in Nasik then the supply must be understood to have taken place just after they have crossed the customs frontiers of India. But if the company in Pune has filed a bill of entry then the goods supplied by the importer (Nasik company) must be understood to have taken place before they crossed the customs frontiers of India. It merits mention here that the concept of 'sale in the course of import' recognised under the CST Act stands obliterated by this subsection 2 to section 7. Reference may be made to The Taxation Laws (Amendment) Act, 2017 wherein section 3 of the Customs Tariff

> The Taxation Laws (Amendment) Act, 2017 amending Customs Act, Customs Tariff Act, Central Excise Act and Central Excise Tariff Act received Presidential assent on _____

Act, 1975 has been amended by substitution of sub sections 7 and 8 to require the imposition of IGST on all goods imported into India. Corresponding changes have also been made to the Central Excise Act, 1944 where duty is imposed only on those articles not subsumed into GST.

Inter-State supply of services

Continuing with interstate supply, but in respect of services, it is firstly important to recollect that this provision will apply not only in respect of supply of services but also in respect of transactions involving goods which are treated as supply of services by the fiction in schedule II. The discussion regarding location of supplier of goods and place of supply of goods will be applicable in the context of services but only to a limited extent for the reason that location of supplier of services has been defined in this Act.

The location of supplier of services and the place of supply of services are in two different States or UTs or either, such as supply of services shall be in the course of inter-State trade or commerce. It is interesting to note that interstate trade is not simply called 'intrastate trade' but is prefixed with 'in the course of'. This prefix is not without reason, because such prefix is missing in relation to intra-State supply. The significance of 'in the course of' is well explained in the decision of State of Bihar Vs TELCO LTD 27 STC 127 at pg. 148 where the Hon'ble Supreme Court has held that it signifies a series of activities that are all interrelated in an unbroken chain of events so intimately linked to each other that all of them are bound together 'in the course of' such an inter-State trade transaction.

Location of supplier of services is defined to mean 'place of business from where supply is made and duly registered for the purpose'. It also includes other places 'from where' supplies are made being a fixed establishment – a place with sufficient degree of permanence and suitable structure to supply services. And lastly, the usual place of residence of the service provider. It is interesting to note that the location of supplier of services has nothing to do with the business premises 'wherefrom' supply is made.

For example, a company incorporated in Chennai engaged in the business of investment in immovable property and letting them out on rent may have such investments in Chennai and in Hyderabad. By the definition of location of supplier of services being the 'place of business', the company has its place of business where its 'seat of management' is located – Chennai. Accordingly, the location of service provider in relation to the transaction involving renting of immovable property is not where the property let out is situated but the registered office of the company where the management has its seat for decision making. Therefore, in relation to property in Chennai that is let out, it is an intra-State supply because location of supplier of services and place of supply both in Chennai. In respect of its property located in Hyderabad, it is an inter-State supply because the location of supplier of service is in Chennai but the place of supply is Hyderabad. Surely, there is no argument to support the view that in every place where property is located the decision to let out such property is taken in each such location. On the contrary, all decisions are taken where the seat of management is located and therefore, the location of supplier of service remains Chennai wherever the let-out properties may be situated. This view may not be acceptable to all but merits attention.

Special category of inter-State supplies

Fiction in law is no stranger to taxation and GST law indulges in use of fiction without any hesitation. The following categories of supplies of goods or services or both, are treated as being in the course of inter-State trade or commerce:

2(105) supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

(a) when the supplier is located in India and the place of supply is outside India

Here it is extremely important to note that usage of the 'supplier is located' is not to be equated with 'location of supplier'. From the previous discussion, it is learnt that location of supplier of goods is – physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied. But, the deliberate departure in usage of the same set of words is almost misleading. Supplier is located in India does not refer to location of supplier. Instead, it is a simple question of fact as to where the supplier is located. Please note, that the 'supplier' is none other than the 'one who supplies' and not his agent or representative or any other person. The question that arises is – what is the GST impact in case the supplier is located outside India and the place of supply is outside India? The Act applies to supplies within the taxable territory and when both – supplier as well as place of supply – being located outside India, the Act does not enjoy any jurisdiction to impose tax even if the recipient is located in India. The destination of consumption being decided by the place of supply provisions and not location of the recipient

(b) where the supply is 'to' or 'by' an SEZ developer or unit

Here, it is important to note that supply to SEZ (developer or unit) is treated as inter-State supply. Supply 'by' SEZ (developer or unit) will also be treated as inter-State supply. Further, the implication of this provision is also that supply by SEZ's *inter se* – one SEZ unit (or developer) to another SEZ unit (or developer) – will also be treated as a supply in the course of inter-State trade or commerce. Let us take a few examples to illustrate the implications from this provision:

- Taxable person (non-SEZ) located in Jaipur supplying goods to an SEZ unit located in Jodhpur is a supply in the course of inter-State trade or commerce.
- SEZ unit in Kolkata supplying services to another SEZ unit in Kolkata is a supply in the course of inter-State trade or commerce.
- Lease of premises by SEZ developer in Chennai to SEZ unit in that same zone in Chennai will be a supply in the course of inter-State trade or commerce.
- non-SEZ Sales by SEZ unit in Kochi to a non-SEZ in Kochi will be a supply in the course of inter-State trade or commerce.
- Disposal of scrap by an SEZ developer in Mumbai to a scrap dealer in Mumbai (outside the zone) is a supply in the course of inter-State trade or commerce.

- Export of goods by an SEZ unit to a customer in Italy is a supply in the course of inter-State trade or commerce.

(c) Any supply not being an intra-State supply

Here it is to be considered that any supply that falls outside the scope of intra-State supply will not escape GST but would be an inter-State supply due to this residual provision in the Act

7.3 Comparative Review

There is no such proposition in the existing laws as the concept of supply is unique to our tax system and considered as a 'taxable event' for the first time in indirect tax regime. As mentioned earlier, Section 7 must be read alongside Sections 10,11,12 & 13 and whenever a conflict arises between the said provisions, Section 7 should make way for the provisions of such Sections, which is signified by usage of the words "subject to the provisions of Section 10/12".

However, broadly this can be compared with the provisions of CST Act, 1956 which provides for determining when a sale will be an inter-State sale or when a sale in outside the State.

7.4 Related Provisions

Statute	Section / Rule / Form	Description
IGST	Section 8	Meaning of intra-State supplies
IGST	Section 10	Place of supply of goods
IGST	Section 12	Place of supply of services
IGST	Section 5	Levy and collection
CGST	Section 9	Levy and collection of CGST / SGST

Statutory provision

8. Intra-State Supplies

(*1*) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely: –

(*i*) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;

(*ii*) goods imported into the territory of India till they cross the customs frontiers of India; or

(*iii*) supplies made to a tourist referred to in section 15.

(*2*) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation 1. ––For the purposes of this Act, where a person has, ––

(*i*) an establishment in India and any other establishment outside India;

(*ii*) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or

(*iii*) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory,

then such establishments shall be treated as establishments of distinct persons.

Explanation 2. ––A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

8.1 Introduction

With the background discussion on inter-State supplies, it would be appropriate to contrast this understanding with a discussion on intra-State supplies.

Analysis

Intra-State supply of goods

In relation to goods, section 8 provides that where the location of the supplier and the place of supply are in the same State or UT, such a supply will be treated as an intra-State supply. Reference may be had to the discussion on location of supplier of goods in the context of section 7 which may be relied upon for the purpose of this discussion. This provision too, is made subject to the provisions of section 10, that is, reference must be had to section 10 regarding the place of supply and the conclusion reached by applying section 10 is required to be read into this section for the purpose of determination of the intra-State nature of the supply. The two factors – location of supplier and place of supply – must at the conclusion of a supply be in the same State or UT. And when it is so, the supply would be an intrastate supply of goods.

For example, a company incorporated in Uttar Pradesh having purchased certain goods in Odisha and supplying the same to the customer also in Odisha under two separate transactions of supply, both of them will be intra-State supplies. The company in Uttar Pradesh will be a casual taxable person in Odisha as regards the outward supply made.

Therefore, it is important to bear in mind that the place of incorporation of the supplier in any transaction is not relevant as the location of the supplier which has been explained earlier as – physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied.

Three exceptions have been carved out in this provision, namely:

- supply 'to' or 'by' an SEZ developer or unit
- supply involving goods imported into India but not beyond the customs frontiers
- supply to outbound tourist as per section 15

These three exceptions make it abundantly clear that they have been treated to be an intrastate supply, expressly under section 7. This proviso excludes any opportunity to question the probable intrastate nature of the said supply. As discussed in the various examples where even though the movement may be within the same State but due to the fiction in section 7 – these supplies being treated as in the course of intrastate trade or commerce – cannot be disturbed by section 8. The express exclusion is evidence of a suspect inclusion – with this proviso, there is no question of the inter-State nature of the supplies listed.

Please note that the supplies are not three specific supplies but three classes of supplies. Examples of supply to or by an SEZ developer or unit has already been discussed in detail earlier the same may be referred. Supply involving goods imported into India also been discussed and the same may be referred. For examples regarding supplied to tourist, kindly refer discussion under section 15.

2(15) location of supplier of services means –

(a) where a supply is name from a place of business for which the registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and

(d) in the absence of such places, the location of the usual place of residence o the supplier;

Intra-State supply of services

With regard to supply of service, if the twin factors – location of supplier of services and place of supply of services – are in the same State or UT, then such supply will be treated as intra-State supply. Location of supplier of services has been defined in the Act to mean 'place of business from where supply is made and duly registered for the purpose'. It also includes other places and reference may be had to the discussion in respect of inter-State supply of services for the implications of this definition. To provide some additional illustration, please consider movement of goods from Delhi to Noida under a lease arrangement. This arrangement being a month-to-month lease, would be inter-State supply in the first month but after that the lessee does not return the leased goods to the lessor but retains it at the end of the month only to take it back on lease from the beginning of the second month. Here, the transaction for the first month would be an inter-State supply but thereafter from the second month onwards, it would be an intra-State supply (lease being a service) requiring the lessor to obtain

registration in the State of Uttar Pradesh. Please refer to more detailed discussion under section 10.

Further, here too we find caution exercised in expressly excluding supply of services 'to' or 'by' SEZ developer or unit from the scope of intra-State supply of services. The two explanations provided are significant as the concept of distinct persons in section 25(4) of CGST Act is further clarified in stating that the following will also be distinct persons, namely:

- establishment in India and an establishment outside India
- establishment in a State or UT and an establishment outside that State or UT
- establishment in a State or UT and a business vertical (registered separately) in the same State of UT

Please note that the term 'establishment' may be interpreted as being similar to 'fixed establishment' which is defined in this Act in identical manner with the definition in section 2(50) of CGST Act. It refers to it being 'a place with sufficient degree of permanence and suitable structure to supply services or to receive and use the services'.

2(7) fixed establishment means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs:

8.2 Comparative Review

There is no such proposition in the existing laws as the concept of supply is unique to our tax system and considered as a 'taxable event' for the first time in indirect tax regime. Section 8 has to be read alongside Sections 10 and 12 and whenever a conflict arises between the said provisions, Section 8 has to make way for Section 10/12, which is signified by usage of the words "subject to the provisions of Sections 10/12".

However, broadly this can be compared with the provisions of CST Act, 1956 which provides for determining when a sale will be an inter-State sale or when a sale in outside the State.

8.3 Related Provisions

Statute	Section / Rule / Form	Description
IGST	Section 7	Meaning of inter-State supplies
IGST	Section 5	Levy and collection of IGST
IGST	Section 10	Place of supply of goods
IGST	Section 12	Place of supply of services
CGST	Section 9	Levy and collection of CGST / SGST

Statutory provision

9. Supplies in Territorial Waters
Notwithstanding anything contained in this Act, —–
(*a*) where the location of the supplier is in the territorial waters, the location of such supplier; or
(*b*) where the place of supply is in the territorial waters, the place of supply,
shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

9.1 Introduction

GST being a destination based consumption tax (discussed in greater detail in section 10), the actual place of supply may sometimes be in the territorial waters of India. And it could also be where the supplier is required to travel into the territorial waters to supply goods or services. While the nature of supply in these cases may be inter-State supplies, it will be decided by section 7 but the ambiguity about the exact location – either of the supplier or of the place of supply – requires to be addressed by statute. For this reason, clear provisions are laid down as to where on the land mass of India, will the actual location be linked to. Please note the statute uses the expression 'deemed to be' which would supply an artificial meaning. Also, this provision does not seek to violate exclusive jurisdiction of the Union on matters of territorial waters but merely establishes a link to the land mass of India to overcome judicial intervention or assumptions by industry.

9.2 Analysis

The provision identifies two facts that have been discussed at length in the context of section 7 and 8, namely:

- Location of supplier of goods or services or both
- Place of supply of goods or services or both

By applying the provisions of section 10 and 12, if it is established that the 'place of supply' is in the territorial waters and not on the land mass, there can be ambiguity as to the applicability of the provisions of section 7 and 8 in these cases. Similarly, if the location of the supplier is found to be in the territorial waters and not on the land mass, there can be a doubt, if not about the applicability of section 7 and 8, at least about the manner of their applicability. To address these situations, the statue lays down, by a deeming fiction, that such locations – supplier or place of supply – will be the most proximate State or UT. For example, if repair services are provided by a company in Delhi on a ship moored off the coast of Kochi for a shipping company from United Kingdom, the place of supply being the location of the ship will create doubt about the applicability of GST. Now, by the provisions in section 9, it is clear that the place of supply of the repair services will not be the waters but Kochi. With this doubt having been resolved, it would be an inter-State supply albeit to the UK company. Another example: lease of ocean exploration equipment by a company in Chennai to a company incorporated in Mumbai to carry out oil exploration off the coast of Andhra Pradesh. The

location of supplier being guided by location of goods at the time of supply can create doubt. With the application of section 9, the location of supplier will be Andhra Pradesh, albeit of a Chennai company, especially in the second and subsequent months.

The non-obstante clause at the beginning of this section is important to overcome any alternative interpretations that may be attempted by reading other provisions of the Act.

9.3 Comparative Review

Under the current tax laws, Central Excise is on 'manufacture of goods', VAT / CST is on 'sale of goods' and Service tax is on 'provision of service'. Unlike different incidences, under the GST law, it is 'supply' which would be the taxable event. Under the current law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST. However, under the GST law, it would be taxable as a 'supply. Further, free supplies would be liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit; under the GST law, the treatment would be similar to the present VAT laws, where the supplies are made without any consideration (monetary/ otherwise).

Under the current law, there are multiple transactions which apparently qualify as both 'sale of goods' as well as 'provision of services'. E.g.: license of software, providing a right to use a brand name, etc. Unlike this situation, GST clarifies as to whether a transaction would qualify as a 'supply of goods' or as 'supply of services'. A transaction would either qualify as goods or as services, under the GST law. Even in respect of composite contracts, it has been clarified under the GST law (Schedule II of the Act, concept of composite supply and mixed supply).

The payment of VAT in the hands of the purchaser (registered dealer) on purchase of goods from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism in respect of say, import of services, sponsorship services etc. are comparable to the 'reverse charge mechanism' prescribed herein. However, the concept of partial reverse charge/ joint charge is not expected to continue in the GST regime, viz., every supply will be liable to forward charge/ reverse charge, wholly. Further, the concept of reverse charge only exists in relation to services. The GST law, however, permits the supply of goods also to be subjected to reverse charge.

9.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
IGST	Section 7	Meaning of inter-State supplies	Defines intra-State supplies of goods and / or services for the purposes of levy of tax under the CGST Act
CGST	Section 9	Levy and collection of GST	Charging Section under CGST Act
CGST	Section 7 read with Schedule I, II and III	Definition of 'supply'	Every supply of goods or services would be liable to tax. Thus, it becomes essential to understand the meaning of 'supply'.
CGST	Section 22	Persons liable for registration	Liability to tax is on every taxable person. Thus, it becomes essential to understand the meaning of 'taxable person'.
CGST	Section 49	Payment of tax	Provides for method and timelines for remittance of tax by the registrant.

Chapter V
Place of Supply of Goods or Services or Both

Statutory provision

10. Place of supply of goods, other than supply of goods imported into, or exported from India

(1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under, ––

(*a*) where the supply involves movement of goods, whether by the supplier or than supply of the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

(*b*) where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;

(*c*) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;

(*d*) where the goods are assembled, or installed at site, the place of supply shall be the place of such installation or assembly;

(*e*) where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

(*2*) Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.

10.1 Introduction

Place of supply is important to determine the kind of tax that is to be applied. When the location of supplier and the place of supply are in two different States, then it will be an inter-State supply and IGST applies. And when they are in the same State, then it will be an intra-State supply and CGST-SGST applies. 'Place of supply' is not a phrase of common understanding, it is a legal term and as in the cases of all legal terms, their common

understanding must not be applied but the meaning assigned to them in the law must be followed. Place of supply, similar to time of supply, is that which the legislature has appointed.

GST is understood as a 'destination based consumption tax' but there is no provision that declares this fact. This missing declaration is more than adequately supplied by the principle being embodied in the provisions of 'place of supply'. It is here that we find that the destination principle of GST is fully captured. The law maker has declared, in each case of supply, its destination of supply.

10.2 Analysis

(a) Place of Supply – Supplies within India

Place of supply of goods, where the supplier and the recipient are both located within India, will be determined in accordance with section 10 of the IGST Act. The phrase 'location of supplier of goods' has not been defined in the IGST Act and this is deliberate. Two very important phrases are relevant, namely:

- Location of supplier – the word 'location' in this phrase refers to the site or premises (geographical point) where the supplier is situated with the goods in his control ready to be supplied or in other words it is the physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied;
- Place of supply of goods – this is a legal phrase which the Section decides to be the site or premises (geographical point) as its 'place of supply'.

Place of supply in each case is discussed below:

(i) Where 'supply involves movement', the place of supply will be the place where the goods are located at the time at which the movement terminates for delivery to the recipient. The location of the goods is a question of fact to be ascertained by observing the journey that the goods supplied make from their origin from supplier and terminating with recipient. This movement, however, can be by the supplier or by the recipient after having disclosed the destination of their movement or journey. Movement 'terminates for delivery' requires a brief understanding about the manner of concluding delivery. Delivery – the mode and the time – is the unilateral choice of the recipient and the supplier has no authority to decide 'how' and 'when' he will deliver the goods to the recipient. It is easy to determine in a contract for supply where it records this 'choice' of the recipient regarding the mode and time of delivery. The supplier is always duty-bound to deliver in exactly the same way – manner and timing – which the recipient dictates. In fact the supplier continues to be obligated until delivery is completed in the way it is stated by the recipient. In other words, delivery is not complete if there is any deviation in either the manner or the timing as compared to that dictated by the recipient. When the delivery is to the satisfaction of the recipient, then the supplier is released from his obligation. Therefore, the additional question of fact to be determined is the mode and time of delivery dictated by the recipient and whether the same has been complied with to the satisfaction of the recipient.

(ii) Where goods are delivered by the supplier to the recipient but at the instruction of a third party, then the place of supply will be determined to be the place of supply which will be the principal place of business of such third party and not of the actual recipient. It is important to identify the two supplies involved – by supplier to third party and by third party to recipient. This provision deals only with the first limb of supply, that is, supply by supplier to third party. The question that arises is – the *locus* or authority of the third party to issue instructions to the supplier regarding its delivery. Even though the definition in section 2(93) refers to recipient as the 'payer of the consideration', in this provision, recipient is the one who actually collects the goods. And the third party is the one who enjoys privity with the supplier to be able to direct him to deliver the goods. Now, the place of supply will not be dependent on whether the movement of goods is from one State to another (if the supplier and recipient are in two different States) but as declared by the section to be dependent on the principal place of business of such third party.

> *2(93) "recipient" of supply of goods or services or both, means—*
> *(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;*
> *(b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and*
> *(c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and*
> *any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;*

(iii) Where the supply does not involve movement of goods, the place of supply will be the location of the goods at the time of its delivery to the recipient. It is not a case where there is difficulty in movement of the goods, but a case where the supply contemplates that the goods ought not to move and when their delivery to the recipient will stand complete. For example, a generator that is bolted to the concrete floor in the basement of a building purchased by the tenant and being left behind at the time of rejecting the tenancy, the supply of the generator by the tenant to the landlord for an agreed price is a case of 'supply that does not involve movement of the goods'. In such cases, the place of supply will be where the generator stands bolted to the concrete floor and without requiring any movement. The landlord (recipient) confirms satisfactory completion of delivery. This provision comes into operation only when its applicability is established based on the facts involved in the supply, that is, they do not involve movement. Reverting to the previous sub-section where the second limb of supply – by the third party to the recipient, where the goods having already reached their destination under the first supply are supplied – is a supply that does not involve movement of goods. And

the place of supply would be where the equipment is located (with the recipient) at the time of confirmation of satisfactory completion of delivery.

(iv) Where the goods are assembled or installed at site, the place of supply will be the location of such installation or assembly. It is important to note that due to the introduction of 'composite supply' and the fact that this assembly or installation is not a 'works contract', this provision refers to only one supply. In other words, supply from the place of their origin to the site 'for' assembly or installation is subsumed within this provision and merged with the supply to the recipient by virtue of such assembly or installation. This provision appoints the place of supply based on the final act of assembly or installation. There is no requirement to vivisect the entire composite supply of goods (not being works contracts) that is a supply-cum-installation into a supply-plus-installation. If such vivisection were to be done, then in every instance of supply-cum-installation, the supplier will become a 'casual taxable person' in the State where the assembly or installation is required. Further, it is important to note that in the case of assembly or installation, it is a supply that is not 'works contract'. This is because works contracts, in GST, are treated as supply of service and that too only if the resultant is an immovable property and the provisions of this section do not apply to works contracts.

(v) Where goods are supplied on-board a conveyance, the place of supply will be the location at which the goods are taken on-board. Here too, are two supplies – supply of the goods 'to' the operator of the conveyance and supply 'by' the operator to the passenger during the journey 'in' the conveyance. The place of supply appointed under this sub-section is in respect of the second limb which is the supply by the operator of the conveyance during its journey to the passenger. Conveyance includes vessel, aircraft, train or motor vehicle. The place of supply in respect of first limb of supply will continue to be determined by other provisions of this section and only the second limb of supply 'on-board the conveyance' will be determined by this sub-section.

(vi) Where none of the above provisions are applicable to determine the place of supply of goods, the Central Government will prescribe rules (based on recommendations of the Council) regarding the manner of its determination. Please ensure that before taking recourse to this residual provision, it must be demonstrated that the supply is one which is not already covered by any of the earlier sub-sections.

Place of supply concept – goods or services:

Supplier	Place of Supply	Whether inter-State / intra-State
Kerala	Bihar	Inter-State (IGST)
Puducherry	Puducherry	Intra-State (CGST Pud GST)
Chandigarh	Chandigarh	Intra-State (CGST UTGST)
Chandigarh	Punjab	Inter-State (IGST)
Chandigarh	Daman & Diu	Inter-State (IGST)
Goa	Goa	Intra-State (CGST + Goa GST)
Karnataka (SEZ)	Karnataka (non-SEZ)	Inter-State (IGST)

Place of supply of goods, other than supply of goods imported into, or exported from India

Section 10(1)(a): Supply involves movement of goods

Particulars	Supplier's factory from where goods are removed	Termination of movement for delivery	Place of supply	Tax Payable
Movement of goods by the supplier (goods dispatched by supplier)	Orissa	Assam	Assam	IGST payable at Orissa
[Section 10(1)(a) read with 2(96)(a) of CGST Act]	Orissa	Orissa	Orissa	CGST / SGST payable at Orissa
Movement of goods by the recipient (goods collected by recipient)	Kerala	Goa	Goa	IGST payable at Kerala
[Section 10(1)(a) read with 2(96)(b) of CGST Act]	Kerala	Kerala	Kerala	CGST / SGST payable at Kerala

Section 10(1)(b): Supply involves movement of goods, and delivered to a person on the instruction of a third person

Leg 1: Supply from the supplier of goods (Seeta) to the person to whom the goods are delivered (Ram) on the instruction of a third person (Lakshman) – *Place of supply shall be the principal place of business of the person on whose instruction goods are delivered to the receiver of goods*:

Case	Location of Supplier - Seeta	Place of delivery of goods - Office of Ram	Principal place of Lakshman who instructed delivery to Ram	Place of supply for Seeta	Type of tax payable by Seeta
1	Ahmedabad	Ahmedabad	Amritsar	Amritsar	IGST at Ahmedabad
2	Ahmedabad	Amritsar	Amritsar	Amritsar	CGST + Guj GST at Ahmedabad
3	Ahmedabad	Bangalore	Bangalore	Bangalore	IGST at Ahmedabad
4	Ahmedabad	Chandigarh	Udaipur	Udaipur	IGST at Ahmedabad

Leg 2: Deemed supply of goods by the person on whose instruction (Lakshman) the goods were delivered by the original supplier (Seeta) to the receiver of goods (Ram) – *Place of supply shall be the location of the goods at the time of delivery to the recipient*:

Case	Location of Supplier - Seeta	Place of delivery of goods - Office of Ram	Principal place of Lakshman who instructed delivery to Ram	Place of supply for Lakshman	Type of tax payable by Lakshman
1	Ahmedabad	Ahmedabad	Amritsar	Ahmedabad	IGST at Punjab
2	Ahmedabad	Amritsar	Amritsar	Amritsar	CGST + Punj GST at Punjab
3	Ahmedabad	Bangalore	Bangalore	Bangalore	CGST + Kar GST at Karnataka
4	Ahmedabad	Chandigarh	Udaipur	Chandigarh	IGST at Rajasthan

Section 10(1)(c): Supply does not involve movement of goods

Particulars	Location of supplier	Location of recipient	Location of goods	Place of supply	Tax Payable
Sale of pre-installed DG Set	Delhi	Bhopal	Bhopal	Bhopal	IGST payable at Delhi
Manufacture of moulds by job-worker (supplier), sold to the Principal, but retained in job worker's premises	Tamil Nadu	Kerala	Tamil Nadu	Tamil Nadu	CGST + TN GST payable at Tamil Nadu
A businessman in Noida has an old car lying unused in his hometown in Sikkim	Noida But in this case, Sikkim (registration as casual taxable person)	Sikkim	Sikkim	Sikkim	CGST + Sik GST payable at Sikkim

Section 10(1)(d): Supply of goods assembles/ installed at site

Particulars	Location of supplier	Registered office of recipient	Installation/ Assembly Site	Place of supply	Tax Payable
Installation of weigh bridge	Delhi	Bhopal	Bhopal	Bhopal	IGST payable at Delhi
Servers supplied and installed at the office of a marketing firm	Karnataka	Goa	Karnataka	Karnataka	CGST + Kar GST payable at Karnataka
Supply of work-stations	Gujarat	Gujarat	Kerala	Kerala	IGST payable at Gujarat

Section 10(1)(e): Supply of goods supplied on board a conveyance

Particulars	Location of supplier	Loading of goods	Passenger boards at	Place of supply	Tax Payable
Supply of canned aerated drinks on a flight	Punjab	Punjab	Delhi	Punjab	CGST + Pun GST payable at Punjab
Sale of Haldirams mixtures by their sales person during the journey	Pune	Goa	Hyderabad	Goa	IGST payable at Pune
Sale of sun-glasses on a ship	Bangalore	Chennai	Cochin	Chennai	IGST payable at Bangalore

Statutory provision

11 Place of Supply of Goods Imported into, or Exported from India

The place of supply of goods, ––

(*a*) imported into India shall be the location of the importer;

(*b*) exported from India shall be the location outside India.

11.1 Analysis

Place of Supply – Supplies outside India

Place of supply of goods where the goods are imported into or exported from India will be determined in accordance with section 8 of the IGST Act. Import of goods is defined in section 2(5) of the IGST Act and export of goods is defined in section 2(10) of the IGST Act. With

these definitions, which are with reference to the movement of goods and not the location of the supplier or recipient. In this case, the place of supply will be:

(i) In the case of import of goods, the location of the importer and

(ii) In the case of export of goods, the location outside India where the goods are exported.

> 2(5) "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;
>
> 2(10) "import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

It is important to recognize that payment in convertible foreign exchange is not at all a criterion for determining whether it is export or import in respect of goods. Whereas payment in foreign exchange is relevant for services including transactions involving goods treated as services. Transactions of merchanting trade – where the goods are procured from one country and are directly dispatched without entering India will not be a supply in the 'taxable territory'. Financial effect of such transactions alone will be reflected in the books of accounts without incidence of GST. Another form of international supply – high sea sales – is also a transaction that transpires outside the taxable territory and not attract incidence of GST. Reimport of export goods will also be liable to GST in the same manner.

Imports will be liable to IGST in addition to basic customs duty and exports will be zero-rated with benefit of refund of input tax credit or rebate of tax paid. Please refer to The Taxation Amendment Act, 2017 for the necessary amendments made to Customs Tariff Act, 1975 and Central Excise Act, 1944 to enable imposition of BCD+IGST on import of goods liable to GST.

Place of supply of goods imported into, or exported from India

Section 11(a): Import of goods

Case	Location of supplier	Location of goods before supply	Goods supplied to	Location of recipient	Place of supply
1	Thailand	Thailand	Assam	Assam	Assam
2	China	China	Kashmir	Haryana	Kashmir
3	Sri Lanka	Sri Lanka	Kerala	Kerala	Kerala
4	Karnataka	Iran	Dubai	Karnataka	Not an import

Section 11(b): Export of goods

Case	Location of supplier	Location of goods	Goods supplied to	Location of recipient	Place of supply
1	Assam	Assam	Thailand	Assam	Thailand
2	Tamil Nadu	Kashmir	China	Texas	China
3	Sri Lanka	Kerala	Sri Lanka	Sri Lanka	Sri Lanka
4	Maharashtra	Dubai	Iran	Iran	Not an export

Statutory provision

12. Place of Supply of Services where Location of Supplier and Recipient is in India

(*1*) The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.

(*2*) The place of supply of services, except the services specified in sub-sections (*3*) to (14)

(*a*) made to a registered person shall be the location of such person;

(*b*) made to any person other than a registered person shall be, ––

(*i*) the location of the recipient where the address on record exists; and

(*ii*) the location of the supplier of services in other cases.

(*3*) The place of supply of services, ––

(*a*) directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or

(*b*) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or

(*c*) by way of accommodation in any immovable property for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or

(*d*) any services ancillary to the services referred to in clauses (*a*), (*b*) and (*c*),

shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation. —Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(*4*) The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.

(*5*) The place of supply of services in relation to training and performance appraisal to, ––

(*a*) a registered person, shall be the location of such person;

(*b*) a person other than a registered person, shall be the location where the services are actually performed.

(*6*) The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

(*7*) The place of supply of services provided by way of, —

(*a*) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or

(*b*) services ancillary to organization of any of the events or services referred to in clause (*a*), or assigning of sponsorship to such events, —

(*i*) to a registered person, shall be the location of such person;

(*ii*) to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.

Explanation.—Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(*8*) The place of supply of services by way of transportation of goods, including by mail or courier to, —

(*a*) a registered person, shall be the location of such person;

(*b*) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.

(*9*) The place of supply of passenger transportation service to, —

(*a*) a registered person, shall be the location of such person;

(*b*) a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (*2*).

Explanation. ––For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.

(*10*) The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

(*11*) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall, —

(*a*) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;

(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;

(c) in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means, ––

(*i*) through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or

(ii) by any person to the final subscriber, be the location where such prepayment is received or such vouchers are sold;

(*d*) in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:

Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:

Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of

services on the record of the supplier of services shall be the place of supply of such services.

Explanation.—Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(*12*) The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:

Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

(*13*) The place of supply of insurance services shall, ––

(*a*) to a registered person, be the location of such person;

(b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.

(*14*) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

12.1 Analysis

(a) Place of Supply – Supplies within India

Place of supply of services where both the supplier and recipient are located within India will be determined in accordance with section 12 of the IGST Act.

(i) General provision regarding place of supply will be as follows:

- Services supplied to a recipient who is registered, it will be the location of such person
- Services supplied to a recipient who is not registered, it will be the address-on-record of such person and where such address is not available, it will be the location of supplier

(ii) Specific provisions regarding place of supply that will apply in priority over the general provisions will be as follows:

- Services directly in relation to immovable property will be the location of such property. The expression 'in relation to' encompasses a wide range of services that have a proximate nexus with the immovable property. The provision lists these services – architects, interior decorators, surveyors, engineers and other related experts or estate agents, grant of rights to use immovable property or carrying out / coordination of construction work. As can be seen, this list is not exhaustive and therefore – 'in relation to' – test will continue to be applicable to identify the services that will have the location of the property as its place of supply. Also, the location of the supplier or recipient is irrelevant in such cases. Further, there are other services that have proximity to immovable property that are 'by way of' accommodation. Such services too have, as their place of supply, the location of such property. Such property may be a hotel, inn, guest house, homestay, club or campsite including houseboat. The use of such property may be accommodation or for organizing a function such as marriage. The end-use will not alter the applicability of this provision but the proximity of the property vis-à-vis the services. Services that are ancillary to such services would also be covered by this provision. Further, goods required in construction activity received as stock before being assigned to any particular site will not be determined by this provision but the general provision. For example, steel purchased in bulk and sent to a central warehouse being deployed to any specific site
- Services of restaurant and catering, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery will be the location where these services are actually performed. The services listed in this provision do not carry a common thread so as to allow expanding this list. At the same time, each of these services themselves are a broad description of various specific services that may be performed under that umbrella. Services, must be examined very carefully to fall with the scope of this provision.
- Services of training and performance appraisal supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location where services are actually performed. Recipient here being the 'payer of the consideration' is not to be misconstrued to be the 'trainee' or 'person appraised'.
- Services of admission to a venue will be the location of the venue. The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment or an amusement park including ancillary services. Services referred to here are only 'admission' and not for organizing the event at the venue.
- Services of organizing an event including ancillary services supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location of the venue itself. The event that is organized may be cultural, artistic, sporting, scientific, education or

entertainment. Services referred to here are 'by way of' organizing the event at the venue. Where the event is organized in a ground or field being an immovable property, the service of securing the location has, as its place of supply, determined by a foregoing provision but the rest of the services of organizing the event alone will fall in this provision.

- Services of transportation of goods supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location where goods are handed over for such transportation. Transportation of goods may be by any mode including mail or courier.
- Services of transportation of passenger will be the location of the recipient when supplied to a registered person. When the recipient is not registered, the place of supply will be the location of embarkation. Return journey is regarded as separate bookings and where the point of embarkation is unknown then the place of supply will be based on the general provisions prescribed.
- Services supplied on-board a conveyance, will be the first scheduled point of departure.
- Telecommunication services are provided in various forms and the place of supply will depend on the mode of providing the services. Where the services involve an in situ device installed to enable the service, the place of supply will be the location where such device is installed. This device may be a dish antenna, telephone line, etc. Where the services involve portable device, the place of supply will be the billing address if the same is on post-paid basis. And where it is on pre-paid basis, the place of supply will be the location of any intermediary who facilitates the supply or location where payment is received. Where none of the situations provide an appropriate location, then the place of supply will be the address-on-record of the recipient. If address is not available, then the location of supplier will be the place of supply
- Banking and financial services including stock broking services will be the location of the address-on-record of the recipient. And if address is not available, then the location of supplier will be the place of supply. The services referred in this provision are not services 'by' a banking or financial institution but services 'of' banking and financial services. As such, the service is to be examined and not the service provider. Classification of services to identify the applicability of this provision is an important exercise that is to be undertaken
- Insurance services supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the address-on-record of the recipient
- Advertisement services involving 'dissemination' of the material supplied to the Government or a statutory body will be the location of such dissemination. Where

it is identifiable to a specific State, then that would be the place of supply and where it disseminated over number of States, then a rule of proportion or any other reasonable basis is to be applied

(iii) Considering that place of supply has been so specifically covered in the various provisions discussed, it is to be borne and recollected that identifying the place of supply is for purposes of determining whether it is an inter-State supply or an intra-State supply. After must resistance to let go of the experience from current tax laws, it would dawn upon each of us to eschew seeking registration in every State where their services constitute a place of supply., but rather rely upon this section to open the doors to choose to effect inter-State supplies from one (or few) State only instead of multi-State registration that may be necessitated under current tax laws.

Statutory provision

13. Place of Supply where Location of Supplier and Location of Recipient is outside India

(*1*) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.

(*2*) The place of supply of services except the services specified in sub-sections (*3*) to (*13*) shall be the location of the recipient of services:

Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.

(*3*) The place of supply of the following services shall be the location where the services are actually performed, namely: —

(*a*) services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:

Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:

Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, then that which is required for such repairs;

(*b*) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.

(*4*) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of

accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.

(*5*) The place of supply of services supplied by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organization, shall be the place where the event is actually held.

(*6*) Where any services referred to in sub-section (*3*) or sub-section (*4*) or sub-section (*5*) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.

(*7*) Where the services referred to in sub-section (*3*) or sub-section (*4*) or sub-section (*5*) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

(*8*) The place of supply of the following services shall be the location of the supplier of services, namely: ––

(*a*) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;

(*b*) intermediary services;

(*c*) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation. ––For the purposes of this sub-section, the expression, ––

(*a*) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;

(*b*) "banking company" shall have the same meaning as assigned to it 2 of 1934. under clause (*a*) of section 45A of the Reserve Bank of India Act, 1934;

(*c*) ''financial institution" shall have the same meaning as assigned to it 2 of 1934. in clause (*c*) of section 45-I of the Reserve Bank of India Act, 1934;

(*d*) "non-banking financial company" means, ––

(*i*) a financial institution which is a company;

(*ii*) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or

(*iii*) such other non-banking institution or class of such institutions, as the Reserve

Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.

(*9*) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.

(*10*) The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.

(*11*) The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.

(*12*) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.

Explanation. —For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely: —

(*a*) the location of address presented by the recipient of services through internet is in the taxable territory;

(*b*) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;

(*c*) the billing address of the recipient of services is in the taxable territory;

(*d*) the internet protocol address of the device used by the recipient of services is in the taxable territory;

(*e*) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;

(*f*) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;

(*g*) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

(*13*) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

13.1 Analysis

Place of supply of services where either the supplier or recipient are located outside India will be determined in accordance with section 13 of the IGST Act. In other words, this provision applies for the determination of export of services as well as for import of services.

> *2(6) "export of services" means the supply of any service when*
> *(i) the supplier of service is located in India;*
> *(ii) the recipient of service is located outside India;*
> *(iii) the place of supply of service is outside India;*
> *(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and*
> *(v) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8;*
> *2(11) "import of service" means the supply of any service, where*
> *(i) the supplier of service is located outside India;*
> *(ii) the recipient of service is located in India; and*
> *(iii) the place of supply of service is in India;*

International supplies involving services are not verifiable similar to goods. GST, in certain cases, treats supplies involving goods as 'supply of services'. In such cases too, this provision will apply for determination of their export and import. Given the definition of export of services and import of services and on comparing them to goods, it will be evident that there is really no comparison. Matters such as location of supplier, location of recipient, currency of compensation, etc., assume importance in relation to services including goods that are treated as supply of services. In this background, we may analyze place of supply of services where either one – supplier or recipient – is located outside India.

Then the place of supply determined by application of this provision may be carried into the definition to determine whether the international supply meets the requirements to be regarded as 'export of services' or 'import of services'. This may be somewhat unnatural but that is the correct approach because location of recipient outside India and payment in foreign currency are tests that the GST law does not appreciate. In this time and age of forex surplus, when two enterprises which are both located within India transacting in foreign currency is not impermissible.

Place of supply of international supplies is as follows:

(i) General provision regarding place of supply will be the location of the recipient of the services. But, it will be the location of the supplier of services if the location of the recipient is not known without employing any extraordinary means. Recipient is defined as 'payer of the consideration' in section 2(93) of the CGST Act

(ii) Specific provisions regarding place of supply that will apply in priority over the general provision will be as follows:

- Services that are 'in respect of' goods made available 'to' persons representing recipient for performance of those services will be the location where the services are actually performed. It is noteworthy that the services to which this provision is to apply are not expressly listed here and left to an application of – made available for performance – test to determine its applicability. Services that are

supplied by remotely accessing the goods, the place of supply will be the location of the goods, without prejudice to goods that are imported for 'repair and return'. Place of supply will be the location where the greatest proportion of service is performed if they are carried out in multiple locations. Further, rule of proportion is to be applied in case the services are carried out in different States.

- Services 'directly in relation to' immovable property will be the location of such property. The expression 'in relation to' encompasses a wide range of services that have a proximate nexus with the immovable property. Such property may be a hotel, inn, guest house, homestay, club or campsite including houseboat. The end-use will not alter the applicability of this provision but the proximity of the property vis-à-vis the services. Services that are ancillary to such services would also be covered by this provision. Place of supply will be the location where the greatest proportion of service is performed if they are carried out in multiple locations. The , rule of proportion is to be applied in case the services are carried out in different States. Services required in construction activity are received before being assigned to any particular site will not be determined by this provision but the general provision. For example, lease of construction equipment sent to a central warehouse before being deployed to any specific site.
- Services of admission to a venue will be the location of the venue. The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment or an amusement park including ancillary services. Services referred to here are only 'admission' and not for organizing the event at the venue. Further, place of supply will be the location where the greatest proportion of service is performed if they are carried out in multiple locations. Further, rule of proportion is to be applied in case the services are carried out in different States
- Services in the following three cases deviates from the 'destination' principle and appoints the place of supply to be the location of the supplier:
  - Services of a banking company or a financial institution or NBFC – reference to services 'of' indicate that this specific provision will encompass all activities by such a service provider performed in their capacity as such
  - Intermediary services – defined in section 2(13) provide for a broad set of activities. It is important to examine whether the role of an intermediary is limited in any manner to marketing (proliferation of information to potential customers), pre-sale (submitting quotations) and post-sale (assisting in delivery, installation and after-sales support)
  - Hiring of transport for a period upto one month – all services attendant to securing such limited duration. This excludes aircraft and vessel other than yacht
- Services of transportation of goods will be the destination of the goods. Transportation of goods may be by any mode but not mail or courier.

- Services of transportation of passenger will be the location where the passenger embarks for the journey.
- Services supplied on-board a conveyance, will be the first scheduled point of departure. Services are to be supplied during the journey and substantially consumed on-board.
- Services of online information and database access or retrieval will be location of recipient. Please refer to detailed discussion under section 14 on OIDAR. Further, such recipient will be considered as situated in a taxable territory if any two of the following conditions are fulfilled: :
  - Address of recipient in taxable territory
  - Card of recipient that is used to pay for the services is issued in taxable territory
  - Billing address is in taxable territory
  - Internet protocol address in taxable territory
  - Bank of recipient in taxable territory
  - Country code of SIM card is of taxable territory
  - Fixed line used by recipient is in taxable territory

(iii) Where there is any occasion for double taxation or non taxation, the Central Government is empowered to notify the place of supply with respect to service of any specific description, wherein the place of supply will be the place of effective use and enjoyment of a service.

Statutory provision

14. Special Provision for Payment of Tax by a Supplier of Online Information Database Access Retrieval (OIDAR)

(*1*) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a nontaxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—

(*a*) the invoice or customer's bill or receipt issued or made available by such

intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;

(*b*) the intermediary involved in the supply does not authorize the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;

(*c*) the intermediary involved in the supply does not authorize delivery; and

(*d*) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.

(*2*) The supplier of online information and database access or retrieval services referred to in sub-section (*1*) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

14.1 Introduction

This is a new transaction that is brought within the tax net only from 1 Dec 2016 under Service Tax. The experience of less the past 6 months has been more than encouraging in the amount of tax that has been collected. OIDAR is in a class of its own as regards taxable person and place of supply. Everything discussed until now must be given a good-bye and OIDAR understood clearly.

14.2 Analysis

Online Information and database access or retrieval (OIDAR) is defined in a specific manner and may be simplified as follows:

2- step definition	Services (and not goods) supplied
	Delivered over continuous internet connectivity
2-step clarification	Involves minimal human intervention
	Impossible to ensure in absence of information technology

Six illustrations in the definition and some explanation about inclusions and exclusions:

Illustration	Includes	Excludes
Online advertising E.g. Google	• Banner ads, pop-up ads, sponsored ads, etc.	• Preparation of content for online display like production, distribution and services of intermediaries • Advertisement in newspaper, on posters and on television
Cloud services E.g. Amazon Web services	• Webhosting • Data warehousing	• Software license issued by delivery of key number to remotely download via FTP
e-books, movies, music, software and other intangibles E.g. Gaana.com & Netflix	• Access to content permitted only 'online' even if stored in cache on user-end device but not allowing (official) permanent download	• Downloadable e-books, movies, music, etc. which are available for offline viewing without any mandatory e-check of the user credentials • Content provided through dedicated user-end device for use of content • Supply of physical books, newsletter, newspaper or journals • Booking services or tickets to entertainment events, hotel accommodation or car hire • Educational or professional courses, where the content is delivered by a teacher over the internet or electronic network
Online data or information E.g. LinkedIn, Taxindiaonline.com	• Paid websites that provide information • Free sites with valuable information – if not treated as 'supply', ITC will not be	• Net banking where banking information is accessed online but merely incidental to offline banking transactions

	available but if treated as 'supply, output tax will apply on like-kind-and-quality or cost-plus basis	• Electronic commerce • Non-commerce and information portals • C2C portals
Online supply of digital content E.g. Setmax online, YouTube	• TV programs and movies supplied over the internet like monitored by issuing user login / password •	• Auditors report sent to client via email. It is merely a form in which the offline services are communicated. Services of auditor is not the email of report issued but the opinion expressed about the financial position of the auditee • Online order processing in respect of offline supply of goods • Services of lawyers and financial consultants who advise clients through email
Data storage E.g. Amazon	• Webservers – shared or dedicated, with/without support, etc.	• Lease of server with redundancy
Online gaming E.g. Zapak.com	• Live-gaming • Collaborative gaming	• Computer / mobile games to be used after downloading to user-end device

Like every transaction done over the internet is not e-commerce, everything delivered online is not OIDAR. The acid-test is to see- 'always on'-status of internet connectivity for the continuous supply of the underlying service. Mere use of internet for delivery of services that can otherwise be provided offline though some media like CD, pen-drive, etc. all though less-securely will not be OIDAR. The use of file-transfer-protocol (FTP) for delivery of software or music or games is only to ensure integrity in the delivery of these high-volume files and the use of internet for FTP does not become OIDAR.

To summarise, the following table depicts the ingredients prescribed in this section:

Supplier	Supplier of Services in non-taxable territory		
Recipient	B2C (non-taxable online recipient – NTOR)	Intermediary@ (deemed to be recipient re-supplying to NTOR)	B2B# (all others)
Tax Payer	Overseas supplier	Recipient	Recipient
Tax Payment	Forward Charge (through representative)	Forward Charge	Reverse Charge

@ issues invoice, authorizes charge for services, responsible to collect payment, authorizes delivery and controls terms and conditions of supply. Else, not an intermediary liable to pay

 # B2B may be registered taxable person for any output supply

14.3 Comparative Review

In Service Tax, present law similar provision was added with effect from 1st December 2016.

14.4 Related Provisions

1. For the purposes of the definition of "non-taxable online recipient, "governmental authority" means an authority or a board or any other body:

   (i) set up by an Act of Parliament or a State legislature; or

   (ii) established by Government,

   with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

2. Section 13(12)-IGST Act: The place of supply of the "online information and database access or retrieval services" services shall be location of recipient of service.

Chapter VI
Refund of Integrated Tax to International Tourist

Statutory provision

> 15. Refund of integrated tax paid on supply of goods to tourist leaving India
>
> The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.
>
> *Explanation.* —For the purposes of this section, the term "tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

15.1 Introduction

Outbound passengers leaving India accompanied by GST-paid goods received during their stay in India would result in India exporting its taxes and this is sought to be overcome.

15.2 Analysis

> "tourist" means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

All outbound passengers carrying goods on which IGST has been paid are entitled to claim refund at the port-of-exit. It is likely that the verification will be simple and refund will be online. It is interesting to note that only 'integrated tax' is eligible for this refund. Also, as per proviso to Section 8(1), all supplies to such an outbound tourist will always be treated as inter-State supply. The challenge to supplies-to-tourist's is to identify an outbound tourist and charge IGST instead of CGST-SGST of the State where the goods are delivered. Please note that person seeking such refund must be a 'tourist' – who has entered India for genuine non-immigrant purposes. 'Purpose' of visit to India is key factor to be examined. Nationality, residency for tax purposes, etc. are irrelevant considerations. Detailed inclusions and exclusions can be expected in due course but few illustrations may be considered.

Tourist will exclude:

- Persons resident in India (not limited to Indian passport holders) who are exiting India for any purpose whether for short duration or long duration or uncertain duration
- Deputation of Indian resident to overseas diplomatic postings
- Children born in India to foreign nationals during their stay in India

Tourist will include the following:

- Crew of an international conveyance entering and exiting India within short duration even though not for purposes of tourism in India
- Foreign diplomatic visitors on official duty in India
- Foreign sports persons visiting India for participating in tournaments or training purposes
- Foreign journalist and camera crew visiting India in connection with their profession
- Foreign artists, musicians and actors visiting India to perform in shows or content production

Chapter VII
Zero Rated Supply

Statutory provision

16. Zero Rated Supply

(*1*) "zero rated supply" means any of the following supplies of goods or services Zero rated or both, namely: —

(*a*) export of goods or services or both; or

(*b*) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit

(*2*) Subject to the provisions of sub-section (*5*) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(*3*) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely: —

(*a*) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or

(*b*) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

16.1 Introduction

Exports have been the area of focus in all policy initiatives of the Government for more than 30 years. Now with the Make in India initiative, exports continue to enjoy this special treatment because exports should not be burdened with domestic taxes. On the other hand, GST demands that the input-output chain not be broken and exemptions have a tendency to break this chain. Zero-rated supply is the method by which the Government has approached to address all these important considerations.

16.2 Analysis

Zero-rated supply does not mean that the goods and services have a tariff rate of '0%' but the recipient to whom the supply is made is entitled to pay '0%' GST to the supplier. In other words, as it has been well discussed in section 17(2) of the CGST Act that input tax credit will not available in respect of supplies that have a '0%' rate of tax. However, this disqualification does not apply to zero-rated supplies covered by this section. It is interesting that section 7(5) (and even proviso to section 8(1)) declares that supplies 'to' or 'by' SEZ developer or unit will

be treated as an inter-State supply. So, when two SEZ units or one SEZ developer and another SEZ unit supply goods or services to each other (among themselves within the zone) and the zone being located within the same State or UT, such supplies will always be inter-State supplies. But, it important to note that this – being treated as inter-State supplies always – by itself does not mean that non-SEZ sales by SEZ unit will be liable to IGST in all cases. Please refer to the below of supplies involving suppliers in the zone that is covered by the provisions of section 7(5) and proviso to section 8(1):

Supply 'by'	Supply 'to'
SEZ unit	Outside India
SEZ unit	Another SEZ unit
SEZ developer	SEZ unit
Non-SEZ unit	SEZ unit
SEZ unit	Non-SEZ unit
Non-SEZ unit	SEZ developer
SEZ developer	Non-SEZ unit

Note: Physical location within the political boundaries of a State are irrelevant

Exemption from the incidence of tax can be ensured either by *ab initio* exemption or by granting exemption-by-way-of-refund. Both these alternatives have been enabled in this section. Zero-rated supplies may be undertaken in either of the following ways:

Taxable person to avail input tax credit required for use in the preparation of the outward supply of goods or service or both and carry out the zero-rated supply	
• Without any payment of IGST on such outward supply by executing LUT (Letter of Undertaking)	• Make payment of IGST on the outward supply by debit to 'electronic credit ledger' but without collecting this tax from the recipient
• Claim refund of input tax credit used in the outward supply	• After completing the outward supply, claim refund of the IGST so debited (unjust enrichment having been duly satisfied)
Subject to fulfilment of all associated conditions and safeguards that may be prescribed in either case	

Physical exports are well understood due to the vast experience from Customs Act. Physical exports, as discussed under section 11, are not determined or defined by realization of foreign exchange (unlike export of services). SEZ is defined in section 2(20) to have the meaning from 2(g) of SEZ Act, 2005. Supply of goods by SEZ to non-SEZ area is governed by Customs Act in terms of Rule 47 in Chapter V of SEZ Rules, 2006. Accordingly, all though the supply is 'treated as inter-State supply of goods' in terms of section 7(5), no tax is to be charged by the SEZ supplier but instead, the non-SEZ recipient is to pay IGST at the time of assessment of the bill of entry filed for such goods in terms of Customs Tariff Act, 1975 duly amended by the

Taxation Laws Amendment Act, 2017 wherein section 3 of the Customs Tariff Act, 1975 has been substantially altered to enable imposition of additional customs duties only on goods not subsumed into GST and for the imposition of IGST on goods subsumed into GST by sub-section 7, 8 and 9. However, with respect to supply of services by SEZ to non-SEZ area, though not prohibited, is not expressly dealt with by this Chapter V, of SEZ Rules as to the taxes / duties applicable. Hence, when services are supplied from SEZ to non-SEZ area, the following implications arise:

- It may be an import of services by the non-SEZ recipient in terms of section 7(1)(b) liable for payment of IGST on reverse charge basis by the recipient. Support for this view may be found in the SEZ Act which states in section 53 that 'zone shall be deemed to be a territory outside the customs boundaries of India'. And as such, the zone would be a location 'outside India' and this supply appears to satisfy all the requirements in the definition in section 2(11) of 'import of services'
- It may very simply be an inter-State supply of services liable to payment of IGST on forward charge basis by the SEZ unit because there is no reference in IGST to borrow the operation of section 53 from SEZ Act. Further, though the definition of ' import of services' is satisfied by the non-SEZ recipient, the zone can be treated as lying within the 'taxable territory' so as to make the SEZ supplier liable to pay IGST

The former interpretation appears to be more reasonable construction to follow. Accordingly, certain examples have been discussed below.

This provision is introduced in the statute on the basis of the prevalent Central Excise and Service Tax laws. It is widely believed that introduction of this provision will alleviate the difficulty of a supplier who exempts goods or services or both in terms of export competitiveness. This provision also specifically expresses that taxes are not exported. Care must be exercised that while paying taxes, such taxes are not collected from the recipient of goods or services or both. This would result unjust enrichment.

The following illustrations may be considered:

Table A – Physical Exports

Zero-rated supply (Physical exports)	Option A	Option B
ABC from Chennai supplies goods required by PQR in Delhi to effect exports to Germany	• ABC to charge IGST (Rs.100) to PQR • PQR to avail input tax credit • PQR to issued invoice for €15 • PQR to ensure no IGST is charged in the Euro invoice	• ABC to charge IGST (Rs.100) to PQR • PQR to avail input tax credit • PQR to issued, invoice for €15 • PQR to ensure no IGST is charged in the Euro invoice

	• PQR to bring proof-of-export and satisfy all other conditions prescribed • PQR to claim refund of input tax credit of Rs.100 being maximum amount related to the outward export supply	• But, PQR to debit electronic credit ledger with IGST applicable of Rs.180 on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods) • PQR to bring proof-of-export and satisfy all other conditions prescribed • PQR to claim refund of Rs.180 debited in electronic credit ledger in respect of export
XYZ from Delhi supplies services required by PQR in Delhi to effect export of services to USA	• XYZ to charge CGST-SGST (Rs.250) to PQR • PQR to avail input tax credit • PQR to issued invoice for $20 • PQR to ensure no IGST is charged in the USD invoice • PQR to bring proof-of-export and satisfy all other conditions prescribed • PQR to claim refund of input tax credit of Rs.250 being maximum amount related to the outward export supply	• XYZ to charge CGST-SGST (Rs.250) to PQR • PQR to avail input tax credit • PQR to issue invoice for $20 • But, PQR to debit electronic credit ledger with IGST applicable of Rs.230 on the export • PQR to bring proof-of-export and satisfy all other conditions prescribed • PQR to claim refund of Rs.230/- in respect of export (though actual relatable credit is much higher at Rs.250/-)

Table B – Supply 'to' SEZ

Zero-rated supply (supply 'to' SEZ)	Option A	Option B
ABC from Hyderabad supplies goods required by PQR in Kolkata for onward supply to XYZ in Kolkata-SEZ (for use in authorized operations)	• ABC to charge IGST (Rs.100) to PQR • PQR to avail input tax credit • PQR to supply goods to XYZ (SEZ) for Rs.1500 • PQR to ensure no IGST is charged in invoice to XYZ • PQR to obtain proof-of-admittance from SEZ officer and satisfy all other conditions prescribed • PQR to claim refund of input tax credit of Rs.100 being maximum amount related to the supply to XYZ (SEZ)	• ABC to charge IGST (Rs.100) to PQR • PQR to avail input tax credit • PQR to issued invoice to XYZ (SEZ) for Rs.1500 • PQR to ensure no IGST is charged in invoice to XYZ • But, PQR to debit electronic credit ledger with IGST applicable of Rs.270 on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods) • PQR to obtain proof-of-admittance from SEZ officer and satisfy all other conditions prescribed • PQR to claim refund of Rs.270 debited in electronic credit ledger in respect of supply to XYZ (SEZ)
XYZ from Surat supplies goods required by PQR in Rajkot for onward supply of services to MNO in Ahmedabad-SEZ (for use in authorized operations)	• XYZ to charge CGST-SGST (Rs.250) to PQR • PQR to avail input tax credit • PQR to supply services to MNO (SEZ) for Rs.2000 • PQR to ensure no IGST (even though within	• XYZ to charge CGST-SGST (Rs.250) to PQR • PQR to avail input tax credit • PQR to issued invoice to MNO (SEZ) for Rs.2000 • But, PQR to debit electronic credit ledger with IGST applicable of

	same State, it is inter-State supply) is charged in invoice to MNO • PQR to obtain proof-of-receipt-of-service (as specified by SEZ officer) and satisfy all other conditions (proviso to Rule 1 of Refund Rules) • PQR to claim refund of input tax credit of Rs.250 being maximum amount related to the supply to MNO (SEZ)	Rs.240 (say, 12%) on the export • PQR to obtain proof-of-receipt-of-service (as specified by SEZ officer) and satisfy all other conditions (proviso to Rule 1 of Refund Rules) • PQR to claim refund of Rs.240/- debited in electronic credit ledger in respect of supply to MNO (SEZ) (though actual relatable credit is much higher at Rs.250/-)

Table C – Supply 'by' SEZ

Zero-rated supply	Option A	Option B
Supply between two SEZ units:		
ABC-SEZ in Indore supplies goods manufactured in the zone to PQR-SEZ in Mumbai (for use in authorized operations) Supply by ABC-SEZ to PQR-SEZ is inter-State supply (whether in same State/UT or in different States/UTs)	• Goods or services received by ABC-SEZ from various suppliers will be as stated in Table B (above) • ABC-SEZ to issue invoice to PQR-SEZ without any IGST • No input tax credit that needs to be availed by PQR-SEZ • ABC-SEZ to obtain proof-of-admittance from SEZ officer with assistance of PQR-SEZ and satisfy all other conditions prescribed • There is no refund to claimed either by ABC-SEZ or PQR-SEZ as no IGST has been paid in this chain	• NOTHING TO DISCUSS IN THIS OPTION

XYZ-SEZ developer in Noida provides lease of premises to MNO-SEZ for its authorized operations Note: This applies to all supplies by developer to unit – premises lease, premises maintenance and other value added services	• Goods or services received by XYZ-SEZ from various suppliers will be as stated in Table B (above) • XYZ-SEZ to issue invoice to MNO-SEZ without any IGST • No input tax credit that needs to be availed by MNO-SEZ • XYZ-SEZ to obtain proof-of-admittance from SEZ officer with assistance of MNO-SEZ and satisfy all other conditions prescribed • There is no refund to claimed either by XYZ-SEZ or MNO-SEZ as no IGST has been paid in this chain	• NOTHING TO DISCUSS IN THIS OPTION
Supply by SEZ into non-SEZ:		
ABC-SEZ in Gurugram supplies goods to PQR (non-SEZ unit) in Delhi (with necessary non-SEZ supply permission obtained by ABC from SEZ officer) Note: All supplies 'by' SEZ is treated as inter-State supply	• ABC-SEZ to supply goods to PQR • No IGST to be charged by ABC-SEZ to PQR • PQR to file bill of entry for import of goods from SEZ to non-SEZ • Bill of entry filed by PQR will be assessed for BCD + IGST on reverse charge basis • PQR can then claim input tax credit of IGST paid on reverse charge basis • PQR to utilize IGST credit	• NOTHING TO DISCUSS IN THIS OPTION

Supply of goods by SEZ to non-SEZ but physically exported outside India:		
XYZ-SEZ in Andhra Pradesh supplies goods to MNO (non-SEZ) in Ranchi but directly dispatches the goods outside India Note: a. All supplies 'by' SEZ is treated as inter-State supply. b. Place of supply in case of export of goods shall be the location outside India c. This illustration does not apply to services because of the peculiar nature of definition of 'export of services'	• XYZ-SEZ to supply goods from Andhra Pradesh to port-of-export • XYZ-SEZ to issue invoice to MNO (non-SEZ) without any IGST • MNO will not file bill of entry for the SEZ-cargo and no IGST payable on RCM • MNO to file shipping bill at port for export to overseas customer • Necessary transit security to be provided by XYZ-SEZ to Customs	• NOTHING TO DISCUSS IN THIS OPTION

All refunds are subject to the 'due process' prescribed in section 54 of CGST Act including verification of unjust enrichment. Care must be taken not to include the refundable amount in the price charged to overseas customer. This may be checked by looking into:

- If the refundable amount is expensed directly or carried forward as a current asset
- If overseas customs is given credit in any subsequent invoice to the extent of refund
- If the reversal of refundable amount from the credit ledger is charged to P&L or not

Further, all supplies to SEZ developer or unit being zero-rated does not mean that the entire company can enjoy this form of *ab initio* exemption. For example, Company incorporated in Delhi may have established an SEZ unit in Jaipur. All goods and services supplied to SEZ in Jaipur will enjoy the *ab initio* exemption but the goods and services supplied to Delhi will be liable to tax. Now, if the incorporated address of the Company were also in Jaipur and inside the zone, the Company must be cautious to differentiate the supplies that are not related to the authorized operations in the zone but related to the other affairs of the Company and instruct the suppliers to charge applicable GST on such non-SEZ supplies. If is for this reason that proviso to Rule 1(1) of the Registration Rules provides for SEZ unit to secure separate registration as a distinct business vertical, apart from the rest of the Company. Complete use of this zero-rated exemption will invite recovery action against the SEZ developer or unit. The supplier who supplied as a zero-rated supply is not responsible for this misuse because the

SEZ developer or unit would have issued the GSTIN of the zone. Further, in case GST is paid on the non-zone operations of the Company and these costs are included in the export billing, there may be some aspects to be taken care of in case post-export refund of this GST paid is sought to be claims. Please note that all supplies to SEZ developer or unit alone is treated as an inter-State supply but the supply to the Company relating to non-SEZ activities will continue to be inter-State or intra-State supply as the case may be. With all information, available online through GSTN, misuse is not difficult to identify. Care must be taken to diligently use the provisions of zero-rated supply.

16.3 Comparative Review

The concept of zero rated supplies is there in the VAT laws with credit benefit and refund. As far as Central Excise law is concerned there is a rebate mechanism in place. That apart the accumulated unutilised credit is available as refund to the exporters of services/goods under rule 5 of the Cenvat Credit Rules, 2004.

16.4 Related Provisions

Statute	Section / Sub Section	Description	Remark
CGST	17(2)	Apportionment of credit and blocked credits	Restrictions on credit attributable to exempt supplies.
IGST	2(23)	Zero-rated supply	Adopts the provisions of section 16 IGST Act

Chapter VIII
Apportionment of Tax and Settlement of Funds

Statutory provision

17 Apportionment of tax and settlement of funds

(*1*) Out of the integrated tax paid to the Central Government, —

(*a*) in respect of inter-State supply of goods or services or both to an unregistered settlement of person or to a registered person paying tax under section 10 of the Central Goods and Services Tax Act;

(*b*) in respect of inter-State supply of goods or services or both where the registered person is not eligible for input tax credit;

(*c*) in respect of inter-State supply of goods or services or both made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;

(*d*) in respect of import of goods or services or both by an unregistered person or by a registered person paying tax under section 10 of the Central Goods and Services Tax Act;

(*e*) in respect of import of goods or services or both where the registered person is not eligible for input tax credit;

(*f*) in respect of import of goods or services or both made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received,

the amount of tax calculated at the rate equivalent to the central tax on similar intra-State supply shall be apportioned to the Central Government.

(*2*) The balance amount of integrated tax remaining in the integrated tax account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (*1*) shall be apportioned to the, —

(*a*) State where such supply takes place; and

(b) Central Government where such supply takes place in a Union territory:

Provided that where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to, —

(*a*) each of the States; and

(b) Central Government in relation to Union territories,

in proportion to the total supplies made by such taxable person to each of such States or Union territories, as the case may be, in a financial year:

Provided further that where the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as State tax or, as the case may be, Union territory tax, by the respective State or, as the case may be, by the Central Government during the immediately preceding financial year.

(*3*) The provisions of sub-sections (*1*) and (*2*) relating to apportionment of integrated tax shall, *mutatis mutandis,* apply to the apportionment of interest, penalty and compounding amount realized in connection with the tax so apportioned.

(*4*) Where an amount has been apportioned to the Central Government or a State Government under sub-section (*1*) or sub-section (*2*) or sub-section (*3*), the amount collected as integrated tax shall stand reduced by an amount equal to the amount so apportioned and the Central Government shall transfer to the central tax account or Union territory tax account, an amount equal to the respective amounts apportioned to the Central Government and shall transfer to the State tax account of the respective States an amount equal to the amount apportioned to that State, in such manner and within such time as may be prescribed.

(*5*) Any integrated tax apportioned to a State or, as the case may be, to the Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State, or Central Government on account of such Union territory, in such manner and within such time as may be prescribed.

17.1 Introduction

GST is a destination based consumption tax – this principle is evident in the Place of Supply provisions. Therefore, GST is to be paid to the State where the destination or consumption takes place. And registration of each tax payer in every destination-State is impossible to comply or administer. It is for this reason that IGST is applicable on supplies whose destination is outside the home-State. Therefore, IGST is not actually a tax but an equitable tax revenue transfer mechanism from the State of origin of supply to the State of its destination where revenue rightly belongs. With IGST having been collected as if it were a tax, it now needs to be transferred to the destination-State. This is provided by section 17 and discussed below.

17.3 Analysis

Inter-State Supply (to)	IGST Paid (on)	Quantum of IGST	Transfer (to)
Unregistered recipient	IGST paid on inter-State supplies IGST paid on import of goods or services	Equivalent Central tax applicable on said supplies in intra-State supply	Union
Composition taxable person			
Registered taxable person not eligible to input tax credit		Balance amount of IGST	State, its respective share of inward supplies@
Registered taxable person eligible to input tax credit but does not avail it within period specified			Union, share of inward supplies to UTs@

@ If this amount cannot be reliably allocated, then rule-of-proportion – total supplies of that State/UT compared to total inter-State supplies during the financial year

Please note the following further aspects:

- Above formula applies to interest, penalty and compounding amount collected in respect of inter-State supplies
- Any apportioned IGST is found to be refundable, then the same will be recouped from the subsequent transfers
- Time and manner of transfer to States/UTs will be prescribed

Statutory provision

18. Transfer of input tax credit

(1) On utilization of credit of integrated tax availed under this Act for payment of, —

(*a*) central tax in accordance with the provisions of sub-section (*5*) of section 49 of the Central Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the central tax account in such manner and within such time as may be prescribed;

(*b*) Union territory tax in accordance with the provisions of section 9 of the Union Territory Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the Union territory tax account in such manner and within such time as may be prescribed;

(*c*) State tax in accordance with the provisions of the respective State Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and shall be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the appropriate State Government in such manner and within such time as may be prescribed.

Explanation. —For the purposes of this Chapter, "appropriate State" in relation to a taxable person, means the State or Union territory where he is registered or is liable to be registered under the provisions of the Central Goods and Services Tax Act.

18.2 Introduction

After apportionment of IGST paid, it leaves credit of IGST availed to be accounted for on its utilization. This section addresses the apportionment on utilization of IGST credit.

18.3 Analysis

IGST	Appropriation	Allocation (to)
Credit of IGST paid availed	Utilized to pay CGST	Union – Central tax account
	Utilized to pay SGST	State – State tax account@
	Utilized to pay UTGST	Union – UT tax account@

@ of respective State or UT

Statutory provision

19. Tax wrongfully collected and paid to Central Government or State Government

(*1*) A registered person who has paid integrated tax on a supply considered by Tax him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.

(*2*) A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.

19.1 Introduction

Payment of tax based on erroneous determination of 'nature of supply' is not permitted to be adjusted because of the above appropriation of payments. Remedy lies in refund.

19.2 Analysis

Taxable person who has paid tax in error is entitled to refund by first restoring the discharge of the correct tax due so that the incorrect tax paid reflects on the Common Portal as 'paid in excess' and:

- IGST paid in error will be refunded subject to conditions prescribed
- IGST payable due to payment of CGST-SGST/UTGST is exempted from payment of interest on IGST due

Provisions of section 54 of CGST Act have not been extended to this refund although the conditions to be prescribed would not be too far from the requirements in section 54

Chapter IX
Miscellaneous

Statutory provision

20. Application of provisions of Central Goods and Services Tax Act

Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

(i) scope of supply; (ii) composite supply and mixed supply; (iii) time and value of supply; (iv) input tax credit; (v) registration; (vi) tax invoice, credit and debit notes; (vii) accounts and records; (viii) returns, other than late fee; (ix) payment of tax; (x) tax deduction at source; (xi) collection of tax at source; (xii) assessment; (xiii) refunds; (xiv) audit; (xv) inspection, search, seizure and arrest; (xvi) demands and recovery; (xvii) liability to pay in certain cases; (xviii) advance ruling; (xix) appeals and revision; (xx) presumption as to documents; (xxi) offences and penalties; (xxii) job work; (xxiii) electronic commerce; (xxiv) transitional provisions; and (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier:

Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

20.1. Introduction

Certain provisions of CGST Act in relation to levy of tax would be applicable to IGST Act also.

20.2. Analysis

The following provisions of CGST Act shall apply to IGST Act:

— scope of supply;

- composite supply and mixed supply;
- time and value of supply;
- input tax credit;
- registration;
- tax invoice, credit and debit notes;
- accounts and records;
- returns, other than late fee;
- payment of tax;
- tax deduction at source;
- collection of tax at source;
- assessment;
- refunds;
- audit;
- inspection, search, seizure and arrest;
- demands and recovery;
- liability to pay in certain cases;
- advance ruling;
- appeals and revision;
- presumption as to documents;
- offences and penalties;
- job work;
- electronic commerce;
- transitional provisions; and
- miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

The following exceptions are provided:

(a) In case of TDS (tax deducted at source) the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier.

(b) In case of TCS (tax collected at source), the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies.

(c) The value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.

(d) In cases where the penalty is leviable under the CGST Act and the SGST Act or the Union UTGST Act, the penalty leviable under this Act shall be the sum total of the said penalties.

20.3. Comparative Review

Under IGST Act	Corresponding Section under present Central Sales Tax Act, 1956	Comparison
Section 20 providing CGST Act provisions which would be applicable to IGST Act.	Section 9(2) of CST Act which provides that all provisions of General tax law of each State shall apply in respect of CST to dealers registered in that state, except those provided in CST Act and Rules. These include procedural aspects such as returns, assessment, offences, etc.	Section 9(2) of CST Act does not include aspects such as registration, valuation, credit, etc. which are included in Section 20 of IGST

20.4 FAQs

Q1. What are the provisions under CGST which would be applicable to IGST also?

Ans: The provisions relating to scope of supply, composite supply and mixed supply, time and value of supply, input tax credit, registration, tax invoice, credit and debit notes, accounts and records, returns, other than late fee, payment of tax, tax deduction at source, collection of tax at source, assessment, refunds, audit, inspection, search, seizure and arrest, demands and recovery, liability to pay in certain cases, advance ruling, appeals and revision, presumption as to documents, offences and penalties, job work, electronic commerce, transitional provisions and miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall apply, in relation to the levy of tax under this Act as they apply in relation to levy of tax under the CGST Act, 2016.

Q2. What is the percentage of tax to be deducted or collected in case of tax deducted at source and tax collected at source?

Ans: The percentage of tax to be deducted by the deductor from the payment made or credit to the supplier is 2% in case of tax deduction at source.

In case of tax collection at source the operator should collect 2% tax on the value of net supplies.

Statutory provision

21. Import of services made on or after the appointed day

Import of services made on or after the appointed day shall be liable to tax under the provisions of this Act regardless of whether the transactions for such import of services had been initiated before the appointed day:

Provided that if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under this Act:

Provided further that if the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under this Act.

Explanation.––For the purposes of this section, a transaction shall be deemed to have been initiated before the appointed day if either the invoice relating to such supply or payment, either in full or in part, has been received or made before the appointed day.

21.1. Introduction

This provision deals with taxability of import of services made after the appointed day.

21.2. Analysis

(a) It provides that import of services made on or after the appointed day shall be liable to tax under the provisions of IGST Act even if the transactions for such import of services had been initiated before the appointed day.

(b) However if the tax on such import of services had been paid in full under the pre-GST regime, no tax shall be payable on such import under the IGST Act.

(c) That apart if the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under this Act.

(d) As per the explanation appended to the section a transaction shall be deemed to have been initiated before the appointed day if either the invoice or payment, either in full or in part, has been received or made before the appointed day.

21.3. FAQ

Q1. Whether import of services made after appointed day is liable to tax under this Act?

Ans. Yes. Any import of services made after appointed day is liable to tax under this Act. However, the taxability is subject to the provisos in section 21 of IGST Act.

Q2. What would be the status of import of services, where the tax on the said transaction is paid in full under earlier laws?

Ans. Not Liable to Tax Under This Act. As per the proviso (1) of section 21 of IGST Act, where the tax on import of services is paid in full under earlier laws, no tax under this Act would be made applicable though such import takes place after the appointed day.

Q3. What would be the status of import where the tax on the said transaction is paid in part under earlier laws?

Ans. As per the second proviso to section 21 of IGST Act, where the tax is paid in part for import of services under the earlier laws, only the balance amount of tax would be payable under this Act.

Q4. When would be the transaction be deemed to have been initiated before the appointed day?

Ans. Under any of the following circumstances it would be deemed that the transaction is initiated before the appointed day.

(i) Where invoice relating to such supply; or

(ii) Payment, either in full or in part;

has been received or made before the appointed day.

21.4 MCQ

Q1. Where the tax is fully paid under earlier laws, amount of tax payable for import of services made after appointed day is?

(a) No tax payable under this Act

(b) Tax as per this Act, to be paid again

Ans: (a) No tax payable under this Act

Q2. Where the tax is paid in part under earlier laws, amount of tax payable for import of services made after appointed day is?

(a) No tax payable under this Act

(b) Balance amount of tax payable on such import of services

Ans: (b) Balance amount of tax payable on such import of services

Statutory provision

22	Power to make rules
(1)	The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.
(2)	Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
(3)	The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.
(4)	Any rules made under sub-section (1) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

22.1. Introduction

(i) It provides power to the Central Government to make Rules for the purposes of IGST Act upon recommendation by the GST Council.

22.2 Analysis

(i) Power to make rules by the Central Government is discussed hereunder:

- The Central Government may make rules for carrying out the purposes of this Act, by notification on the recommendation of the Council.
- The Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
- The power to make rules shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the appointed day.
- Any rules made may provide for penalty upto Rs.10,000 for contravention thereof.
- "Council" would mean the Goods and Services Tax Council established under Article 279A of the Constitution.

22.3 Comparative review

Under IGST Act	Corresponding Section under present Central Sales Tax Act, 1956
Section 22 of IGST Act which deals with powers of Central Government to make rules	Section 13 authorizes Central Government to make rules. However, specific scenarios for making rules have been specified like manner of application for registration, form of declaration or certificate.

22.4 FAQs

Q1. Who is given the power to make rules under IGST Act?

Ans: The Central Government may, by notification, make rules for carrying out the purposes of this Act on the recommendation of the Council.

22.5 MCQs

Q1. Under Section 22, the Central Government has power to make rules on recommendation of whom of the following?

(a) Ministry of Finance

(b) GST Council

(c) CBEC

(d) None of the above

Ans: (b) GST Council

Statutory provision

23 Power to make regulations
The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

23.1. Introduction

This provision refers to the Board's power to make regulations.

23.2. Analysis

To carry out the provisions of the IGST Act, the Board is empowered to make regulations, which would be notified. Such regulations should not be inconsistent with the provisions of the IGST Act and the Rules made thereunder.

Statutory provision

24. Laying of rules, regulations and notifications
Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be, after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

24.1. Introduction

This Section lays down the general procedure of laying delegated legislations before the Parliament for a prescribed duration.

24.2 Analysis

(a) The Act permits making of rules by Government, issuance of regulation by Board and issuance of notification by the Government.

(b) Such rule, regulation and notification, which is a part of delegated legislation is placed before the Parliament.

(c) It is laid before the Parliament, as soon as may be after it is made or issued, when the Parliament is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions

(d) Before the expiry of the session or successive sessions both Houses may make suitable modifications and would have effect in such modified form.

(e) However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

24.3. Comparative Review

Similar provisions are there in the existing tax laws as well.

Statutory provision

25 Removal of Difficulties

(1) If any difficulty arises in giving effect to any provision of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

25.1. Introduction

The responsibility to implement the legislatures' will is of the appropriate Government. In doing this, the Act empowers the appropriate Government with the necessary power to remove any difficulty that may arise.

25.2. Analysis

(i) If the Government identifies that there is a difficulty in implementation of any provision of the GST Legislations, it has powers to issue a general or special order, to carry out anything to remove such difficulty.

(ii) Such activity of the Government must be consistent with the provisions of the Act and should be necessary or expedient.

(iii) Maximum Time limit for passing such order shall be 3 years from the date of effect of the IGST Act.

25.3. Comparative review

The above provisions are present in all tax legislations, to ensure that any practical difficulties in implementation can be addressed.

25.4. Related provisions

This is an independent Section and would be applicable for implementation of the GST Law.

25.5. FAQs

Q1. Will the powers include the power to notify the effective date for implementation of particular provisions?

Ans: Yes. All powers regarding implementation of any provision of the GST law is covered.

Q2. Will the powers include bringing changes in any provision of law?

Ans: No. The Government has power only to decide on the practical implementation of law. But it cannot amend the legislation through this Section.

Q3. What is the maximum time limit for exercising the powers under Section 25?

Ans: The maximum time limit is 3 years from the date of effect of CGST Act.

Q4. Whether the reasons be mentioned in the order?

Ans: The order is issued only when there is a necessity or expediency for it. Specific reasons may not be mentioned in the order.

25.6. MCQs

Q1. Whether Prior approval of the Parliament is necessary?

(a) Yes

(b) No

Ans: (b) No

Q2. What is the maximum period for exercising this power?

(a) 4 years

(b) 3 years

(c) 2 years

(d) 1 year

Ans: (b) 3 years

THE UNION TERRITORY GOODS AND SERVICE TAX ACT, 2017

Statement of Objects and Reasons

The Union Territories (for brevity, "UT") are currently empowered to levy Sales Tax / VAT on the sale of goods, whereas the Central Government is empowered to levy excise duty and service tax on manufacture of goods and supply of services. This has led to a multiplicity of indirect taxes being levied by various authorities.

The difficulties faced in the current indirect tax system are:

(i) Rising hidden costs in trade and industry due to multiplicity of taxes at the Central and Union Territory levels

(ii) Lack of uniformity of tax rates and tax structure, compliance procedures across Union Territories

(iii) Cascading of taxes

(iv) Non-availability of cross-utilization of credits i.e., utilization of excise duty and service tax credits against taxes levied by Union Territories and vice-versa.

(v) Credit of taxes levied by one Union Territory or State cannot be set of against taxes levied by other Union Territories or States.

To usher in the GST regime, Union Territory tax along with related GST legislations was to replace the current tax while empowering the Central Government to levy Union Territory tax on the supply of goods or services or both taking place within a Union Territory not having a Legislature. The new legislation:

(i) Provides for levy of tax on all intra-State supplies of goods or services or both, except alcoholic liquor for human consumption, at the rates recommended by the GST Council (not exceeding 20%);

(ii) Empowers the Central Government to grant exemptions on the recommendation of the GST Council;

(iii) Enables apportionment of tax and settlement of funds on account of transfer of input tax credit between the Central Government, State Governments and Union Territories;

(iv) Empowers recovery of tax, interest or penalty payable by a person and remaining unpaid;

(v) Empowers establishing of an Authority for Advance Ruling to enable the taxpayers to seek binding clarity on taxation matters;

(vi) Provides for an elaborate transitional provision for smooth transition of existing taxpayers to GST regime; and

(vii) Allows application of certain provisions of the CGST Act, 2017 to the extent relevant for the purposes of this Act;

Chapter I
Preliminary

Statutory provision

1.	Short title, extent and commencement
(1)	This Act may be called the Union Territory Goods and Service Tax Act, 2017.
(2)	It extends to the Union territories of Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Chandigarh and other territory.
(3)	It shall come into force on such date as the Central may, by notification in the Official Gazette, appoint: Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Title:

All Acts enacted by the Parliament since the introduction of the Indian Short Titles Act, 1897 carry a long and a short title. The *long title*, set out at the head of a statute, gives a fairly description of the general purpose of the Act and broadly covers the scope of the Act.

The *short title*, serves simply as an ease of reference and is considered a statutory nickname to obviate the necessity of referring to the Act under its full and descriptive title. Its object is identification, and not description, of the purpose of the Act.

Extent:

Part I of the Constitution of India states: "India, that is Bharat, shall be a Union of States". It provides that territory of India shall comprise the States and the Union Territories specified in the First Schedule of the Constitution of India. The First Schedule provides for twenty-nine (29) States and seven (2+5=7) Union Territories.

Part VI of the Constitution of India provides that for every State, there shall be a Legislature, while Part VIII provides that every Union Territory shall be administered by the President through an 'Administrator' appointed by him. However, the Union Territories of Delhi and Puducherry have been provided with Legislatures with powers and functions as required for their administration.

India is a summation of three categories of territories namely – (i) States (29); (ii) Union Territories with Legislature (2); and (iii) Union Territories without Legislature (5).

'State' under the GST law is defined to include a Union Territory with Legislature. Delhi and Puducherry, though are Union Territories, have a Legislature of their own. Accordingly, for GST the Union Territories of Delhi and Puducherry will be regarded as a State and will be

governed by the respective SGST laws passed by them, instead of the UTGST law which is passed by the Central Government.

Commencement:

The UTGST Act will to come into operation on the date appointed by the Central Government by means of a notification in the Official Gazette (tentatively 1st July 2017). A provision has been made to notify different dates for commencement of different provisions of the Act.

It is expected that a notification with a prospective date of commencement of the UTGST Act i.e., a specific date succeeding the date of notification in the Official Gazette, would be issued. A notification providing for a retrospective date for commencement of the UTGST Act cannot be issued, since that would result in simultaneous operation of two laws governing the same subject matter i.e., the existing law(s) and the UTGST Act being in force during the period starting from such retrospective date of commencement until the date of notification in the Official Gazette.

Statutory provision

2. Definitions

In this Act, unless the context otherwise requires–

(1) ''appointed day'' means the date on which the provisions of this Act shall come into force.

The provisions of the UTGST Act are expected to be implemented with effect from 1st July 2017 with powers vested to notify different dates for effective date of commencement of different provisions of the Act.

(2) ''Commissioner'' means the Commissioner of Union territory tax appointed under section 3;

Every Union Territory is administered by the President through an Administrator appointed by him. The Aadministrator, in turn, is empowered to appoint Commissioners and other officers for carrying out the purposes of the Act who will be deemed to be 'Proper Officers' for administering the Act.

The oofficers appointed under the existing central and UT laws will continue to function as officers under the UTGST Act as well.

(3) ''designated authority'' means such authority as may be notified by the Commissioner;

Currently, the term does not find a reference in the Act and will be notified by the Commissioner from time to time.

(4) ''exempt supply'' means supply of any goods or services or both which attracts nil rate of tax or which may be exempt from tax under section 8, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

The meaning of exempt supply is similar to the meaning assigned to it under the CGST law with the exception that supplies that are partly exempted from tax under this Act will also be considered as 'exempt supply'. On the contrary, partially exempted supplies under the CGST

law would not be considered as 'exempt supplies' under the CGST law. The word "wholly" found in section 2(47) of the CGST law which is missing from section 2(4) under the UTGST law in the definition of exempt supply.

Exempt supplies comprise the following 3 types of supplies:

(a) supplies taxable at a 'NIL' rate of tax;

(b) supplies that are wholly or partially exempted from UTGST or IGST, by way of a notification; and

(c) supplies that are not taxable under the Act (petrol, high speed diesel, alcoholic liquor for human consumption etc.)

The following aspects need to be noted:

(a) Zero-rated supplies such as exports would not be treated as supplies taxable at 'NIL' rate of tax;

(b) Input tax credit attributable to exempt supplies will not be available for utilisation/ set-off.

(5) ''existing law'' means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;

This covers all the existing Central and State laws (along with the relevant notifications, orders, and regulations), relating to levy of tax on goods or services like Service Tax law, Central Excise law, State VAT laws, etc. Therefore, laws that do not levy tax or duty on goods or services, such as The Indian Stamp Act, 1899, would not be covered here.

(6) ''Government'' means the Administrator or any authority or officer authorized to act as Administrator by the Central Government;

Every UT is administered by the President through an 'Administrator' appointed by him. Even a Governor of a State can be appointed as the Administrator of an adjoining UT. Such an Administrator will be regarded as 'Government' for the purposes of the UTGST law.

(7) ''output tax'' in relation to a taxable person, means the Union territory tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

The output tax chargeable on taxable supply of goods or services can be summarised as under:

Type of Supply	Output tax	Reference
Supplies within a UT without Legislature	UTGST + CGST (intra-State supply)	Section 8(1) and 8(2) of the IGST Act

Supplies between two UT without Legislature	IGST (inter-State supply)	Section 7(1) and 7(3) of the IGST Act
Supplies between a UT without Legislature and a State (including UT with Legislature)	IGST (inter-State supply)	Section 7(1) and 7(3) of the IGST Act

The following aspects need to be noted:

(a) While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the law from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but who have failed to obtain registration.

(b) The amount covered under this term is the tax 'chargeable' under law, and not what is 'charged'. Therefore, in case a person wrongly charges an amount as tax, or charges an excess rate of tax as compared to the applicable tax rate, such excess would not qualify as output tax.

(c) Some experts are of the view that taxes payable on reverse charge basis would also be out of the scope of 'output tax'. Since credit of input tax can only be used to pay output tax, the above will have to be discharged by way of cash only (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).

(d) The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the UT tax payable on such supplies as output tax in the hands of the supplier.

(8) ''Union territory'' means the territory of, —

(i) the Andaman and Nicobar Islands;

(ii) Lakshadweep;

(iii) Dadra and Nagar Haveli;

(iv) Daman and Diu;

(v) Chandigarh; or

(vi) other territory.

Explanation. —For the purposes of this Act, each of the territories specified in sub-clauses (i) to (vi) shall be a separate Union territory;

Analysis

'State' under the GST law is defined under the CGST Act to include a Union Territory with Legislature. Delhi and Puducherry, being UTs with Legislature, will be regarded as 'States' for GST, and will be governed by their respective SGST laws, instead of the UTGST law.

By definition, the expression 'other territory' is inclusive of all territories that do not form part of any State (including the UTs of Delhi and Puducherry), and excludes the five UTs without Legislature listed under clauses (i) to (v) of the definition.

All territories that fall into the ambit of 'other territory' would also form part of the meaning of the term 'Union territory'. The purpose of this inclusion is to ensure that any Indian territory that remains unclaimed by all the States and Union Territories can be brought into the scope of GST. Although there is no specific indication that the extent of the term should be limited to the territory of India, locations outside India cannot be said to fall into the scope of 'other territory' defined above, as it would defeat the purpose of law.

(9) ''Union territory tax'' means the tax levied under this Act;

It refers to the tax charged under this Act on intra-State supply of goods or services or both, in addition to the tax levied under the CGST law. The rate of UT tax is capped at 20%, and will be notified by the Central Government based on the recommendation of the GST Council.

(10) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, the State Goods and Services Tax Act, and the Goods and Services Tax (Compensation to States) Act, shall have the same meaning as assigned to them in those Acts.

Certain words and expressions like person, supplier, recipient, intra-state supply, reverse charge, cess, place of supply etc. defined in the CGST/ SGST/ IGST laws will have the same meaning for UTGST law.

Chapter II
Administration

Statutory provision

3. Officers under this Act

The Administrator may, by notification, appoint Commissioners and such other class of officers as may be required for carrying out the purposes of this Act and such officers shall be deemed to be proper officers for such purposes as may be specified therein:

Provided that the officers appointed under the existing law shall be deemed to be the officers appointed under the provisions of this Act.

4. Authorisation of officers

The Administrator may, by order, authorise any officer to appoint officers of Union territory tax below the rank of Assistant Commissioner of Union territory tax for the administration of this Act.

5. Powers of officers

(*1*) Subject to such conditions and limitations as the Commissioner may impose, an officer of the Union territory tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(*2*) An officer of a Union territory tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of a Union territory tax who is subordinate to him.

(*3*) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer subordinate to him.

(*4*) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of Union territory tax.

6. Authorisation of officers of Central Tax as proper officer in certain circumstances

(*1*) Without prejudice to the provisions of this Act, the officers appointed under the Central Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.

(2) Subject to the conditions specified in the notification issued under sub-section (*1*), —

(*a*) where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;

(*b*) where a proper officer under the Central Goods and Services Tax Act has

initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.

(*3*) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act.

Introduction

Union Territory without a legislature enjoys laws passed by Parliament. The UTGST Act is one where the law is by the Parliament but it's administration is left with the Administrator of the Union Territory.

Analysis

Without being bound by the rigours and specificity of executive officers under the CGST act, the UTGST Act empowers the Administrator to issue a notification appointing one or more Commissioners and such other class of officers as required.

The Administrator is also empowered to appoint officers lower in rank than the Assistant Commissioner as required. Commissioners appointed by the Administrator are empowered to impose conditions and limitations necessary in the discharge of functions by the officers of UT Tax. A superior officer is permitted to discharge the functions and exercise the authority conferred on a subordinate officer. Interestingly, we do not find such flexibility in CGST Act and IGST Act. Not only does this Act prescribed the Assuming of power by a superior officer but also permits delegation of vested powers to be exercised by any other officer of UT Tax. Appellate authorities under this act are denied the flexibility of such appropriation or delegation of power vested in them.

Continuing with efficiency in tax administration, without causing any prejudice to the UT Tax Act, officers under the CGST Act are authorised to be officers under this Act. This is permitted only upon the recommendation of the Council and subject to any conditions that may be imposed by the Administrator.

Where officers under this Act initiate any proceedings, said officers shall proceed to pass orders not only in respect of UT Tax but also in respect of Central Tax. Where such conjoined proceedings are underway, the said officers are expected to intimate officers of Central Tax. Similarly, where proceedings initiated by officers in respect of Central tax, the underlying transaction or the taxable base being the same, such officers under the CGST Act, are required to pass orders addressing demands in respect of UT Tax arising from the common underlying transactions. Whichever officer initiates any proceedings will determine the law and forum for exercising lawful jurisdiction in respect of rectification, appeal and revision.

Chapter-III
Levy and collection of tax

Statutory provision

7. Levy and collection of Union Territory Goods and Services Tax

LEVY AND COLLECTION OF TAX

(*1*) Subject to the provisions of sub-section (2), there shall be levied a tax called the Union territory tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding twenty per cent., as may be notified by the Central Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(*2*) The Union territory tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Central Government on the recommendations of the Council.

(*3*) The Central Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(*4*) The Union territory tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(*5*) The Central Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax.

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and, he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for paying tax and such person shall be liable to pay tax.

7.1. Introduction

(i) The Constitution mandates that no tax shall be levied or collected by a taxing Statute except by authority of law. While no can be taxed by implication, a person can be subject to tax in terms of the charging section only

(ii) Section 7 is the charging provision of the UTGST Act. It provides that all intra-State supplies would be liable to UTGST subject to a ceiling rate of 20%. The levy is on all goods or services or both except on the supply of alcoholic liquor for human consumption. Besides, GST may be levied on the supply of petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel with effect from such date as may be notified by the Government after recommendation of the Council. It also provides for the value on which tax shall be paid, the maximum rate of tax applicable on such supplies, the manner of collection of tax by the Government and the person who will be liable to pay such tax. The provision of this section is comparable to the provisions of section 9 of the CGST Act.

(iii) Under the UTGST law, the levy of tax is as follows:

(a) In the hands of the supplier - on the supply of goods and / or services (referred to as tax under forward charge mechanism);

(b) In the hands of the recipient – on receipt of goods and / or services (referred to as tax under reverse charge mechanism)

(c) In the hands of electronic commerce operator-on services supplied by the suppliers through such electronic commerce operator

In the normal course, the tax would be payable by the supplier of goods and/or services. However, in specific cases (as may be notified), the onus of payment of tax is shifted to the recipient of goods and/or services.

Normally, the supplier of goods or services or both will be liable to discharge tax on the supplies effected. However, the Central Government is empowered to specify categories of supplies in respect of which the recipient of goods or services or both will be liable to discharge the tax.

Accordingly, all other provisions of this Act and CGST Act, as applicable, will apply to the recipient of such goods or services or both, as if the recipient is the supplier of such goods or services or both – viz., for the limited purpose of such transactions, the recipient would be deemed to be the 'supplier'.

(iv) When the goods/ services are supplied by a supplier, who is un-registered person to a receiver, who is registered person, the liability to pay tax on such supplies will be on recipient under reverse charge basis. Thus, a registered person would be required to pay GST on all supplies received by it from un-registered persons.

(v) Additionally, where any supply of services is effected through e-commerce operators, the law provides that the Central Government may on recommendation of the Council notify that the e-commerce operator will be liable to discharge the tax on such supplies where the e-commerce operator:

(a) Does not have a physical presence then the person who represents the e-commerce operator will be liable to pay tax.

(b) Does not have a physical presence or a representative, then the e-commerce operator is mandatorily required to appoint a person who will be liable to pay tax.

(vi) In so far as e-commerce operators are concerned, care must be exercised to determine the nature of business of such operators. Essentially, there are four models of e-commerce business:

(a) Market-place – the question of supply by the e-commerce operator does not arise. For this reason, they are liable for TCS under section 52.

(b) Fulfilment centre – here States have been contesting that this model is one involving 'buy-sell' and accordingly liable to VAT. The test here is to establish the fact that the supply is by supplier directly to the end customer and not 'through' the e-commerce operator.

(c) Hybrid (of above 2) – all though not widely prevalent, this is a case where both buy-sell as well as market-place models are employed. It is important for such business to clearly establish which side of the fence they are would prefer to fall on so that the respective incidence of tax follows.

(d) Agency – this is employed by few business involving supply of industrial inputs. The *modus operandi* is that the principal logs in to the portal and routes the supplies to the end customer. The agreements are so framed that the e-commerce operator becomes responsible for the delivery and collection of payment. This renders the e-commerce Operator to constitute an agency. Such arrangements need to be vetted to ensure the inference of agency that emerges if it is not so desired, then the same may be redrafted suitably. Schedule I of the CGST Act states that transactions between principal and agent are deemed to be a supply and liable to tax. This consequence may be borne in mind even by e-commerce businesses.

7.2 Analysis

The discussion of Levy under Section 9 of the CGST Act made in this book may be referred for detailed analysis

Levy of tax: Every intra-State supply will be liable to tax, if:

(a) Supply should involve goods or services or both viz., wholly goods or wholly services or both or both viz.,

Even where a supply involves both, goods and services, the law provides that such supplies would classifiable either as, wholly goods or wholly services. The reference to be made to Schedule II of the CGST Act which provides for this classification.

(b) The supply is an intra-State supply – viz., ordinarily, the location of the supplier and the place of supply is in same Union Territory. (Refer Section 8 of the IGST Act to understand the meaning of intra-State supply);

(c) The tax shall be payable by a 'taxable person' as explained in definition Sec. 2(107) and explained in Section 22 & 24 of CGST Act.

Tax shall be payable by a 'taxable person': The tax shall be payable by a 'taxable person' i.e. person/ separate establishments of persons registered or liable to be registered under section 22 and 24 of the CGST Act...

Rate and value of tax: The rate of tax will be as specified in the notification that would be issued in this regard, subject to a maximum of 20%. The rates would be determined based on the recommendation of the Council and the rate of tax so notified will apply on the value of supplies as determined under Section 15 of the CGST Act.

Supply:

Refer discussion under Chapter III of the CGST Act for a detailed understanding of the expression 'supply'. Additionally, the comments relating to 'composite supply' and 'mixed supply' and 'reverse charge' will equally apply for supplies taxable under UTGST Act.

7.3 Comparative review

Under the current tax laws, Central Excise is on 'manufacture of goods', VAT/CST is on 'sale of goods' and Service tax is on 'provision of service'. Unlike different incidences, under the GST law, it is 'supply' which would be the taxable event. Under the current law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST. However, under the GST law, it would be taxable as a 'supply. Further, free supplies would be liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit;

Under the current law, there are multiple transactions which apparently qualify as both 'sale of goods' as well as 'provision of services'. e.g. license of software, providing a right to use a brand name, etc. Unlike this situation, GST clarifies as to whether a transaction would qualify as a 'supply of goods' or as 'supply of services'. A transaction would either qualify as goods or as services, under the GST law. Even in respect of composite contracts, it has been clarified under Schedule II, Definition of composite supply and mixed supply in the CGST law.

The payment of VAT in the hands of the purchaser (registered dealer) on purchase of goods from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism in respect of say, import of services, sponsorship services etc. are comparable to the 'reverse charge mechanism' prescribed herein. Further, the concept of reverse charge only exists in relation to services. The GST law, however, permits the supply of goods also to be subjected to reverse charge.

7.4 Related provisions

Statute	Section	Description
CGST	Section 7 read with Schedule I, II and III	Definition of 'supply'
CGST	Section 2(17)	Definition of 'business'
CGST	Section 2(107) read with 22 and 24	Meaning of 'taxable person' and

Statute	Section	Description
		distinct persons
CGST	Section 2(31)	Meaning of consideration
IGST	Section 8	Meaning of intra-State supplies
UTGST	Section 7	Levy and collection of UTGST

7.5 FAQ

Q1. Is the reverse charge mechanism applicable only to services?

Ans. No. Reverse charge applies to supplies of both goods and services.

Q2. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. The receiver of goods would be liable to pay tax under reverse charge.

7.2. MCQ

Q1. As per Section 7, which of the following would attract levy of UTGST?

(a) Inter-state supplies

(b) Intra-state supplies

(c) Any of the above

(d) None of the above

Ans. (b) Intra-state supplies

Q2. Who can notify a supply to be taxed under reverse charge basis?

(a) Board

(b) Central Government

(c) GST Council

(d) None of the above

Ans. (b) Central Government.

Statutory provision

8. Power to grant exemption from tax

(*1*) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(*2*) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case,

under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(*3*) The Central Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (*1*) or order issued under sub-section (*2*), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (*1*) or order under sub-section (*2*), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

(*4*) Any notification issued by the Central Government under sub-section (*1*) of section 11 or order issued under sub-section (*2*) of the said section of the Central Goods and Services Tax Act shall be deemed to be a notification or an order issued under this Act.

Explanation. —For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, more than the effective rate, on such supply of goods or services or both

8.1 Introduction

This provision states that the Central Government may grant exemptions for intra-State supply of goods and / or services within a Union Territory. Reference may also be made to Section 11 of the CGST Act and Section 6 of the IGST Act for a detailed analysis.

8.2 Analysis

The Central Government will be empowered to grant exemptions from payment of UTGST on intra-State supplies within Union Territory, subject to the following conditions:

(i) Exemption should be in public interest

(ii) By way of issue of notification

(iii) On recommendation from the Council

(iv) Absolute / conditional exemption may be for any goods and / or services

(v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature.

- With specific reference to the fourth condition indicated above, it is important to note that the exemption would only be in respect of goods and / or services, and not specifically for classes of persons.
- It is to be noted that in cases where goods and/or services are exempt absolutely, no input tax credit can be claimed.
- Mandatory nature of absolute exemptions has been litigated in the past and where tax is paid even though exemption is available, credit becomes admissible. For this reason, even inadvertence in not availing such absolute

exemptions are made inexcusable. As such, credit denial also becomes absolute. No plea of equity or revenue neutrality becomes admissible.

- There is generally not much doubt about exemptions – whether absolute or conditional – because the condition associated may be examined at one-time or continuously to be satisfied. Conditional exemptions abate if the associated condition is not complied. Care should be taken not to mistake conditional exemption with absolute exemption having specific applicability.
- There is one school of thought wherein it is opined / understood that in case of conditional exemptions, there is an option available to the taxable person to pay the tax (by which way, there would be no requirement for input tax credit reversals). However, an absolute exemption is required to be followed mandatorily. The other view is that exemptions would never be optional, and would be mandatory automatically when the conditions relating to the exemption are satisfied. This provision does not bring in any clarity on this issue.
- In terms of sub-Section (2), the Government may issue a special order on a case-to-case basis. The circumstances of exceptional nature would also have to be specified in the special order. While this provision is welcome, trade and industry is apprehensive that this could be used without necessary superintendence.
- To provide more clarity to the exemption notification or the special order, it is provided that the Government may issue an "Explanation" at any time within a period of 1 year from the date of notification or special order. The effect of this "Explanation" would be retrospective, viz., from the effective date of the relevant notification or special order.
- The law makes it clear that when the exemption is absolute (i.e., if whole or part of tax leviable is exempt) the registered person cannot collect taxes more than the effective rate.

Exemption under section 11 of the CGST/SGST Act equally applicable

Any exemption notification or special order issued under Section 11 of the CGST Law will apply equally for intra-State supplies, viz., any supply of goods or services or both which are exempt under CGST Law will be exempt even under the UTGST Law.

Effective date of the notification or special order:

The effective date of the notification or the special order would be date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would come into force on the date of its issue by the Central Government for publication in the Official Gazette. It follows that such notification/ order shall be made available on the official website of the department of the Central Government.

8.3 Comparative review

The provisions relating to exemption are broadly like the exemption provisions under the current tax regime. There are no significant differences.

8.4 Related provisions

Statute	Section	Description
CGST	Section 11	Exemption from payment of CGST / SGST
IGST	Section 6	Exemption from payment of IGST
UTGST	Section 8	Power to grant exemption from tax

Chapters of UTGST Act covered under CGST / IGST

Sl. No.	Chapter No. / Heading – UTGST	Sections No. - UTGST	Description
1	IV – Payment of tax	9	Payment of tax
		10	Transfer of input tax credit
2	V – Inspection, Search, Seizure and Arrest	11	Officers required to assist proper officers
3	VI – Demands and Recovery	12	Tax wrongfully collected and paid to the Central Government or UT Government
		13	Recovery of tax
4	VII – Advance Ruling	14	Definitions
		15	Constitution of Authority for Advance Ruling
		16	Constitution of Appellate Authority for Advance Ruling
5	VIII – Transitional Provisions	17	Migration of existing tax payers
		18	Transitional arrangements for input tax credit
		19	Transitional provisions relating to job work
		20	Miscellaneous transition provisions
6	IX- Miscellaneous	21	Application of provisions of CGST Act
		22	Power to make Rules
		23	General power to make regulations
		24	Laying of rules, regulations and notifications
		25	Power to issue instructions or directions
		26	Removal of difficulties

- The sections cited supra other than the provisions relating to Chapter IX - Miscellaneous are discussed in the relevant sections of CGST / IGST laws wherever deemed fit.
- The Chapter IX - Miscellaneous other than Section 21 of the UTGST Act are similar to the provisions as discussed in the context of IGST Act. There is an additional provision (section 25 under the UTGST Act), which deals with Commissioner's power to issue instructions or directions, which is similar to section 168 of the CGST Act. Readers are requested to refer to the said provisions in this context.

The discussion on the following provisions have been provided in the CGST Act in the relevant chapters/sections.

(*i*)	scope of supply;
(*ii*)	composition levy;
(*iii*)	composite supply and mixed supply;
(*iv*)	time and value of supply;
(*v*)	input tax credit;
(*vi*)	registration;
(*vii*)	tax invoice, credit and debit notes;
(*viii*)	accounts and records;
(*ix*)	returns;
(*x*)	payment of tax;
(*xi*)	tax deduction at source;
(*xii*)	collection of tax at source;
(*xiii*)	assessment;
(*xiv*)	refunds;
(*xv*)	audit;
(*xvi*)	inspection, search, seizure and arrest;
(*xvii*)	demands and recovery;
(*xviii*)	liability to pay in certain cases;
(*xix*)	advance ruling;
(*xx*)	appeals and revision;

(*xxi*)	presumption as to documents;
(*xxii*)	offences and penalties;
(*xxiii*)	job work;
(*xxiv*)	electronic commerce;
(*xxv*)	settlement of funds;
(*xxvi*)	transitional provisions; and
(*xxvii*)	miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

It is important to note that the UTGST Act is legislated by the Central Government and the corresponding rules would also be legislated under its authority.

Goods and Service Tax (Compensation to States) Act, 2017

The Goods and Service Tax (Compensation to States) Act, 2017 provides for a mechanism to compensate the States on account of loss of revenue which may arise due to implementation of the Goods and Services Tax read together with the Constitutional (one Hundred and First Amendment) Act, 2016, for a period of 5 years.

This Act, inter-alia provides:

(a) That the base year during the transition period shall be reckoned as the financial year 2015-16 for the purpose of calculating compensation amount payable to the States;

(b) That the revenue proposed to be compensated would consist of revenues from all taxes that stands subsumed into the GST law, as audited by the CAG;

(c) For reckoning the growth rate of revenue subsumed for a State at 14% per annum;

(d) That the compensation will be released bi-monthly based on the provisional numbers furnished by the Central Accounting Authorities and the final adjustment to be done after the accounts are subjected to audit by CAG;

(e) That the revenue foregone on account of grant of exemption in the 11 special categories State (Article 279A), be counted for the purpose of determining revenue for the base year 2015-16;

(f) That the revenue of States directly devolved to Mandi / Municipalities would be considered as revenue subsumed;

(g) Levy of a cess over and above the GST on certain notified goods to compensate States for 5 years on account of revenue loss suffered by them;

(h) That the proceeds of the cess will be utilised to compensate States that warrant payment of compensation;

(i) That 50% of the amount remaining unutilised in the fund at the end of the fifth year will be transferred to the Centre and the balance 50% would be distributed amongst the State and Union Territories in the ratio of total revenues from SGST / UTGST of the fifth year;

Relevant Sections of the GST Compensation Act warranting attention are reproduced below:

2. Definitions:

(c) "cess" means the goods and service tax compensation cess levied under section 8;

(g) "input tax" in relation to a taxable person, means:

(i) the cess charged on any supply of goods or services or both to him;

(ii) the cess charged on import of goods, and includes the cess payable on reverse charge basis;

(p) "taxable supply'' means a supply of goods or services or both which is chargeable to the cess under this Act;

8. LEVY AND COLLECTION OF CESS

(1). There shall be levied a cess on such intra-State supplies of goods or services or both as provided for in Section 9 of CGST Act and such inter-State supplies of goods or services or both as provided for in Section 5 of IGST Act, 2017 and collected in such manner as may be prescribed on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the Central Goods and Service Tax Act is brought into force for a period of five years or for such period as may be prescribed on the recommendations of the council.

Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Service Tax Act.

(2). The cess shall be levied on such supplies of goods and services as are specified in column 2 of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set-forth in the corresponding entry in column 4 of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazetted, specify.

Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under Section 15 of the Central Goods and Service Tax Act for intra-State and inter-State supplies of goods or services or both.

Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975(51 of 1975), at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 (52 of 1962), on a value determined under the Customs Tariff Act, 1975.

9. RETURNS, PAYMENTS AND REFUNDS

(1) Every taxable person registered making a taxable supply of goods or services or both, shall –

(a) Pay the amount of cess as payable under this Act in such manner;

(b) Furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and

(c) Apply for refunds of such cess paid in such form.

as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Service Tax Act and the rules made thereafter,

shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of Central Tax on such supplies under the said Act or the rules made thereunder.

11. OTHER PROVISIONS RELATING TO CESS

(1) The provisions of the Central Goods and Services Tax Act and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis apply in relation to the levy and collection of the cess leviable under Section 8 on the intrastate supply of goods and services, as they apply in relation to the levy and collection of Central Tax on such intra-state supplies under the said Act or the rules made thereunder.

(2) The provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall mutatis mutandis apply in relation to the levy and collection of the cess leviable under Section 8 on the inter-state supply of goods and services, as they apply in relation to the levy and collection of Integrated Goods Tax on such inter-state supplies under the said Act or the rules made thereunder.

Provided that the input tax credit in respect of Cess on supply of goods and services leviable under Section 8, shall be utilised only towards payment of said Cess on supply of goods and services leviable under the said Section.

Salient features of the GST Compensation Act:

I. Levy of cess:

- GST Compensation Cess (under Section 8 of the Act) will be levied on all intra-State and inter-State supplies of goods or services or both, including import of goods.
- The following supplies will be liable at the rate specified below:
    - Pan Masala (not exceeding 135% *ad valorem*)
    - Tobacco and Tobacco products (Rs. 4,170 per 1,000 sticks or 290% *ad valorem or a combination thereof,* but not exceeding Rs. 4,170 per 1,000 sticks plus 290% *ad valorem*)
    - Coal, briquettes and similar solid fuels (Rs. 400 per tonne)
    - Aerated Water (15% *ad valorem)*
    - Motor cars and passenger motor vehicles (15% *ad valorem)*
    - Any other supplies (15% *ad valorem)*
- The Cess would not be leviable on supplies made by a person who has opted for composition levy.

- Those supplies that are liable to tax with reference to their value (i.e. all supplies except coal, briquettes and similar solid fuels), are to be determined based on the Valuation provisions under Section 15 of the CGST Act.
- The cess levied under this Act would be payable over and above the CGST, SGST/UTGST and IGST tax leviable on.

II. Determination of Base Year Revenue:

- The Compensation amount to be paid in any year during the transition period is to be computed taking the base year as 2015-16 only.
- The provisions of Section 5(1) of the said Act lists the taxes imposed by State / Union that stand subsumed into the GST while the proviso to Section 5(1) lists out the taxes that shall not be included for calculation of base year revenue. The revenue collected by the States on account of the said taxed detailed in Section 5(1) of the Act alone would be considered for the determination of Base Year Revenue;
- The revenue collected would always be reckoned as 'net of refunds';
- The transition period will be the period of 5 years from the date when the respective SGST Acts commence.

III. Input Tax Credit and returns:

- Input Tax Credit on inward supplies liable to cess can be utilized only for payment of cess on outward supplies liable to cess under the Act.
- A taxable person effecting supplies chargeable to cess is required to file returns along with the returns prescribed under the CGST Act.

IV. General

- All provisions of CGST Act and IGST Act including input tax credit, assessment, offences, penalties, interest, non-levy and short-levy will apply in relation to the levy and collection of cess on intra-State and inter-State supply, respectively.

Note on State GST Laws & Rules

In the scheme of overall implementation of GST, the Parliament enacts Central GST Act, Integrated GST Act, Union Territory GST Act and when it comes to State GST Acts, each of the State legislature are to enact their respective State GST enactments.

As discussed in this background material in detail, on intra-state supply of goods or services, two levies would be attracted, i.e. Central GST and State GST in case of states; Central GST and Union Territory GST in case of Union Territory. When the same transaction attracts two taxes, obviously, both the enactments should operate simultaneously in the absence of which compliance with law arises. In that direction, the GST Council has provided all the States, a model version of State GST law for enactment in the respective states.

It will be interesting to note that as on date Telangana State has already passed the State GST bill in its legislature. On a perusal of the said bill, it can be seen that almost all the provisions are in parallel with the provisions of Central GST Act, 2017 with suitable modifications as to State GST tax.

In this background material:

1. Wherever the State GST law differs from the Central GST Act, the same is discussed at appropriate places.
2. The Draft Rules, which are available in public domain are considered and discussed at appropriate places. The Rules are issued under delegated legislation by the Central Government in so far as the CGST, IGST and UTGST laws are concerned whereas it will be issued by the respective State Government when it comes to SGST is concerned. It is suggested that the final rules as and when issued by both Central Government and State Government should be considered appropriately when referring to this background material.

Chapter __

COMPOSITION RULES

1. Intimation for composition levy

(1) Any person who has been granted registration on a provisional basis under sub-rule (1) of rule Registration.16 and who opts to pay tax under section 10, shall electronically file an intimation in FORM GST CMP-01, duly signed, on the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, prior to the appointed day, but not later than thirty days after the said day, or such further period as may be extended by the Commissioner in this behalf:

Provided that where the intimation in FORM GST CMP-01 is filed after the appointed day, the registered person shall not collect any tax from the appointed day but shall issue bill of supply for supplies made after the said day.

(2) Any person who applies for registration under rule Registration.1 may give an option to pay tax under section 10 in Part B of FORM GST REG-01, which shall be considered as an intimation to pay tax under the said section.

(3) Any registered person who opts to pay tax under section 10 shall electronically file an intimation in FORM GST CMP-02, duly signed, on the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised and shall furnish the statement in FORM GST ITC-3 in accordance with the provisions of sub-rule (4) of rule ITC.9 within sixty days from the commencement of the relevant financial year,

(4) Any person who files an intimation under sub-rule (1) to pay tax under section 10 shall furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax under the said section, electronically, in FORM GST CMP-03, on the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, within sixty days of the date from which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf.

(5) Any intimation under sub-rule (1) or sub-rule (3) in respect of any place of business in any State or Union territory shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

2. Effective date for composition levy

(1) The option to pay tax under section 10 shall be effective from the beginning of the financial year, where the intimation is filed under sub-rule (3) of rule 1 and the appointed date where intimation is filed under sub-rule (1) of the said rule

(2) The intimation under sub-rule (2) of rule 1 shall be considered only after grant of registration to the applicant and his option to pay tax under section 10 shall be effective from the date fixed under sub-rule (2) or (3) of rule Registration.3.

3. Conditions and restrictions for composition levy

(1) The person exercising the option to pay tax under section 10 shall comply with the following conditions:

(a) he is neither a casual taxable person nor a non-resident taxable person;

(b) the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised under sub-rule (1) of rule 1;

(c) the goods held in stock by him have not been purchased from an unregistered person and where purchased, he pays the tax under sub-section (4) of section 9;

(d) he shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both received from un-registered persons;

(e) he was not engaged in the manufacture of goods as notified under clause (e) of sub-section (2) of section 10, during the preceding financial year;

(f) he shall mention the words "composition taxable person, not eligible to collect tax on supplies" at the top of the bill of supply issued by him; and

(g) he shall mention the words "composition taxable person" on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.

(2) The registered person paying tax under section 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the Act and these rules.

4 Validity of composition levy

(1) The option exercised by a registered person to pay tax under section 10 shall remain valid so long as he satisfies all the conditions mentioned in the said section and these rules.

(2) The person referred to in sub-rule (1) shall be liable to pay tax under sub-section (1) of section 9 from the day he ceases to satisfy any of the conditions mentioned in section 10 or these rules and shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in FORM GST CMP-04 within seven days of occurrence of such event.

(3) The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in FORM GST CMP-04, duly signed, electronically on the Common Portal.

(4) Where the proper officer has reasons to believe that the registered person was not

eligible to pay tax under section 10 or has contravened the provisions of the Act or these rules, he may issue a notice to such person in FORM GST CMP-05 to show cause within fifteen days of the receipt of such notice as to why option to pay tax under section 10 should not be denied.

(5) Upon receipt of reply to the show cause notice issued under sub-rule (4) from the registered person in FORM GST CMP-06, the proper officer shall issue an order in FORM GST CMP-07 within thirty days of receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 from the date of option or from the date of the event concerning such contravention, as the case may be.

(6) Every person who has furnished an intimation under sub-rule (2) or filed an application for withdrawal under sub-rule (3) or a person in respect of whom an order of withdrawal of option has been passed in FORM GST CMP-07 under sub-rule (5), may electronically furnish at the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, a statement in FORM GST ITC-01 containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, within 30 days, from the date from which the option is withdrawn or from the date of order passed in FORM GST CMP-07, as the case may be.

(7) Any intimation for withdrawal under sub-rule (2) or (3) or denial of the option under sub-rule (5) in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

5. Rate of tax of the composition levy

The category of registered persons, eligible for composition levy under section 10 and these rules, specified in column (2) of the Table below shall pay tax under section 10 at the rate specified in column (3) of the said Table:

Sl No. *(1)*	*Category of registered persons* *(2)*	*Rate of tax* *(3)*
1	Manufacturers, other than manufacturers of such goods as may be notified by the Government	one per cent.
2	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	two and a half per cent.
3	Any other supplier eligible for composition levy under section 10 and these rules	half per cent.

Relevant Forms Related to Composition Levy

Sl No.	Form Number	Content
1.	FORM GST CMP-01	Intimation for composition levy by a person who has been granted provisional registration and who opts to pay tax under section 10 i.e. Composition Levy
2.	FORM GST CMP-02	Intimation for composition levy by a registered person who opts to pay tax under section 10 i.e. Composition Levy
3.	FORM GST CMP-03	Details of stock, including the inward supply of goods received from unregistered persons to be provided by a person who has been granted provisional registration adopts pay tax under composition levy
4.	FORM GST CMP-04	Application for withdrawal from the composition scheme
5.	FORM GST CMP-05	Show Cause Notice for denying the option to pay tax under Composition levy
6.	FORM GST CMP-06	Reply to Show Cause Notice
7.	FORM GST CMP-07	Order for accepting or denying the option to pay tax under Composition levy.

Chapter __

INPUT TAX CREDIT

1. Documentary requirements and conditions for claiming input tax credit

(1) The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely: -

(a) an invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;

(b) a debit note issued by a supplier in accordance with the provisions of section 34;

(c) a bill of entry;

(d) an invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31;

(e) a document issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule invoice.7;

(f) a document issued by an Input Service Distributor, as prescribed in clause (g) of sub-rule (1) of rule 4.

(2) Input tax credit shall be availed by a registered person only if all the applicable as prescribed in Chapter ---- (*Invoice Rules*) are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person.

(3) No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been raised on account of any fraud, willful misstatement or suppression of facts.

2. Reversal of input tax credit in case of non-payment of consideration

(1) A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof the value of such supply along with the tax payable thereon within the time limit specified in the second proviso to sub-section (2) of section 16, shall furnish the details of such supply and the amount of input tax credit availed of in FORM GSTR-2 for the month immediately following the period of one hundred and eighty days from the date of issue of invoice.

(2) The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.

(3) The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.

3. Claim of credit by a banking company or a financial institution

A banking company or a financial institution, including a non-banking financial company,

engaged in supply of services by way of accepting deposits or extending loans or advances that chooses not to comply with the provisions of sub-section (2) of section 17, in accordance with the option permitted under sub-section (4) of that section, shall follow the procedure specified below -

(a) the said company or institution shall not avail the credit of tax paid on inputs and input services that are used for non-business purposes and the credit attributable to supplies specified in sub-section (5) of section 17, in FORM GSTR-2;

(b) the said company or institution shall avail the credit of tax paid on inputs and input services referred to in the second proviso to sub-section (4) of section 16 and not covered under clause (a);

(c) fifty per cent. of the remaining input tax shall be the input tax credit admissible to the company or the institution and shall be furnished in FORM GSTR-2;

(d) the amount referred to in clauses (b) and (c) shall, subject to the provisions of sections 41, 42 and 43, be credited to the electronic credit ledger of the said company or the institution.

4. Procedure for distribution of input tax credit by Input Service Distributor

(1) An Input Service Distributor shall distribute input tax credit in the manner and subject to the conditions specified below-

(a) the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR-6 in accordance with the provisions of Chapter ---- (*Return Rules*);

(b) the Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount in-eligible as input tax credit under the provisions of sub-section (5) of section 17 and the amount eligible as input tax credit;

(c) the input tax credit on account of central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d);

(d) the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) of sub-section (2) of section 20 to one of the recipients *'R_1'*, whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C_1", to be calculated by applying the following formula:-

$$C_1 = (t_1 \div T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t_1" is the turnover, as referred to in section 20, of person R1 during the relevant period, and

"T" is the aggregate of the turnover of all recipients during the relevant period;

(e) the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;

(f) the input tax credit on account of central tax and State tax shall,

(i) in respect of a recipient located in the same State in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax respectively;

(ii) in respect of a recipient located in a State other than that of the Input Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax that qualifies for distribution to such recipient in accordance with clause (d);

(g) The Input Service Distributor shall issue an ISD invoice, as prescribed in sub-rule (1) of rule invoice-7, clearly indicating in such invoice that it is issued only for distribution of input tax credit.

(h) The Input Service Distributor shall issue an ISD credit note, as prescribed in sub-rule (1) of rule Invoice-7, for reduction of credit in case the input tax credit already distributed gets reduced for any reason.

(i) Any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (g) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) above and such credit shall be distributed in the month in which the debit note has been included in the return in FORM GSTR-6.

(j) Any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which input tax credit contained in the original invoice was distributed in terms of clause (d) above, and the amount so apportioned shall be, -

(i) reduced from the amount to be distributed in the month in which the credit note is included in the return in FORM GSTR-6; and

(ii) added to the output tax liability of the recipient and where the amount so apportioned is in the negative by virtue of the amount of credit to be distributed is less than the amount to be adjusted.

(2) If the amount of input tax credit distributed by an Input Service Distributor is reduced later on for any other reason for any of the recipients, including that it was distributed to

a wrong recipient by the Input Service Distributor, the process prescribed in clause (j) of sub-rule (1) shall, *mutatis mutandis* apply for reduction of credit.

(3) Subject to sub-rule (2), the Input Service Distributor shall, on the basis of the ISD credit note specified in clause (h) of sub-rule (1), issue an ISD Invoice to the recipient entitled to such credit and include the ISD credit note and the ISD Invoice in the return in FORM GSTR-6 for the month in which such credit note and invoice was issued.

5. Manner of claiming credit in special circumstances

(1) Input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs lying in stock or inputs contained in semi-finished or finished goods lying in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions -

(a) The input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of invoice or such other documents on which the capital goods were received by the taxable person.

(b) The registered person shall within thirty days from the date of his becoming eligible to avail of input tax credit under sub-section (1) of section 18 shall make a declaration, electronically, on the Common Portal in FORM GST ITC-01 to the effect that he is eligible to avail of input tax credit as aforesaid;

(c) The declaration under clause (b) shall clearly specify the details relating to the inputs lying in stock or inputs contained in semi-finished or finished goods lying in stock, or as the case may be, capital goods–

(i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act, in the case of a claim under clause (a) of sub- section (1) of Section 18,

(ii) on the day immediately preceding the date of grant of registration, in the case of a claim under clause (b) of sub-section (1) of Section 18,

(iii) on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of Section 18,

(iv) on the day immediately preceding the date from which supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub- section (1) of Section 18.

(d) The details furnished in the declaration under clause (c) shall be duly certified by a practicing chartered account or cost accountant if the aggregate value of claim on account of central tax, State tax and integrated tax exceeds two lakh rupees.

(e) The input tax credit claimed in accordance with clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the

corresponding supplier in FORM GSTR-1 or as the case may be, in FORM GSTR-4, on the Common Portal.

6. Transfer of credit on sale, merger, amalgamation, lease or transfer of a business

(1) A registered person shall, on sale, merger, de-merger, amalgamation, lease or transfer or change in ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in FORM GST ITC-02 electronically on the Common Portal along with a request to transfer the unutilized input tax credit lying in his electronic credit ledger to the transferee:

Provided that in the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme.

(2) The transferor shall also submit a copy of a certificate issued by a practicing chartered account or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for transfer of liabilities.

(3) The transferee shall, on the Common Portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in FORM GST ITC-02 shall be credited to his electronic credit ledger.

(4) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account.

7. Manner of determination of input tax credit in certain cases and reversal thereof

(1) The input tax credit in respect of inputs or input services, which attract the provisions of sub-sections (1) or (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempted supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely, -

(a) total input tax involved on inputs and input services in a tax period, be denoted as 'T';

(b) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for purposes other than business, be denoted as 'T_1';

(c) the amount of input tax, out of 'T', attributable to inputs and input services intended to be used exclusively for effecting exempt supplies, be denoted as 'T_2';

(d) the amount of input tax, out of 'T', in respect of inputs on which credit is not available under sub-section (5) of section 17, be denoted as 'T_3';

(e) the amount of input tax credit credited to the electronic credit ledger of registered person, be denoted as 'C_1' and calculated as:

$$C_1 = T - (T_1+T_2+T_3)$$

(f) the amount of input tax credit attributable to inputs and input services used exclusively in or in relation to taxable supplies including zero rated supplies, be denoted as 'T_4';

(g) ' T_1', 'T_2', 'T_3' and 'T_4' shall be determined and declared by the registered person at the invoice level in FORM GSTR-2;

(h) Input tax credit left after attribution of input tax credit under clause (g) shall be called common credit, be denoted as 'C_2' and calculated as:

$$C_1 = C_1 - T_4$$

(i) The amount of input tax credit attributable towards exempt supplies, be denoted as 'D_1' and calculated as

where,

$$D_1 = (E \div F) \times C_2$$

'E' is the aggregate value of exempt supplies, that is, all supplies other than taxable and zero rated supplies, during the tax period, and

'F' is the total turnover of the registered person during the tax period:

Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' shall calculated by taking values of 'E' and 'F' of the last tax period for which details of such turnover are available, previous to the month during which the said value of 'E/F' is to calculated;

Explanation: For the purposes of this clause, the aggregate value of exempt supplies and total turnover shall exclude the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule.

(j) the amount of credit attributable to non-business purposes if common inputs and input services are used partly for business and partly for non-business purposes, be denoted as 'D_2', and shall be equal to five per cent. of C_2; and

(k) the remainder of the common credit shall be the eligible input tax credit attributed to the purposes of business and for effecting taxable supplies including zero rated supplies and shall be denoted as 'C_3', where, -

$$C_3 = C_2 - (D_1 + D_2);$$

(l) The amount 'C_3' shall be computed separately for input tax credit of central tax, State tax, Union territory tax and integrated tax;

(m) The amount equal to 'D_1' and 'D_2' shall be added to the output tax liability of the registered person:

Provided that if the amount of input tax relating to inputs or input services which have been used partly for purposes other than business and partly for effecting exempt

supplies has been identified and segregated at invoice level by the registered person, the same shall be included in 'T_1' and 'T_2' respectively, and the remaining amount of credit on such input or input services shall be included in 'T_4'.

(2) The input tax credit determined under sub-rule (1) shall be calculated finally for the financial year before the due date for filing the return for the month of September following the end of the financial year to which such credit relates, in the manner prescribed in the said sub-rule and,

(a) where the aggregate of the amounts calculated finally in respect of 'D_1' and 'D_2' exceeds the aggregate of the amounts determined under sub-rule (1) in respect of 'D_1' and 'D_2', such excess shall be added to the output tax liability of the registered person for a month not later than the month of September following the end of the financial year to which such credit relates and the said person shall be liable to pay interest on the said excess amount at the rate specified in sub-section (1) of section 50 for the period starting from first day of April of the succeeding financial year till the date of payment; or

(b) where the aggregate of the amounts determined under sub-rule (1) in respect of 'D_1' and 'D_2' exceeds the aggregate of the amounts calculated finally in respect of 'D_1' and 'D_2', such excess amount shall be claimed as credit by the registered person in his return for a month not later than the month of September following the end of the financial year to which such credit relates.

8. Manner of determination of input tax credit in respect of capital goods and reversal thereof in certain cases

(1) Subject to the provisions of sub-section (3) of section 16, the input tax credit in respect of capital goods, which attract the provisions of sub-sections (1) and (2) of section 17, being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies including zero rated supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies in the following manner, namely, -

(a) the amount of input tax in respect of capital goods used or intended to be used exclusively for non-business purposes or used or intended to be used exclusively for effecting exempt supplies shall be indicated in FORM GSTR-2 and shall not be credited to his electronic credit ledger;

(b) the amount of input tax in respect of capital goods used or intended to be used exclusively for effecting taxable supplies including zero-rated supplies shall be indicated in FORM GSTR-2 and shall be credited to the electronic credit ledger;

(c) the amount of input tax in respect of capital goods not covered under clauses (a) and (b), denoted as 'A', shall be credited to the electronic credit ledger and the useful life of such goods shall be taken as five years:

Provided that where any capital goods earlier covered under clause (a) is

subsequently covered under this clause, the value of 'A' shall be arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof and the amount 'A' shall be credited to the electronic credit ledger;

(d) the aggregate of the amounts of 'A' credited to the electronic credit ledger under clause (c), to be denoted as 'T_c', shall be the common credit in respect of capital goods for a tax period:

Provided that where any capital goods earlier covered under clause (b) is subsequently covered under this clause, the value of 'A' arrived at by reducing the input tax at the rate of five percentage points for every quarter or part thereof shall be added to the aggregate value 'T_c';

(e) the amount of input tax credit attributable to a tax period on common capital goods during their residual life, be denoted as 'Tm' and calculated as: -

$$T_m = T_c \div 60$$

(f) the amount of input tax credit, at the beginning of a tax period, on all common capital goods whose residual life remains during the tax period, be denoted as 'T_r' and shall be the aggregate of 'T_m' for all such capital goods.

(g) the amount of common credit attributable towards exempted supplies, be denoted as 'T_e', and calculated as:

$$T_e = (E \div F) \times T_r$$

where,

'E' is the aggregate value of exempt supplies, that is, all supplies other than taxable and zero rated supplies, during the tax period, and

'F' is the total turnover of the registered person during the tax period:

Provided that where the registered person does not have any turnover during the said tax period or the aforesaid information is not available, the value of 'E/F' calculated by taking values of 'E' and 'F' of the last tax period for which details of such turnover are available, previous to the month during which the said value of 'E/F' is to calculated;

Explanation: For the purposes of this clause, the aggregate value of exempt supplies and total turnover shall exclude the amount of any duty or tax levied under Entry 84 of List I of the Seventh Schedule to the Constitution and Entry 51 and 54 of List II of the said Schedule;

(h) the amount T_e along with applicable interest shall, during every tax period of the residual life of the concerned capital goods, be added to the output tax liability of the person making such claim of credit.

(2) The amount T_e shall be computed separately for central tax, State tax, Union territory tax and integrated tax.

9. Manner of reversal of credit under special circumstances

(1) The amount of input tax credit, relating to inputs lying in stock, inputs contained in semi-finished and finished goods lying in stock, and capital goods lying in stock, for the purposes of sub-section (4) of section 18 or sub-section (5) of 29, shall be determined in the following manner namely, -

(a) For inputs lying in stock, and inputs contained in semi-finished and finished goods lying in stock, the input tax credit shall be calculated proportionately on the basis of corresponding invoices on which credit had been availed by the registered taxable person on such input.

(b) For capital goods lying in stock the input tax credit involved in the remaining residual life in months shall be computed on pro-rata basis, taking the residual life as five years;

Illustration

Capital goods have been in use for 4 years, 6 month and 15 days.

The residual remaining life in months= 5 months ignoring a part of the month

Input tax credit taken on such capital goods=Ç

Input tax credit attributable to remaining residual life=C multiplied by 5/60

(2) The amount, as prescribed in sub-rule (1) shall be determined separately for input tax credit of IGST and CGST.

(3) Where the tax invoices related to the inputs lying in stock are not available, the registered person shall estimate the amount under sub-rule (1) based on the prevailing market price of goods on the effective date of occurrence of any of the events specified in sub-section (4) of section 18 or sub-section (5) of section 29.

(4) The amount determined under sub-rule (1) shall form part of the output tax liability of the registered person and the details of the amount shall be furnished in FORM GST ITC-03, where such amount relates to any event specified in sub-section (4) of section 18 and in FORM GSTR-10, where such amount relates to cancellation of registration.

10: Conditions and restriction in respect of inputs and capital goods sent to the job worker

(1) The inputs or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where the inputs or capital goods are sent directly to job- worker.

(2) The challan issued by the principal to the job worker shall contain the details specified in rule Invoice.8.

(3) The details of challans in respect of goods dispatched to a job worker or received from a job worker during a tax period shall be included in FORM GSTR-1 furnished for that period.

(4) If the inputs or capital goods are not returned to the principal within the time stipulated in

section 143, the challan issued under sub-rule (1) shall be deemed to be an invoice for the purposes of this Act.

Explanation. For the purposes of this Chapter, -

(1) "capital goods" shall include "plant and machinery" as defined in the Explanation to section 17;

(2) for determining the value of an exempt supply as referred to in sub-section (3) of section17:

(a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and

(b) the value of security shall be taken as one per cent. of the sale value of such security.

Relevant Input Tax Credit Form

Sl No.	Form Number	Content
1.	FORM GST ITC-01	Declaration, to the effect that following are eligible to avail of input tax credit on the inputs lying in stock or inputs contained in semi-finished or finished goods lying in stock, or the credit claimed on capital goods • a person who has applied for registration within 30 days from the date on which he becomes liable to registration and has been granted such registration; or • a person who takes registration under section 25(3) • where any registered person ceases to pay tax under composite levy or becomes liable to pay tax u/s 9
2.	FORM GST ITC-02	Details of sale, merger, de-merger, amalgamation, lease or transfer of business
3.	FORM GST ITC-03	Details of output tax liability pertaining to the amount of ITC, relating to inputs lying in stock, inputs contained in semi-finished and finished goods lying in stock, and capital goods lying in stock in terms of Section18(4)

Chapter ___

DETERMINATION OF VALUE OF SUPPLY

1. Value of supply of goods or services where the consideration is not wholly in money

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,

(a) be the open market value of such supply;

(b) if open market value is not available, be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d) if value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by application of rule 4 or rule 5 in that order.

Illustration:

(1) Where a new phone is supplied for Rs.20000 along with the exchange of an old phone and if the price of the new phone without exchange is Rs.24000, the open market value of the new phone is Rs 24000.

(2) Where a laptop is supplied for Rs.40000 along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is Rs.4000 but the open market value of the laptop is not known, the value of the supply of laptop is Rs.44000.

2. Value of supply of goods or services or both between distinct or related persons, other than through an agent

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall, -

(a) be the open market value of such supply;

(b) if open market value is not available, be the value of supply of goods or services of like kind and quality;

(c) if value is not determinable under clause (a) or (b), be the value as determined by application of rule 4 or rule 5, in that order:

Provided where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services.

3. Value of supply of goods made or received through an agent

The value of supply of goods between the principal and his agent shall, -

(a) be the open market value of the goods being supplied, or at the option of the supplier, be ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient;

Illustration: Where a principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of Rs.5000 per quintal on the day of supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of Rs.4550 per quintal. The value of the supply made by the principal shall be Rs.4550 per quintal or where he exercises the option the value shall be 90% of the Rs.5000 i.e. is Rs.4500 per quintal.

(b) where the value of a supply is not determinable under clause (a), the same shall be determined by application of rule 4 or rule 5 in that order.

4. Value of supply of goods or services or both based on cost

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules, the value shall be one hundred and ten percent of the cost of production or manufacture or cost of acquisition of such goods or cost of provision of such services.

5. Residual method for determination of value of supply of goods or services or both

Where the value of supply of goods or services or both cannot be determined under rules 1 to 4, the same shall be determined using reasonable means consistent with the principles and general provisions of section 15 and these rules:

Provided that in case of supply of services, the supplier may opt for this rule, disregarding rule 4.

6. Determination of value in respect of certain supplies

(1) Notwithstanding anything contained in the Act or in these rules, the value in respect of supplies specified below shall be determined in the manner provided hereinafter.

(2) The value of supply of services in relation to purchase or sale of foreign currency, including money changing, shall be determined by the supplier of service in the following manner: -

(a) For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

Provided also that a person supplying the services may exercise option to ascertain value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

(b) At the option of supplier of services, the value in relation to supply of foreign currency, including money changing, shall be deemed to be

(i) one per cent. of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;

(ii) one thousand rupees and half of a per cent. of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and

(iii) five thousand rupees and one tenth of a per cent. of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to maximum amount of sixty thousand rupees.

(3) The value of supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of five percent. of the basic fare in the case of domestic bookings, and at the rate of ten per cent. of the basic fare in the case of international bookings of passage for travel by air.

Explanation - For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airline.

(4) The value of supply of services in relation to life insurance business shall be:

(a) the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such amount is intimated to the policy holder at the time of supply of service;

(b) in case of single premium annuity policies other than (a), ten per cent. of single premium charged from the policy holder; or

(c) in all other cases, twenty-five per cent. of the premium charged from the policy holder in the first year and twelve and a half per cent. of the premium charged from policy holder in subsequent years:

Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

(5) Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e. used goods as such or after such minor processing which does not

change the nature of the goods and where no input tax credit has been availed on purchase of such goods, the value of supply shall be the difference between the selling price and purchase price and where the value of such supply is negative it shall be ignored.

(6) The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

(7) The value of taxable services provided by such class of service providers as may be notified by the Government on the recommendations of the Council as referred to in Entry 2 of Schedule I between distinct persons as referred to in section 25, other than those where input tax credit is not available under sub-section (5) of section 17, shall be deemed to be NIL.

7. Value of supply of services in case of pure agent

Notwithstanding anything contained in these rules, the expenditure or costs incurred by the supplier as a pure agent of the recipient of supply of services shall be excluded from the value of supply, if all the following conditions are satisfied, namely: -

(i) the supplier acts as a pure agent of the recipient of the supply, when he makes payment to the third party for the services procured as the contract for supply made by third party is between third party and the recipient of supply;

(ii) the recipient of supply uses the services so procured by the supplier service provider in his capacity as pure agent of the recipient of supply;

(iii) the recipient of supply is liable to make payment to the third party;

(iv) the recipient of supply authorises the supplier to make payment on his behalf;

(v) the recipient of supply knows that the services for which payment has been made by the supplier shall be provided by the third party;

(vi) the payment made by the supplier on behalf of the recipient of supply has been separately indicated in the invoice issued by the supplier to the recipient of service;

(vii) the supplier recovers from the recipient of supply only such amount as has been paid by him to the third party; and

(viii) the services procured by the supplier from the third party as a pure agent of the recipient of supply are in addition to the supply he provides on his own account.

Explanation. - For the purposes of this rule, "pure agent" means a person who -

(a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;

(b) neither intends to hold nor holds any title to the goods or services or both so procured or provided as pure agent of the recipient of supply;

(c) does not use for his own interest such goods or services so procured; and

(d) receives only the actual amount incurred to procure such goods or services.

Illustration. Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to Registrar of the Companies. The fees charged by the Registrar of the companies registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

8. Rate of exchange of currency, other than Indian rupees, for determination of value

The rate of exchange for determination of value of taxable goods or services or both shall be the applicable reference rate for that currency as determined by the Reserve Bank of India on the date when point of taxation arises in respect of such supply in terms of section 12 or, as the case may be, section 13 of the Act.

Explanation. -For the purposes of this Chapter,-

(a) "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

(b) "supply of goods or services or both of like kind and quality" means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.

1. Application in respect of tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day

(1) Every registered person entitled to take credit of input tax under section 140 shall, within sixty days of the appointed day, submit an application electronically in FORM GST TRAN-1, duly signed, on the Common Portal specifying therein, separately, the amount of tax or duty to the credit of which the said person is entitled under the provisions of the said section:

Provided that where the inputs have been received from an Export Oriented Unit or a unit located in Electronic Hardware Technology Park, the credit shall be allowed to the extent as provided in sub-rule (7) of rule 3 of the CENVAT Credit Rules, 2004:

[*This proviso is applicable only in CGST*]

Provided that in the case of a claim under sub-section (1) of section 140, the application shall specify separately—

(i) the value of claims under section 3, sub-section (3) of section 5, sections 6 and 6A and sub-section (8) of section 8 of the Central Sales Tax Act, 1956 made by the applicant during the financial year relating to the relevant return, and

(ii) the serial number and value of declarations in Forms C and/or F and Certificates in Forms E and/or H or Form I specified in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 submitted by the applicant in support of the claims referred to in sub- clause (i) above;

[This proviso is applicable only in SGST]

(2) Every application under sub-rule (1) shall:

(a) in the case of a claim under sub-section (2) of section140, specify separately the following particulars in respect of every item of capital goods as on the appointed day-

(i) the amount of tax or duty availed or utilized by way of input tax credit under each of the existing laws till the appointed day, and

(ii) the amount of duty or tax yet to be availed or utilized by way of input tax credit under each of the existing laws till the appointed day;

(b) in the case of a claim under sub-section (3), or the proviso thereto, or clause (b) of sub- section (4), sub-section (6), sub-section (8), sub-section (9) of Section 140 shall specify separately details of stock held on the appointed day;

(c) in the case of a claim under sub-section (5), shall furnish the following details—

(i) the name of the supplier, serial number and date of issue of the invoice by

the supplier or any document on the basis of which credit of input tax was admissible under the existing law,

(ii) the description, quantity and value of the goods or services

(iii) the amount of eligible taxes and duties or, as the case may be, the value added tax [or entry tax] charged by the supplier in respect of the goods or services,

(iv) the date on which the receipt of goods or services is entered in the books of account of the recipient.

(3) (a) (i) A registered person, who was not registered under the existing law, availing credit in accordance with the proviso to sub-section (3) of section 140 shall be allowed to avail input tax credit on goods held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of central excise duty.

(ii) Such credit shall be allowed at the rate of [forty per cent.] of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid.

(iii) The scheme shall be available for six tax periods from the appointed date.

(b) Such credit of central tax shall be availed subject to satisfying the following conditions, namely, -

(i) Such goods were not wholly exempt from duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated.

(ii) Document for procurement of such goods is available with the registered person.

(iii) Registered person availing this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2) of rule 1, submits a statement in FORM GST TRAN--- at the end of each of the six tax periods during which the scheme is in operation indicating therein the details of supplies of such goods effected during the tax period.

(iv) The amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the Common Portal.

(v) The stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person.

(In CGST Rules)

(3) (a) (i) A registered person, holding stock of goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State availing credit in accordance with the proviso to sub-section (3) of section 140 shall be allowed to avail input tax credit on goods held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of value added tax.

(ii) Such credit shall be allowed at the rate of [forty per cent.] of the State tax applicable on supply of such goods after the appointed date and shall be credited after the State tax payable on such supply has been paid.

(iii) The scheme shall be available for six tax periods from the appointed date.

(b) Such credit of State tax shall be availed subject to satisfying the following conditions, namely, -

(i) Such goods were not wholly exempt from tax under the <Name of the State> Value Added Tax Act,..

(ii) Document for procurement of such goods is available with the registered person.

(iii) Registered person availing this scheme and having furnished the details of stock held by him in accordance with the provisions of clause (b) of sub-rule (2) of rule 1, submits a statement in FORM GST TRAN--- at the end of each of the six tax periods during which the scheme is in operation indicating therein the details of supplies of such goods effected during the tax period.

(iv) The amount of credit allowed shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the Common Portal.

(v) The stock of goods on which the credit is availed is so stored that it can be easily identified by the registered person.

(4) The amount of credit specified in the application in FORM GST TRAN-1 shall be credited to the electronic credit ledger of the applicant maintained in FORM GST PMT-2 on the Common Portal.

(In SGST Rules of States offering tax on MRP scheme)

2. Declaration of stock held by a principal

Every person to whom the provisions of section 141 apply shall, within sixty days of the appointed day, submit an application electronically in FORM GST TRAN-1, specifying therein, the stock or, as the case may be, capital goods held by him on the appointed day details of stock or, as the case may be, capital goods held by him as a principal at the place/places of business of his agents/branch, separately agent-wise/branch-wise.

3. Details of goods sent on approval basis

Every person having sent goods on approval under the earlier law and to whom sub-section (12) of section 142 applies shall, within sixty days of the appointed day, submit details of such goods sent on approval in FORM GST TRAN-1.

4. Recovery of credit wrongly availed

The amount credited under sub-rule (3) of rule 1 may be verified and proceedings under section 73 or, as the case may be section 74 shall be initiated in respect of any credit wrongly availed, whether wholly or partly.

Relevant Form in case of Transitional Provision

Sl No.	Form Number	Content
1.	Form GST Tran-1	Application in respect of tax or duty credit carried forward under any existing law or on goods held in stock on the appointed day Declaration of stock held by a principal

Chapter ___

REGISTRATION

1. Application for registration

(1) Every person (other than a non-resident taxable person, a person supplying online information and data base access or retrieval services from a place outside India to a non-taxable online recipient referred to in section 14 of the Integrated Goods and Services Tax Act, a person required to deduct tax at source under section 51 and a person required to collect tax at source under section 52) who is liable to be registered under sub-section (1) of section 25 and every person seeking registration under sub-section (3) of section 25 (hereinafter referred to in this Chapter as "the applicant") shall, before applying for registration, declare his Permanent Account Number (PAN), mobile number, e-mail address, State or Union territory in Part A of FORM GST REG-01 on the Common Portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that a Special Economic Zone unit or Special Economic Zone developer shall make a separate application for registration as a business vertical distinct from its other units located outside the Special Economic Zone.

(2) (a) The PAN shall be validated online by the Common Portal from the database maintained by the Central Board of Direct Taxes constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(b) The mobile number declared under sub-rule (1) shall be verified through a one-time password sent to the said mobile number; and

(c) The e-mail address declared under sub-rule (1) shall be verified through a separate one- time password sent to the said e-mail address.

(3) On successful verification of the PAN, mobile number and e-mail address, a temporary reference number shall be generated and communicated to the applicant on the said mobile number and e-mail address.

(4) Using the reference number generated under sub-rule (3), the applicant shall electronically submit an application in Part B of FORM GST REG-01, duly signed, along with documents specified in the said Form at the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner.

(5) On receipt of an application under sub-rule (4), an acknowledgement shall be issued electronically to the applicant in FORM GST REG-02.

(6) A person applying for registration as a casual taxable person shall be given a temporary reference number by the Common Portal for making advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-rule (5) shall be issued electronically only after the said deposit in the electronic cash ledger.

2. Verification of the application and approval

(1) The application shall be forwarded to the proper officer who shall examine the application and the accompanying documents and if the same are found to be in order, approve the grant of registration to the applicant within three working days from the date of submission of application.

(2) Where the application submitted under rule 1 is found to be deficient, either in terms of any information or any document required to be furnished under the said rule, or where the proper officer requires any clarification with regard to any information provided in the application or documents furnished therewith, he may issue a notice to the applicant electronically in FORM GST REG-03 within three working days from the date of submission of application and the applicant shall furnish such clarification, information or documents sought electronically, in FORM GST REG-04, within seven working days from the date of receipt of such intimation.

Explanation. - The clarification includes modification or correction of particulars declared in the application for registration, other than PAN, State, mobile number and e-mail address declared in Part A of FORM GST REG-01.

(3) Where the proper officer is satisfied with the clarification, information or documents furnished by the applicant, he may approve the grant of registration to the applicant within seven working days from the date of receipt of such clarification or information or documents.

(4) Where no reply is furnished by the applicant in response to the notice issued under sub-rule (2) within the prescribed period or where the proper officer is not satisfied with the clarification, information or documents furnished, he shall, for reasons to be recorded in writing, reject such application and inform the applicant electronically in FORM GST REG-05.

(5) If the proper officer fails to take any action -

(a) within three working days from the date of submission of application, or

(b) within seven working days from the date of receipt of clarification, information or documents furnished by the applicant under sub-rule (2), the application for grant of registration shall be deemed to have been approved.

3. Issue of registration certificate

(1) Subject to the provisions of sub-section (12) of section 25, where the application for grant of registration has been approved under rule 2, a certificate of registration in FORM GST REG-06 showing the principal place of business and additional place(s) of business shall be made available to the applicant on the Common Portal and a Goods and Services Tax Identification Number (hereinafter in these rules referred to as "GSTIN") shall be assigned in the following format:

(a) two characters for the State code;

(b) ten characters for the PAN or the Tax Deduction and Collection Account Number;

(c) two characters for the entity code; and

(d) one checksum character.

(2) The registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within thirty days from such date.

(3) Where an application for registration has been submitted by the applicant after thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of grant of registration under sub-rule (1) or sub-rule (3) or sub-rule (5) of rule 2.

(4) Every certificate of registration made available on the Common Portal shall be digitally signed by the proper officer under the Act.

(5) Where the registration has been granted under sub-rule (5) of rule 2, the applicant shall be communicated the registration number and the certificate of registration under sub-rule (1), duly signed, shall be made available to him on the common portal within three days after expiry of the period specified in sub-rule (5) of rule 2.

4. Separate registration for multiple business verticals within a State or a Union territory

(1) Any person having multiple business verticals within a State or a Union territory, requiring a separate registration for any of its business verticals under sub-section (2) of section 25 shall be granted separate registration in respect of each of the verticals subject to the following conditions:

(a) Such person has more than one business vertical as defined in clause (18) of section 2 of the Act;

(b) No business vertical of a taxable person shall be granted registration to pay tax under section 10 if any one of the other business verticals of the same person is paying tax under section 9.

Explanation. - Where any business vertical of a registered person that has been granted a separate registration becomes ineligible to pay tax under section 10, all other business verticals of the said person shall become ineligible to pay tax under the said section.

(c) All separately registered business verticals of such person shall pay tax under this Act on supply of goods or services or both made to another registered business vertical of such person and issue a tax invoice for such supply.

(2) A registered person eligible to obtain separate registration for business verticals may submit a separate application in FORM GST REG-01 in respect of each such vertical.

(3) The provisions of rule 2 and rule 3 relating to verification and grant of registration shall, *mutatis mutandis,* apply to an application submitted under this rule.

5. Grant of registration to persons required to deduct tax at source or to collect tax at source

(1) Any person required to deduct tax in accordance with the provisions of section 51 or a person required to collect tax at source in accordance with the provisions of section 52 shall electronically submit an application, duly signed, in FORM GST REG-07 for grant of registration through the Common Portal, either directly or from a Facilitation Centre notified by the Commissioner.

(2) The proper officer may grant registration after due verification and issue a certificate of registration in FORM GST REG-06 within three working days from the date of submission of application.

(3) Where, upon an enquiry or pursuant to any other proceeding under the Act, the proper officer is satisfied that a person to whom a certificate of registration in FORM GST REG-06 has been issued is no longer liable to deduct tax at source under section 51 or collect tax at source under section 52, the said officer may cancel the registration issued under sub-rule (2) and such cancellation shall be communicated to the said person in FORM GST REG-08:

Provided that the proper officer shall follow the procedure prescribed in rule 14 for cancellation of registration.

6. Grant of registration to non-resident taxable person

(1) A non-resident taxable person shall electronically submit an application, along with a valid passport, for registration, duly signed, in FORM GST REG-09, at least five days prior to the commencement of business at the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

(2) A person applying for registration as a non-resident taxable person shall be given a temporary reference number by the Common Portal for making an advance deposit of tax under section 27 and the acknowledgement under sub-rule (5) of rule 1 shall be issued thereafter.

(3) The person applying for registration under sub-rule (1) shall make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which registration is sought, as specified in section 27.

(4) The provisions of rule 2 and rule 3 relating to verification and grant of registration shall *mutatis mutandis,* apply to an application submitted under this rule.

Explanation. – The application for registration made by a non-resident taxable person shall be signed by his authorized signatory who shall be a person resident in India having a valid PAN.

6A. Grant of registration to a person supplying online information and data base access or retrieval services from a place outside India to a non-taxable online recipient

(1) Any person supplying online information and data base access or retrieval services from a place outside India to a non-taxable online recipient shall electronically submit an application for registration, duly signed, in FORM GST REG-09A, at the Common Portal.

(2) The applicant referred to in sub-rule (1) shall be granted registration, in FORM GST REG-06, subject to such conditions and restrictions and by such officer as may be notified by the Central Government on the recommendations of the Council.

7. Extension in period of operation by casual taxable person and non-resident taxable person

(1) Where a registered casual taxable person or a non-resident taxable person intends to extend the period of registration indicated in his application of registration, an application in FORM GST REG-10 shall be furnished electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, by such person before the end of the validity of registration granted to him.

(2) The application under sub-rule (1) shall be acknowledged only on payment of the amount specified in sub-section (2) of section 27.

8. *Suo moto* registration

(1) Where, pursuant to any survey, enquiry, inspection, search or any other proceedings under the Act, the proper officer finds that a person liable to registration under the Act has failed to apply for such registration, such officer may register the said person on a temporary basis and issue an order in FORM GST REG-11.

(2) The registration granted under sub-rule (1) shall be effective from the date of order granting registration.

(3) Every person to whom a temporary registration has been granted under sub-rule (1) shall, within ninety days from the date of the grant of such registration, submit an application for registration in the form and manner provided in rule 1 or rule 5 unless the said person has filed an appeal against the grant of temporary registration, in which case the application for registration shall be submitted within thirty days from the date of issuance of order upholding the liability to registration by the Appellate Authority.

(4) The provisions of rule 2 and rule 3 relating to verification and issue of certificate of registration shall, *mutatis mutandis,* apply to an application submitted under sub-rule (3).

(5) The GSTIN assigned pursuant to verification under sub-rule (4) shall be effective from the date of order granting registration under sub-rule (1).

9. Assignment of unique identity number to certain special entities

(1) Every person required to be granted a unique identity number under sub-section (9) of section 25 may submit an application, electronically in FORM GST REG-12, duly signed, in the manner specified in rule 1 at the Common Portal, either directly or through a Facilitation Centre, notified by the Board or Commissioner.

(2) The proper officer may, upon submission of an application in FORM GST REG-12 or

after filling up the said form, assign a Unique Identity Number to the said person and issue a certificate in FORM GST REG-06 within three working days from the date of submission of application.

10. Display of registration certificate and GSTIN on the name board

(1) Every registered person shall display his certificate of registration in a prominent location at his principal place of business and at every additional place or places of business.

(2) Every registered person shall display his GSTIN on the name board exhibited at the entry of his principal place of business and at every additional place or places of business.

11. Amendment of registration

(1) Where there is any change in any of the particulars furnished in the application for registration in FORM GST REG-01 or FORM GST REG-07 or FORM GST REG-09 or FORM GST REG-09A or FORM GST-REG-12, as the case may be, either at the time of obtaining registration or as amended from time to time, the registered person shall, within fifteen days of such change, submit an application, duly signed, electronically in FORM GST REG-13, along with documents relating to such change at the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

(2) (a) Where the change relates to-

(i) legal name of business;

(ii) address of the principal place of business or any additional place of business; or

(iii) addition, deletion or retirement of partners or directors, Karta, Managing Committee, Board of Trustees, Chief Executive Officer or equivalent, responsible for day to day affairs of the business,-

which does not warrant cancellation of registration under section 29, the proper officer shall approve the amendment within fifteen working days from the date of receipt of application in FORM GST REG-13 after due verification and issue an order in FORM GST REG-14 electronically and such amendment shall take effect from the date of occurrence of the event warranting amendment.

(b) The change relating to sub-clause (i) and sub-clause (iii) of clause (a) in any State or Union territory shall be applicable for all registrations of the registered person obtained under these rules on the same PAN.

(c) Where the change relates to any particulars other than those specified in clause (a), the certificate of registration shall stand amended upon submission of the application in FORM GST REG-13 on the Common Portal:

Provided that any change in the mobile number or e-mail address of the authorised signatory submitted under rule 1, as amended from time to time, shall

be carried out only after online verification through the Common Portal in the manner provided under the said rule.

(d) Where a change in the constitution of any business results in change of the Permanent Account Number (PAN) of a registered person, the said person shall apply for fresh registration in FORM GST REG-01.

(3) Where the proper officer is of the opinion that the amendment sought under clause (a) of sub- rule (2) is either not warranted or the documents furnished therewith are incomplete or incorrect, he may, within fifteen working days from the date of receipt of the application in FORM GST REG-13, serve a notice in FORM GST REG-03, requiring the registered person to show cause, within seven working days of the service of the said notice, as to why the application submitted under sub-rule (1) shall not be rejected.

(4) The taxable person shall furnish a reply to the notice to show cause, issued under sub-rule 3, in FORM GST REG-04 within seven working days from the date of the service of the said notice.

(5) Where the reply furnished under sub-rule (4) is found to be not satisfactory or where no reply is furnished in response to the notice issued under sub-rule (3) within the period prescribed in sub-rule (4), the proper officer shall reject the application submitted under sub-rule (1) and pass an order in FORM GST REG-05.

(6) If the proper officer fails to take any action-

(a) within fifteen working days from the date of submission of application, or

(b) within seven working days from the date of receipt of reply to the notice to show cause under sub-rule (4), the certificate of registration shall stand amended to the extent applied for and the amended certificate shall be made available to the registered person on the Common Portal.

12. Application for cancellation of registration

A registered person, other than a person to whom a unique identification number has been granted under rule 9 or a person to whom registration has been granted under rule 5, seeking cancellation of his registration under sub-section (1) of section 29 shall electronically submit an application in FORM GST REG-14, including therein the details of inputs held in stock or inputs contained in semi-finished or finished goods held in stock and of capital goods held in stock on the date from which cancellation of registration is sought, liability thereon, details of the payment, if any, made against such liability and may furnish, along with the application, relevant documents in support thereof at the Common Portal within thirty days of occurrence of the event warranting cancellation, either directly or through a Facilitation Centre notified by the Commissioner:

Provided that no application for cancellation of registration shall be considered in case of a taxable person, who has registered voluntarily, before the expiry of a period of one year from the effective date of registration.

13. Registration to be cancelled in certain cases

The registration granted to a person is liable to be cancelled if the said person—

(a) does not conduct any business from the declared place of business; or

(b) issues invoice or bill without supply of goods or services in violation of the provisions of this Act, or the rules made thereunder.

14. Cancellation of registration

(1) Where the proper officer has reasons to believe that the registration of a person is liable to be cancelled under section 29, he shall issue a notice to such person in FORM GST REG-16, requiring him to show cause within seven working days from the date of service of such notice as to why his registration should not be cancelled.

(2) The reply to the show cause notice issued under sub-rule (1) shall be furnished in FORM REG–17 within the period prescribed in the said sub-rule.

(3) Where a person who has submitted an application for cancellation of his registration is no longer liable to be registered or his registration is liable to be cancelled, the proper officer shall issue an order in FORM GST REG-18, within thirty days from the date of application submitted under sub-rule (1) of rule 12 or, as the case may be, the date of reply to the show cause issued under sub-rule (1), cancel the registration, with effect from a date to be determined by him and notify the taxable person, directing to pay arrears of any tax, interest or penalty including the amount liable to be paid under sub-section(5) of section 29.

(4) Where the reply furnished under sub-rule (2) is found to be satisfactory, the proper officer shall drop the proceedings and pass an order in FORM GST REG –19.

(5) The provisions of sub-rule (3) shall, *mutatis mutandis,* apply to the legal heirs of a deceased proprietor, as if the application had been submitted by the proprietor himself.

15. Revocation of cancellation of registration

(1) A registered person, whose registration is cancelled by the proper officer on his own motion, may submit an application for revocation of cancellation of registration, in FORM GST REG-20, to such proper officer, within thirty days from the date of service of the order of cancellation of registration at the Common Portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that no application for revocation shall be filed if the registration has been cancelled for the failure of the taxable person to furnish returns, unless such returns are filed and any amount due as tax, in terms of such returns has been paid along with any amount payable towards interest, penalties and late fee payable in respect of the said returns.

(2) (a) Where the proper officer is satisfied, for reasons to be recorded in writing, that there are sufficient grounds for revocation of cancellation of registration, he shall revoke the cancellation of registration by an order in FORM GST REG-21 within

thirty days from the date of receipt of the application and communicate the same to the applicant

(b) The proper officer may, for reasons to be recorded in writing, under circumstances other than those specified in clause (a), by an order in FORM GST REG-05, reject the application for revocation of cancellation of registration and communicate the same to the applicant.

(3) The proper officer shall, before passing the order referred to in clause (b) of sub-rule (2), issue a notice in FORM GST REG–22 requiring the applicant to show cause as to why the application submitted for revocation under sub-rule (1) should not be rejected and the applicant shall furnish the reply within seven working days from the date of the service of notice in FORM GST REG-23.

(4) Upon receipt of the information or clarification in FORM GST REG-23, the proper officer may proceed to dispose of the application in the manner specified in sub-rule (2) within thirty days from the date of receipt of such information or clarification from the applicant.

16. Migration of persons registered under the existing law

(1) (a) Every person, other than a person deducting tax at source or an Input Service Distributor, registered under an existing law and having a Permanent Account Number issued under the Income-tax Act, 1961 (Act 43 of 1961) shall enrol on the Common Portal by validating his e-mail address and mobile number, either directly or through a Facilitation Centre notified by the Commissioner.

(b) Upon enrolment under clause (a), the said person shall be granted registration on a provisional basis and a certificate of registration in FORM GST REG-25, incorporating the GSTIN therein, shall be made available to him on the Common Portal:

Provided that a taxable person who has been granted multiple registrations under the existing law on the basis of a single PAN shall be granted only one provisional registration under the Act:

Provided further that a person having centralized registration under Chapter V of the Finance Act, 1994 shall be granted only one provisional registration in the State or Union territory in which he is registered under the existing law. (*CGST Rules only*)

(2) (a) Every person who has been granted a provisional registration under sub-rule (1) shall submit an application electronically in FORM GST REG–24, duly signed, along with the information and documents specified in the said application, on the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

(b) The information asked for in clause (a) shall be furnished within a period of three months or within such further period as may be extended by in this behalf.

(c) If the information and the particulars furnished in the application are found, by the proper officer, to be correct and complete, a certificate of registration in

FORM GST REG-06 shall be made available to the registered person electronically on the Common Portal.

(3) Where the particulars or information specified in sub-rule (2) have either not been furnished or not found to be correct or complete, the proper officer shall cancel the provisional registration granted under sub-rule (1) and issue an order in FORM GST REG-26:

Provided that no provisional registration shall be cancelled as aforesaid without serving a notice to show cause in FORM GST REG-27 and without affording the person concerned a reasonable opportunity of being heard:

Provided further that the show cause notice issued in FORM GST REG-27 can be vacated by issuing an order in FORM GST REG-19, if it is found, after affording the person an opportunity of being heard, that no such cause exists for which the notice was issued.

(4) Every person registered under any of the existing laws, who is not liable to be registered under the Act may, within thirty days from the appointed day, at his option, submit an application electronically in FORM GST REG-28 at the Common Portal for cancellation of the registration granted to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said registration.

17. Physical verification of business premises in certain cases

Where the proper officer is satisfied that the physical verification of the place of business of a registered person is required after grant of registration, he may get such verification done and the verification report along with other documents, including photographs, shall be uploaded in FORM GST REG-29 on the Common Portal within fifteen working days following the date of such verification.

18. Method of authentication

(1) All applications, including reply, if any, to the notices, returns, appeals or any other document required to be submitted under these rules shall be so submitted electronically at the Common Portal with digital signature certificate or through e-signature as specified under the Information Technology Act, 2000 (21 of 2000) or through any other mode of signature notified by the Board in this behalf.

(2) Each document including the return furnished online shall be signed -

(a) in the case of an individual, by the individual himself or by some other person duly authorised by him in this behalf, and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

(b) in the case of a Hindu Undivided Family, by a Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family or by the authorised signatory of such Karta;

(c) in the case of a company, by the chief executive officer or authorised signatory thereof;

(d) in the case of a Government or any Governmental agency or local authority, by an officer authorised in this behalf;

(e) in the case of a firm, by any partner thereof, not being a minor or authorised signatory;

(f) in the case of any other association, by any member of the association or persons or authorised signatory;

(g) in the case of a trust, by the trustee or any trustee or authorised signatory; or

(h) in the case of any other person, by some person competent to act on his behalf, or by a person authorised in accordance with the provisions of section 48.

(3) All notices, certificates and orders under these Rules shall be issued electronically by the proper officer or any other officer authorised to issue any notice or order, through digital signature certificate specified under the Information Technology Act, 2000 (21 of 2000).

"Relevant Registration Forms"

Sr. No	Form Number	Content
1.	GST REG-01	Application for Registration PART A – Declaration of PAN, e-mail address, State or Union territory of the applicant PART B – Application for Registration
2.	GST REG-02	Acknowledgement
3.	GST REG-03	Notice for Seeking Additional Information / Clarification / Documents relating to Application
4.	GST REG-04	Furnishing of clarification/additional information/document sought in GST REG-03
5.	GST REG-05	Order of Rejection of Application
6.	GST REG-06	Issue of Registration Certificate
7.	GST REG-07	Application for Registration as Tax Deductor or Tax Collector at Source
8.	GST REG -08	Order of Cancellation of Application for Registration as Tax Deductor or Tax Collector at Source
9.	GST REG-09	Application for Registration for Non-Resident Taxable Person.

Sr. No	Form Number	Content
10.	GST REG-9A	Application for Registration for a person supplying online information and data base access or retrieval services from a place outside India to a non-taxable online recipient
11.	GST REG-10	Application for extension in period of operation by Casual Taxable Person and Non-Resident Taxable Person
12.	GST REG-11	Temporary Registration by Proper Officer / Suo Moto Registration
13.	GST REG-12	Application to grant Unique Identity Number
14.	GST REG-13	Application for Amendment in Particulars subsequent to Registration
15.	GST REG-16	Show Cause Notice for Cancellation of Registration
16.	GST REG-17	Reply to SCN for Cancellation of Registration
17.	GST REG-18	Order for Cancellation of Registration
18.	GST REG-19	Order for dropping the SCN for Cancellation of Registration
19.	GST REG-20	Application for Revocation of Cancellation of Registration
20.	GST REG-21	Order for Revocation of Cancellation of Registration
21.	GST REG-22	Show Cause Notice for rejecting Revocation of Cancellation of Registration
22.	GST REG-23	Furnishing of clarification/additional information/ in respect of application filed for Revocation of Cancellation of Registration
23.	GST REG-24	Application for Migration of persons registered under Existing Law on a provisional basis
24.	GST REG- 25	Certificate of provisional registration to every person, other than TDS deductor or an ISD, registered under an existing law and having PAN (For Migration of persons under Existing Law)
25.	GST REG-26	Cancellation of provisional registration where particulars or information asked for, have either not been furnished or not found to be correct or complete
26.	GST REG-27	Show Cause Notice for cancelling provisional registration granted
27.	GST REG-28	Application by every person registered under any of the existing laws, who is not liable to be registered under GST
28.	GST REG-29	Physical verification of business premises

Chapter ___

TAX INVOICE, CREDIT AND DEBIT NOTES

1. Tax invoice

Subject to rule 7, a tax invoice referred to in section 31 shall be issued by the registered person containing the following particulars: -

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN or UIN, if registered, of the recipient;

(e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more;

(f) HSN code of goods or Accounting Code of services;

(g) description of goods or services;

(h) quantity in case of goods and unit or Unique Quantity Code thereof; (i) total value of supply of goods or services or both;

(j) taxable value of supply of goods or services or both taking into account discount or abatement, if any;

(k) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

(l) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

(m) place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;

(n) address of delivery where the same is different from the place of supply; (o) whether the tax is payable on reverse charge basis; and

(p) signature or digital signature of the supplier or his authorized representative:

Provided that the Commissioner may, on the recommendations of the Council, by notification, specify -

(i) the number of digits of HSN code for goods or the Accounting Code for services, that a class of registered persons shall be required to mention, for such period as may be specified in the said notification, and

(ii) the class of registered persons that would not be required to mention the HSN

code for goods or the Accounting Code for services, for such period as may be specified in the said notification:

Provided further that in case of exports of goods or services, the invoice shall carry an endorsement "SUPPLY MEANT FOR EXPORT ON PAYMENT OF IGST" or "SUPPLY MEANT FOR EXPORT UNDER BOND OR LETTER OF UNDERTAKING WITHOUT PAYMENT OF IGST", as the case may be, and shall, in lieu of the details specified in clause (e), contain the following details:

(i) name and address of the recipient;

(ii) address of delivery;

(iii) name of the country of destination; and

(iv) number and date of application for removal of goods for export:

Provided also that a registered person may not issue a tax invoice in accordance with the provisions of clause (b) of sub-section (3) of section 31 subject to the following conditions, namely: -

(a) the recipient is not a registered person; and

(b) the recipient does not require such invoice;

and shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.

2. Time limit for issuing tax invoice

The invoice referred to in rule 1, in case of taxable supply of services, shall be issued within a period of thirty days from the date of supply of service:

Provided that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, the period within which the invoice or any document in lieu thereof is to be issued shall be forty-five days from the date of supply of service:

Provided further that where the supplier of services is an insurer or a banking company or a financial institution, including a non-banking financial company, or a telecom operator, or any other class of supplier of services as may be notified by the Government on the recommendations of the Council, making taxable supplies of services between distinct persons as specified in section 25 as referred to in Entry 2 of Schedule I, may issue the invoice before or at the time such supplier records the same in his books of account or before the expiry of the quarter during which the supply was made.

3. Manner of issuing invoice

(1) The invoice shall be prepared in triplicate, in case of supply of goods, in the following manner: –

(a) the original copy being marked as ORIGINAL FOR RECIPIENT;

(b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and

(c) the triplicate copy being marked as TRIPLICATE FOR SUPPLIER.

(2) The invoice shall be prepared in duplicate, in case of supply of services, in the following manner: -

(a) the original copy being marked as ORIGINAL FOR RECIPIENT; and

(b) the duplicate copy being marked as DUPLICATE FOR SUPPLIER.

(3) The serial number of invoices issued during a tax period shall be furnished electronically through the Common Portal in FORM GSTR-1.

4. Bill of supply

A bill of supply referred to in clause (c) of sub-section (3) of section 31 shall be issued by the supplier containing the following details: -

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN or UIN, if registered, of the recipient;

(e) HSN Code of goods or Accounting Code for services;

(f) description of goods or services or both;

(g) value of supply of goods or services or both taking into account discount or abatement, if any; and

(h) signature or digital signature of the supplier or his authorized representative:

Provided that the provisos to rule 1 shall., mutatis mutandis, apply to the bill of supply issued under this rule.

5. Receipt voucher

A receipt voucher referred to in clause (d) of sub-section (3) of section 31 shall contain the following particulars:

(a) name, address and GSTIN of the supplier;

(b) a consecutive serial number containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year

(c) date of its issue;

(d) name, address and GSTIN or UIN, if registered, of the recipient;

(e) description of goods or services;

(f) amount of advance taken;

(g) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);

(h) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);

(i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;

(j) whether the tax is payable on reverse charge basis; and

(k) signature or digital signature of the supplier or his authorized representative.

6. Supplementary tax invoice and Credit or debit notes

(1) A revised tax invoice referred to in section 31 and credit or debit note referred to in section 34 shall contain the following particulars -

(a) the word "Revised Invoice", wherever applicable, indicated prominently;

(b) name, address and GSTIN of the supplier; (c) nature of the document;

(d) a consecutive serial number containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;

(e) date of issue of the document;

(f) name, address and GSTIN or UIN, if registered, of the recipient;

(g) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;

(h) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;

(i) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and

(j) signature or digital signature of the supplier or his authorized representative:

(2) Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue revised tax invoices in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration:

Provided that the registered person may issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered under the Act during such period:

Provided further that in case of inter-State supplies, where the value of a supply does not exceed two lakhs and fifty thousand rupees, a consolidated revised invoice may be issued separately in respect of all recipients located in a State, who are not registered under the Act.

(3) Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130 shall prominently contain the words “INPUT TAX CREDIT NOT ADMISSIBLE”.

7. Tax Invoice in special cases

(1) An ISD invoice or, as the case may be, an ISD credit note issued by an Input Service Distributor shall contain the following details: -

(a) name, address and GSTIN of the Input Service Distributor;

(b) a consecutive serial number containing alphabets or numerals or special characters hyphen or dash and slash symbolised as, “-”, “/”, respectively, and any combination thereof, unique for a financial year;

(c) date of its issue;

(d) name, address and GSTIN of the recipient to whom the credit is distributed;

(e) amount of the credit distributed; and

(f) signature or digital signature of the Input Service Distributor or his authorized representative:

Provided that where the Input Service Distributor is an office of a banking company or a financial institution, including a non-banking financial company, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as prescribed above.

(2) Where the supplier of taxable service is an insurer or a banking company or a financial institution, including a non-banking financial company, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of taxable service but containing other information as prescribed under rule 1.

(3) Where the supplier of taxable service is a goods transport agency supplying services in relation to transportation of goods by road in a goods carriage, the said supplier shall issue a tax invoice or any other document in lieu thereof, by whatever name called, containing the gross weight of the consignment, name of the consignor and the consignee, registration number of goods carriage in which the goods are transported, details of goods transported, details of place of origin and destination, GSTIN of the person liable for paying tax whether as consignor, consignee or goods transport agency, and also containing other information as prescribed under rule 1.

(4) Where the supplier of taxable service is supplying passenger transportation service, a tax invoice shall include ticket in any form, by whatever name called, whether or not serially numbered, and whether or not containing the address of the recipient of service but containing other information as prescribed under rule 1.

8. Transportation of goods without issue of invoice

(1) For the purposes of

(a) supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known,

(b) transportation of goods for job work,

(c) transportation of goods for reasons other than by way of supply, or

(d) such other supplies as may be notified by the Board,

the consigner may issue a delivery challan, serially numbered, in lieu of invoice at the time of removal of goods for transportation, containing following details:

(i) date and number of the delivery challan,

(ii) name, address and GSTIN of the consigner, if registered,

(iii) name, address and GSTIN or UIN of the consignee, if registered,

(iv) HSN code and description of goods,

(v) quantity (provisional, where the exact quantity being supplied is not known),

(vi) taxable value,

(vii) tax rate and tax amount – central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee,

(viii) place of supply, in case of inter-State movement, and

(ix) signature.

(2) The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner: –

(a) the original copy being marked as ORIGINAL FOR CONSIGNEE;

(b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and

(c) the triplicate copy being marked as TRIPLICATE FOR CONSIGNER.

(3) Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared in FORM [WAYBILL].

(4) Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods.

(5) Where the goods are being transported in a semi knocked down or completely knocked down condition,

(a) the supplier shall issue the complete invoice before dispatch of the first consignment;

(b) the supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;

(c) each consignment shall be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and

(d) the original copy of the invoice shall be sent along with the last consignment.

"Invoice Format"

Government of India/State Department of .....

Form GST INV – 1 (See Rule --------)

Application for Electronic Reference Number of an Invoice

Details of Receiver (Billed to)

1. GSTIN
2. Name
3. Address
4. Serial No. of Invoice
5. Date of Invoice

Details of Receiver (Billed to)	Details of Consignee (Shipped to)
Name	Name
Address	Address
State	State
State Code	State Code
GSTIN/Unique ID	GSTIN/Unique ID

Sr. No.	Description of Goods	HS N	Qty.	Unit	Rate (per item)	Total	Discount	Taxable value	CGST		SGST		IGST	
									Rate	Amt.	Rate	Amt.	Rate	Amt.
	Freight Insurance Packing and Forwarding Charges													
		Total												
	Total Invoice Value (In figure) Total Invoice Value (In Words) Amount of Tax subject to Reverse Charges													

Declaration:

Signature

Name of the Signatory

Designation / Status

Electronic Reference Number

Date

1. Electronic Tax Liability Register

(1) The electronic tax liability register specified under sub-section (7) of section 49 shall be maintained in FORM GST PMT-01 for each person liable to pay tax, interest, penalty, late fee or any other amount on the Common Portal and all amounts payable by him shall be debited to the said register.

(2) The electronic tax liability register of the person shall be debited by: -

(a) the amount payable towards tax, interest, late fee or any other amount payable as per the return furnished by the said person;

(b) the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person;

(c) the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or

(d) any amount of interest that may accrue from time to time.

(3) Subject to the provisions of section 49, payment of every liability by a registered person as per his return shall be made by debiting the electronic credit ledger maintained as per rule 2 or the electronic cash ledger maintained as per rule 3 and the electronic tax liability register shall be credited accordingly.

(4) The amount deducted under section 51, or the amount collected under section 52, or the amount payable under sub-section (3) or sub-section (4) of section 9, or the amount payable under section 10, or sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Act or sub-section (3) or sub-section (4) of section 7 of the Union Territory Goods and Services Tax Act any amount payable towards interest, penalty, fee or any other amount under the Act or the Integrated Goods and Services Act shall be paid by debiting the electronic cash ledger maintained as per rule 3 and the electronic tax liability register shall be credited accordingly.

(5) Any amount of demand debited in the electronic tax liability register shall stand reduced to the extent of relief given by the appellate authority or Appellate Tribunal or court and the electronic tax liability register shall be credited accordingly.

(6) The amount of penalty imposed or liable to be imposed shall stand reduced partly or fully, as the case may be, if the taxable person makes the payment of tax, interest and penalty specified in the show cause notice or demand order and the electronic tax liability register shall be credited accordingly.

2. Electronic Credit Ledger

(1) The electronic credit ledger shall be maintained in FORM GST PMT-02 for each

registered person eligible for input tax credit under the Act on the Common Portal and every claim of input tax credit under the Act shall be credited to the said Ledger.

(2) The electronic credit ledger shall be debited to the extent of discharge of any liability in accordance with section 49.

(3) Where a registered person has claimed refund of any unutilized amount from the electronic credit ledger in accordance with the provisions of section 54, the amount to the extent of the claim shall be debited in the said ledger.

(4) If the refund so filed is rejected, either fully or partly, the amount debited under sub- rule (3), to the extent of rejection, shall be re-credited to the electronic credit ledger by the proper officer by an order made in FORM GST PMT-03.

(5) Save as provided in these rules, no entry shall be made directly in the electronic credit ledger under any circumstance.

(6) A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the Common Portal in FORM GST PMT-04.

Explanation. – For the purpose of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

3. Electronic Cash Ledger

(1) The electronic cash ledger under sub-section (1) of section 49 shall be maintained in FORM GST PMT-05 for each person, liable to pay tax, interest, penalty, late fee or any other amount, on the Common Portal for crediting the amount deposited and debiting the payment therefrom towards tax, interest, penalty, fee or any other amount.

(2) Any person, or a person on his behalf, shall generate a challan in FORM GST PMT-06 on the Common Portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount.

(3) The deposit under sub-rule (2) shall be made through any of the following modes:

(i) Internet Banking through authorized banks;

(ii) Credit card or Debit card through the authorised bank;

(iii) National Electronic Fund Transfer (NeFT) or Real Time Gross Settlement (RTGS) from any bank;

(iv) Over the Counter payment (OTC) through authorized banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft:

Provided that the restriction for deposit up to ten thousand rupees per challan in case of an Over the Counter (OTC) payment shall not apply to deposit to be made by –

(a) Government Departments or any other deposit to be made by persons as may be notified by the Commissioner in this behalf;

(b) Proper officer or any other officer authorised to recover outstanding dues from any person, whether registered or not, including recovery made through attachment or sale of movable or immovable properties;

(c) Proper officer or any other officer authorized for the amounts collected by way of cash, cheque or demand draft during any investigation or enforcement activity or any *ad hoc* deposit:

Provided further that the challan in FORM GST PMT-06 generated at the Common Portal shall be valid for a period of fifteen days.

Explanation. – For making payment of any amount indicated in the challan, the commission, if any, payable in respect of such payment shall be borne by the person making such payment.

(4) Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the Common Portal.

(5) Where the payment is made by way of NeFT or RTGS mode from any bank, the mandate form shall be generated along with the challan on the Common Portal and the same shall be submitted to the bank from where the payment is to be made:

Provided that the mandate form shall be valid for a period of fifteen days from the date of generation of challan.

(6) On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number (CIN) will be generated by the collecting Bank and the same shall be indicated in the challan.

(7) On receipt of CIN from the authorized Bank, the said amount shall be credited to the electronic cash ledger of the person on whose behalf the deposit has been made and the Common Portal shall make available a receipt to this effect.

(8) Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number (CIN) is generated or generated but not communicated to the Common Portal, the said person may represent electronically in FORM GST PMT-07 through the Common Portal to the Bank or electronic gateway through which the deposit was initiated.

(9) Any amount deducted under section 51 or collected under section 52 and claimed in FORM GSTR-02 by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger in accordance with the provisions of rule 2. Return.

(10) Where a person has claimed refund of any amount from the electronic cash ledger, the said amount shall be debited to the electronic cash ledger.

(11) If the refund so claimed is rejected, either fully or partly, the amount debited under sub-

rule (10), to the extent of rejection, shall be credited to the electronic cash ledger by the proper officer by an order made in FORM GST PMT-03.

Explanation. - For the purposes of this rule, a refund shall be deemed to be rejected if the appeal is finally rejected or if the claimant gives an undertaking to the proper officer that he shall not file an appeal.

4. Identification number for each transaction

(1) A unique identification number shall be generated at the Common Portal for each debit or credit to the electronic cash or credit ledger, as the case may be.

(2) The unique identification number relating to discharge of any liability shall be indicated in the corresponding entry in the electronic tax liability register.

(3) A unique identification number shall be generated at the Common Portal for each credit in the electronic tax liability register for reasons other than those covered under sub-rule (2).

List of Forms

Sr No.	Form No.	Title of the Form
1.	Form GST PMT-1	Electronic Tax Liability Register of Taxpayer (Part–I: Return related liabilities Electronic Tax Liability Register of Taxpayer (Part–II: Other than return related liabilities)
2.	Form GST PMT-2	Electronic Credit Ledger
3.	Form GST PMT-2A	Order for re-credit of the amount to cash or credit ledger
4.	Form GST PMT-3	Electronic Cash Ledger
5.	Form GST PMT-4	Challan For Deposit of Goods and Services Tax
6.	Form GST PMT-5	Payment Register of Temporary IDs / Un-registered Taxpayers
7.	Form GST PMT-6	Application For Credit of Missing Payment (CIN not generated)

Chapter ---

REFUND

1. Application for refund of tax, interest, penalty, fees or any other amount

(1) Any person, except the persons covered by notification issued under section 55, claiming refund of any tax, interest, penalty, fees or any other amount paid by him, may file an application in FORM GST RFD-01 electronically through the Common Portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that any claim for refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49 may also be made through the return furnished for the relevant tax period in FORM GSTR-3, FORM GSTR-4 or FORM GSTR-7, as the case may be:

Provided further that in case of export of goods, application for refund shall be filed only after the export manifest or an export report, as the case may be, is delivered under section 41 of the Customs Act, 1962 in respect of such goods:

Provided also that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorized operations, as endorsed by the specified officer of the Zone:

Provided also that in respect of supplies to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the supplier of services along with such evidence regarding receipt of services for authorized operations as endorsed by the specified officer of the Zone:

Provided also that in respect of supplies regarded as deemed exports, the application shall be filed by the recipient of deemed export supplies:

Provided also that refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed either in the last return required to be furnished by him or only after furnishing of the said last return.

(2) The application under sub-rule (1) shall be accompanied by any of the following documentary evidences, as applicable, to establish that a refund is due to the applicant:

(a) the reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the amount specified in sub-section (6) of section 107 and sub-section (8) of section 112 claimed as refund;

(b) a statement containing the number and date of shipping bills or bills of export and the number and date of relevant export invoices, in a case where the refund is on account of export of goods;

(c) a statement containing the number and date of invoices and the relevant Bank Realization Certificates or Foreign Inward Remittance Certificates, as the case may be, in a case where the refund is on account of export of services;

(d) a statement containing the number and date of invoices as prescribed in rule Invoice.1 along with the evidence regarding endorsement specified in the third proviso to sub-rule (1) in case of supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer;

(e) a statement containing the number and date of invoices, the evidence regarding endorsement specified in the fourth proviso to sub-rule (1) and the details of payment, along with proof thereof, made by the recipient to the supplier for authorized operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer:

(f) a statement containing the number and date of invoices along with such other evidence as may be notified in this behalf, in a case where the refund is on account of deemed exports;

(g) a statement in Annex 1 of FORM GST RFD-01 containing the number and date of invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilized input tax credit under sub-section (3) of section 54 where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies, other than nil- rated or fully exempt supplies;

(h) the reference number of the final assessment order and a copy of the said order in a case where the refund arises on account of finalisation of provisional assessment;

(i) a declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed does not exceed two lakh rupees:

Provided that a declaration is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) of sub-section (8) of section 54;

(j) a Certificate in Annex 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, in a case where the amount of refund claimed exceeds two lakh rupees:

Provided that a certificate is not required to be furnished in respect of cases covered under clause (a) or clause (b) or clause (c) or clause (d) of sub-section (8) of section 54;

Explanation. – For the purposes of this rule,

(i) in case of refunds referred to in clause (c) of sub-section (8) of section 54, "invoice" means invoice conforming to the provisions contained in section 31;

(ii) where the amount of tax has been recovered from the recipient, it shall be deemed that the incidence of tax has been passed on to the ultimate consumer.

(3) Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant in an amount equal to the refund so claimed.

(4) In case of zero-rated supply of goods or services or both without payment of tax under bond or letter of undertaking in accordance with the provisions of sub-section (3) of section 16 of the Integrated Goods and Services Tax Act, refund of input tax credit shall be granted as per the following formula:

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) × Net ITC _ ÷ Adjusted Total Turnover

Where, -

(A) "Refund amount" means the maximum refund that is admissible;

(B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period;

(C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking;

(D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely: -

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero- rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

(E) "Adjusted Total turnover" means the turnover in a State or a Union territory, as defined under sub- section (112) of section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period;

(F) "Relevant period" means the period for which the claim has been filed.

2. Acknowledgement

(1) Where the application relates to a claim for refund from the electronic cash ledger, an

acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the Common Portal electronically, clearly indicating the date of filing of the claim for refund.

(2) The application for refund, other than claim for refund from electronic cash ledger, shall be forwarded to the proper officer who shall, within fifteen days of filing of the said application, scrutinize the application for its completeness and where the application is found to be complete in terms of sub-rule (2), (3) and (4) of rule 1, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the Common Portal electronically, clearly indicating the date of filing of the claim for refund.

(3) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the Common Portal electronically, requiring him to file a refund application after rectification of such deficiencies.

(4) Where deficiencies have been communicated in FORM GST RFD-03 under the GST Rules of the State, the same shall also deemed to have been communicated under this Rule along with deficiencies communicated under sub-rule (3).

[CGST Rules]

(4) Where deficiencies have been communicated in FORM GST RFD-03 under the CGST Rules, the same shall also deemed to have been communicated under this Rule along with deficiencies communicated under sub-rule (3).

[SGST Rules]

3. Grant of provisional refund

(1) The provisional refund under sub-section (6) of section 54 shall be granted subject to the following conditions -

(a) the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an existing law where the amount of tax evaded exceeds two hundred and fifty lakh rupees;

(b) the GST compliance rating, where available, of the applicant is not less than five on a scale of ten;

(c) no proceedings of any appeal, review or revision is pending on any of the issues which form the basis of the refund and if pending, the same has not been stayed by the appropriate authority or court.

(2) The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund under sub-rule (1) is due to the applicant in accordance with the provisions of sub-section (6) of section 54, shall make an order in FORM GST RFD-04, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding

seven days from the date of acknowledgement under sub-rule (1) or sub-rule (2) of rule 2.

(3) The proper officer shall issue a payment advice in FORM GST RFD-05 for the amount sanctioned under sub-rule (2) and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

4. Order sanctioning refund

(1) Where, upon examination of the application, the proper officer is satisfied that a refund under sub- section (5) of section 54 is due and payable to the applicant, he shall make an order in FORM GST RFD-06, sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under sub-section (6) of section 54, amount adjusted against any outstanding demand under the Act or under any existing law and the balance amount refundable:

Provided that in cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any existing law, an order giving details of the adjustment may be issued in FORM GST RFD-07.

(2) Where the proper officer is satisfied, for reasons to be recorded in writing, that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant, he shall issue a notice in FORM GST RFD-08 to the applicant, requiring him to furnish a reply *in* FORM GST RFD-09 within fifteen days of the receipt of such notice and after considering the reply, make an order in FORM GST RFD-06, sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically and the provision of sub-rule (1) shall, *mutatis mutandis,* apply to the extent refund is allowed:

Provided that no application for refund shall be rejected without giving the applicant a reasonable opportunity of being heard.

(3) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or (2) is payable to the applicant under sub-section (8) of section 48, he shall make an order in FORM GST RFD-06 and issue a payment advice in FORM GST RFD-05, for the amount of refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

(4) Where the proper officer is satisfied that the amount refundable under sub-rule (1) or sub-rule (2) is not payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue an advice in FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund.

5. Credit of the amount of rejected refund claim

(1) Where any deficiencies have been communicated under sub-rule (3) of rule 2, the amount debited under sub-rule (3) of rule 1 shall be re-credited to the electronic credit ledger.

(2) Where any amount claimed as refund is rejected under rule 4, either fully or partly, the amount debited, to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-*03*.

Explanation. – For the purposes of this rule, a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal.

6. Order sanctioning interest on delayed refunds

Where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment advice in FORM GST RFD-05, specifying therein the amount of refund which is delayed, the period of delay for which interest is payable and the amount of interest payable, and such amount of interest shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

7. Refund of tax to certain persons

(1) Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued section 55 shall apply for refund in FORM GST RFD-10 once in every quarter, electronically on the Common Portal, either directly or from a Facilitation Centre notified by the Commissioner, along with a statement of inward supplies of goods or services or both in FORM GSTR-11, prepared on the basis of statement of outward supplies furnished by corresponding suppliers in FORM GSTR-1.

(2) An acknowledgement for receipt of the application for refund shall be issued in FORM GST RFD-02.

(3) Refund of tax paid by the applicant shall be available if-

(a) the inward supplies of goods or services or both were received from a registered person against a tax invoice and the price of the supply covered under a single tax invoice exceeds five thousand rupees, excluding tax paid, if any;

(b) name and GSTIN or UIN of the applicant is mentioned on the tax invoice; and

(c) such other restrictions or conditions as may be specified in the notification are satisfied.

(4) The provisions of rule 4 shall, *mutatis mutandis,* apply for the sanction and payment of refund under this rule.

(5) Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of these rules, such treaty or international agreement shall prevail.

8. Consumer Welfare Fund

(1) All credits to the Consumer Welfare Fund shall be made under sub-rule (4) of rule 4.

(2) Any amount, having been credited to the Fund, ordered or directed as payable to any claimant by orders of the proper officer, appellate authority or Appellate Tribunal or court, shall be paid from the Fund.

(3) Any utilisation of amount from the Consumer Welfare Fund under sub-section (1) of section 58 shall be made by debiting the Consumer Welfare Fund account and crediting the account to which the amount is transferred for utilisation.

(4) The [Central/State] Government shall, by an order, constitute a Standing Committee with a Chairman, a Vice-Chairman, a Member Secretary and such other members as it may deem fit and the Committee shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumers.

(5) The Committee shall meet as and when necessary, but not less than once in three months.

(6) Any agency or organisation engaged in consumer welfare activities for a period of three years registered under the Companies Act, 2013 (18 of 2013) or under any other law for the time being in force, including village or mandal or samiti level co-operatives of consumers especially Women, Scheduled Castes and Scheduled Tribes, or any industry as defined in the Industrial Disputes Act, 1947 (14 of 1947) recommended by the Bureau of Indian Standards to be engaged for a period of five years in viable and useful research activity which has made, or is likely to make, significant contribution in formulation of standard mark of the products of mass consumption, the Central Government or the State Government may make an application for a grant from the Consumer Welfare Fund:

Provided that a consumer may make application for reimbursement of legal expenses incurred by him as a complainant in a consumer dispute, after its final adjudication.

(7) All applications for grant from the Consumer Welfare Fund shall be made by the applicant Member Secretary, but the Committee shall not consider an application, unless it has been inquired into in material details and recommended for consideration accordingly, by the Member Secretary.

(8) The Committee shall have powers -

(a) to require any applicant to produce before it, or before a duly authorised Officer of the Government such books, accounts, documents, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;

(b) to require any applicant to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be carried on, to a duly authorised officer of the Central Government or, as the case may be, State Government;

(c) to get the accounts of the applicants audited, for ensuring proper utilisation of the grant;

(d) to require any applicant, in case of any default, or suppression of material information on his part, to refund in lump-sum, the sanctioned grant to the Committee, and to be subject to prosecution under the Act;

(e) to recover any sum due from any applicant in accordance with the provisions of the Act;

(f) to require any applicant, or class of applicants to submit a periodical report, indicating proper utilisation of the grant;

(g) to reject an application placed before it on account of factual inconsistency, or inaccuracy in material particulars;

(h) to recommend minimum financial assistance, by way of grant to an applicant, having regard to his financial status, and importance and utility of nature of activity under pursuit, after ensuring that the financial assistance provided shall not be misutilised;

(i) to identify beneficial and safe sectors, where investments out of Consumer Welfare Fund may be made and make recommendations, accordingly.

(j) to relax the conditions required for the period of engagement in consumer welfare activities of an applicant;

(k) to make guidelines for the management, administration and audit of the Consumer Welfare Fund.

(9) The Central Consumer Protection Council and the Bureau of Indian Standards shall recommend to the GST Council, the broad guidelines for considering the projects or proposals for the purpose of incurring expenditure from the Consumer Welfare Fund.

"Relevant Refund Forms"

Sl No.	Form Number	Content
1.	GST RFD-01	Refund Application form – Annexure 1 Details of Goods – Annexure 2 Certificate by CA
2.	GST RFD-02	Acknowledgement
3.	GST RFD-03	Notice of Deficiency on Application for Refund
4.	GST RFD-04	Provisional Refund Sanction Order
5.	GST RFD-05	Payment Advice
6.	GST RFD-06	Refund Sanction/Rejection Order
7.	GST RFD-07	Order for Complete adjustment of claimed Refund
8.	GST RFD-08	Show Cause Notice for rejecting of refund application
9.	GST RFD-09	Reply to Show Cause Notice
10.	GST RFD-10	Refund application form for any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified
11.	GST RFD-11	Statement of Inward Supply of Goods or Services for any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified

Chapter ---

RETURN RULES

1. Form and manner of furnishing details of outward supplies

Every registered person required to furnish the details of outward supplies of goods or services or both under section 37, shall furnish such details in FORM GSTR-1 electronically through the Common Portal either directly or through a Facilitation Centre notified by Commissioner.

(1) The details of outward supplies of goods or services or both furnished in FORM GSTR-1 shall include *inter-alia*,–

(a) invoice wise details of all -

(i) inter-State and intra-State supplies made to registered persons;

(ii) inter-State supplies with invoice value more than two and a half lakh rupees made to unregistered persons;

(b) consolidated details of all -

(i) intra-State supplies made to unregistered persons for each rate of tax; and

(ii) State wise inter-State supplies with invoice value less than two and a half lakh rupees made to unregistered persons for each rate of tax; and

(c) debit and credit notes, if any issued during the month for invoices issued previously.

(3) The details of outward supplies furnished by the supplier shall be made available electronically to the concerned registered persons (recipients) in Part A of FORM GSTR-2A, in FORM GSTR-4A and in FORM GSTR-6A through the Common Portal after the due date of filing of FORM GSTR-1.

(4) The details of inward supplies added, corrected or deleted by the recipient in his FORM GSTR-2 under section 38 or FORM GSTR-4 under section 39 shall be made available to the supplier electronically in FORM GSTR-1A through the Common Portal and such supplier may either accept or reject the modifications made by the recipient and FORM GSTR-1 furnished earlier by the supplier shall stand amended to the extent of modifications accepted by him.

2. Form and manner of furnishing details of inward supplies

(1) Every registered person required to furnish the details of inward supplies of goods or services or both received during a tax period under sub-section (2) of section 38 shall, on the basis of details contained in Part A, Part B, Part C and Part D of FORM GSTR-2A, prepare such details as specified in sub-section (1) of the said section and furnish the same in FORM GSTR-2 electronically through the Common Portal, either directly or from a Facilitation Centre notified by the Commissioner, after including therein details of such other inward supplies, if any, required to be furnished under sub-section (2) of section 38.

(2) Every registered person shall furnish the details, if any, required under sub-section (5) of section 38 electronically in FORM GSTR-2.

(3) The registered person shall specify the inward supplies in respect of which he is not eligible, either fully or partially, for input tax credit in FORM GSTR-2 where such eligibility can be determined at the invoice level.

(4) The registered person shall declare the quantum of ineligible input tax credit on inward supplies which is relatable to non-taxable supplies or for purposes other than business and cannot be determined at the invoice level in FORM GSTR-2.

(5) The details of invoices furnished by an Input Service Distributor in his return in FORM GSTR-6 under rule 7 shall be made available to the recipient of credit in Part B of FORM GSTR -2A electronically through the Common Portal and the said recipient may include the same in FORM GSTR-2.

(6) The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in FORM GSTR-7 shall be made available to the deductee in Part C of FORM GSTR-2A electronically through the Common Portal and the said deductee may include the same in FORM GSTR-2.

(7) The details of tax collected at source furnished by an e-commerce operator under section 52 in FORM GSTR-8 shall be made available to the concerned person in Part D of FORM GSTR - 2A electronically through the Common Portal and such taxable person may include the same in FORM GSTR-2.

(8) The details of inward supplies of goods or services or both furnished in Form GSTR-2 shall include, *inter-alia*-

(a) invoice wise details of all inter-State and intra-State supplies received from registered persons or unregistered persons;

(b) import of goods and services made; and

(c) debit and credit notes, if any, received from supplier.

3. Form and manner of submission of monthly return

(1) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in FORM GSTR-3 electronically through the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

(2) Part A of the return under sub-rule (1) shall be electronically generated on the basis of information furnished through returns in FORM GSTR-1, FORM GSTR-2 and based on other liabilities of preceding tax periods.

(3) Every registered person furnishing the return under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or these rules by debiting the electronic cash

ledger or electronic credit ledger and include the details in Part B of the return in FORM GSTR-3.

(4) A registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in Part B of the return in FORM GSTR-3 and such return shall be deemed to be an application filed under section 54 .

(5) Where the time limit for furnishing of details in FORM GSTR-1 under section 37 and in FORM GSTR-2 under section 38 has been extended, return in FORM GSTR-3B, in lieu of FORM GSTR-3, may be furnished in such manner as may be notified by the Commissioner.

4. Form and manner of submission of quarterly return by the composition supplier

(1) Every registered person paying tax under section 10 shall, after adding, correcting or deleting the details in FORM GSTR-4A, furnish a quarterly return in FORM GSTR-4 electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) Every registered person furnishing the return under sub-rule (1) shall discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or these rules by debiting the electronic cash ledger.

(3) The return furnished under sub-rule (1) shall include, *inter-alia*:

(a) invoice wise inter-State and intra-State inward supplies received from registered and un-registered persons;

(b) import of goods and services made;

(c) consolidated details of outward supplies made; and

(d) debit and credit notes issued and received, if any;

(4) A registered person who has opted to pay tax under section 10 from the beginning of a financial year, shall furnish the details of outward and inward supplies and return under rule 1, rule 2 and rule 3 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

5. Form and manner of submission of return by non-resident taxable person

Every registered non-resident taxable person shall furnish a return in FORM GSTR-5 electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, including therein the details of outward supplies and inward supplies and shall pay the tax, interest, penalty, fees or any other amount payable under the Act or these rules within twenty days after the end of a tax period or within seven days after the last day of the validity period of registration, whichever is earlier.

6. Form and manner of submission of return by an Input Service Distributor

Every Input Service Distributor shall, after adding, correcting or deleting the details contained in FORM GSTR-6A, furnish electronically a return in FORM GSTR-6, containing the details of tax invoices on which credit has been received and those issued under section 20, through the Common Portal either directly or from a Facilitation Centre notified by the Commissioner.

7. Form and manner of submission of return by a person required to deduct tax at source

(1) Every registered person required to deduct tax at source under section 51 shall furnish a return in FORM GSTR-7 electronically through the Common Portal either directly or from a Facilitation Centre notified by the Commissioner.

(2) The details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the suppliers in Part C of FORM GSTR-2A on the Common Portal after the due date of filing of FORM GSTR-7.

(3) The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the Common Portal in FORM GSTR-7A on the basis of the return furnished under sub-rule (1).

8. Form and manner of submission of statement of supplies by an e-commerce operator

(1) Every electronic commerce operator required to collect tax at source under section 52 shall furnish a statement in FORM GSTR-8 electronically through the Common Portal, either directly or from a Facilitation Centre notified by the Commissioner, containing details of supplies effected through such operator and the amount of tax collected as required under sub-section (1) of section 52.

(2) The details furnished by the operator under sub-rule (1) shall be made available electronically to each of the suppliers in Part D of FORM GSTR-2A on the Common Portal after the due date of filing of FORM GSTR-8.

9. Notice to non-filers of returns

A notice in FORM GSTR-3A shall be issued, electronically, to a registered person who fails to furnish return under section 39 and section 45.

10. Matching of claim of input tax credit

The following details relating to the claim of input tax credit on inward supplies including imports, provisionally allowed under section 41, shall be matched under section 42 after the due date for furnishing the return in FORM GSTR-3

(a) GSTIN of the supplier;

(b) GSTIN of the recipient;

(c) Invoice/ or debit note number;

(d) Invoice/ or debit note date;

(e) taxable value; and

(f) tax amount:

Provided that where the time limit for furnishing FORM GSTR-1 specified under section 37 and FORM GSTR-2 specified under section 38 has been extended, the date of matching relating to claim of input tax credit shall also be extended accordingly.

Explanation 1.- The claim of input tax credit in respect of invoices and debit notes in FORM GSTR-2 that were accepted by the recipient on the basis of FORM GSTR-2A without amendment shall be treated as matched if the corresponding supplier has furnished a valid return.

Explanation 2. - The claim of input tax credit shall be considered as matched, where the amount of input tax credit claimed is equal to or less than the output tax paid on such tax invoice or debit note by the corresponding supplier.

11. Final acceptance of input tax credit and communication thereof

(1) The final acceptance of claim of input tax credit in respect of any tax period, specified in sub-section (2) of section 42, shall be made available electronically to the registered person making such claim in FORM GST MIS -1 through the Common Portal.

(2) The claim of input tax credit in respect of any tax period which had been communicated as mismatched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in FORM GST MIS - 1 through the Common Portal.

12. Communication and rectification of discrepancy in claim of input tax credit and reversal of claim of input tax credit

(1) Any discrepancy in the claim of input tax credit in respect of any tax period, specified in sub-section (3) of section 42 and the details of output tax liable to be added under sub-section (5) of the said section on account of continuation of such discrepancy shall be made available to the registered person making such claim electronically in FORM GST MIS -1 and to the supplier electronically in FORM GST MIS-2 through the Common Portal on or before the last date of the month in which the matching has been carried out.

(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

(3) A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.

(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the recipient in his return to be furnished in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.

Explanation 1. - Rectification by a supplier means adding or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient.

Explanation 2. - Rectification by the recipient means deleting or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

13. Claim of input tax credit on the same invoice more than once

Duplication of claims of input tax credit in the details of inward supplies shall be communicated to the registered person in FORM GST MIS - 1 electronically through the Common Portal.

14. Matching of claim of reduction in the output tax liability

The following details relating to the claim of reduction in output tax liability shall be matched under section 43 after the due date for furnishing the return in FORM GSTR-3-

(a) GSTIN of the supplier;

(b) GSTIN of the recipient;

(c) credit note number;

(d) credit note date;

(e) taxable value; and

(f) tax amount:

Provided that where the time limit for furnishing FORM GSTR-1 under section 37 and FORM GSTR-2 under section 38 has been extended, the date of matching of claim of reduction in the output tax liability shall be extended accordingly.

Explanation 1.- The claim of reduction in output tax liability due to issuance of credit notes in FORM GSTR-1 that were accepted by the recipient in FORM GSTR-2 without amendment shall be treated as matched if the corresponding recipient has furnished a valid return.

Explanation 2.- The claim of reduction in the output tax liability shall be considered as matched, where the amount of reduction claimed is equal to or less than the claim of reduction in input tax credit admitted and discharged on such credit note by the corresponding recipient in his valid return.

15. Final acceptance of reduction in output tax liability and communication thereof

(1) The final acceptance of claim of reduction in output tax liability in respect of any tax period, specified in sub-section (2) of section 43, shall be made available electronically to the person making such claim in FORM GST MIS - 3 through the Common Portal.

(2) The claim of reduction in output tax liability in respect of any tax period which had been communicated as mis-matched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in FORM GST MIS - 3 through the Common Portal.

16. Communication and rectification of discrepancy in reduction in output tax liability and reversal of claim of reduction

(1) Any discrepancy in claim of reduction in output tax liability, specified in sub-section (3) of section 43, and the details of output tax liability to be added under sub-section (5) of the said section on account of continuation of such discrepancy shall be made available to the registered person making such claim electronically in FORM GST MIS - 3 and the recipient electronically in FORM GST MIS - 4 through the Common Portal on or before the last date of the month in which the matching has been carried out.

(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

(3) A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.

(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier and debited to tax liability register and also shown in his return in FORM GSTR-3 for the month succeeding the month in which the discrepancy is made available.

Explanation 1.- Rectification by a supplier means deleting or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient.

Explanation 2.- Rectification by the recipient means adding or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

17. Claim of reduction in output tax liability more than once

Duplication of claims for reduction in output tax liability in the details of outward supplies shall be communicated to the registered person in FORM GST MIS - 3 electronically through the Common Portal.

18. Refund of interest paid on reclaim of reversals

The interest to be refunded under sub-section (9) of section 42 or sub-section (9) of section 43 shall be claimed by the registered person in his return in FORM GSTR-3 and shall be credited to his electronic cash ledger in FORM GST PMT-3 and the amount credited shall be available for payment of any future liability towards interest or the taxable person may claim refund of the amount under section 54.

19. Matching of details furnished by the e-Commerce operator with the details furnished by the supplier

The following details relating to the supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1-

(a) GSTIN of the supplier;

(b) GSTIN or UIN of the recipient, if the recipient is a registered person;

(c) State of place of supply;

(d) invoice number of the supplier;

(e) date of invoice of the supplier;

(f) taxable value; and

(g) tax amount:

Provided that for all supplies where the supplier is not required to furnish the details separately for each supply, the following details relating to such supplies made through an e-Commerce operator, as declared in FORM GSTR-8, shall be matched with the corresponding details declared by the supplier in FORM GSTR-1-

(a) GSTIN of the supplier;

(b) State of place of supply;

(c) total taxable value of all supplies made in the State through e-commerce portal; and

(d) tax amount on all supplies made in the State:

Provided further that where the time limit for furnishing FORM GSTR-1 under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

20. Communication and rectification of discrepancy in details furnished by the e-commerce operator and the supplier

(1) Any discrepancy in the details furnished by the operator and those declared by the

supplier shall be made available to the supplier electronically in FORM GST MIS-5 and to the e-commerce portal electronically in FORM GST MIS–6 through the Common Portal on or before the last date of the month in which the matching has been carried out.

(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

(3) An operator to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement to be furnished for the month in which the discrepancy is made available.

(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier in his return in FORM GSTR-3 for the month succeeding the month in which the details of discrepancy are made available and such addition to the output tax liability and interest payable thereon shall be made available to the supplier electronically on the Common Portal in FORM GST MIS –5.

21. Annual return

(1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return as specified under sub-section (1) of section 44 electronically in FORM GSTR-9 through the Common Portal either directly or through a Facilitation Centre notified by the Commissioner:

Provided that a person paying tax under section 10 shall furnish the annual return in FORM GSTR-9A.

(2) Every registered person whose aggregate turnover during a financial year exceeds one crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9B, electronically through the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

22. Final return

Every registered person required to furnish a final return under section 45, shall furnish such return electronically in FORM GSTR-10 through the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

23. Details of inward supplies of persons having Unique Identity Number

(1) Every person, who has been issued a Unique Identity Number and claims refund of the taxes paid on his inward supplies, shall furnish the details of such supplies of taxable goods or services or both in FORM GSTR-11 along with application for such refund claim either directly or through a Facilitation Centre, notified by the Commissioner.

(2) Every person, who has been issued a Unique Identity Number for purposes other than refund of the taxes paid, shall furnish the details of inward supplies of taxable goods or services or both as may be required by the proper officer in FORM GSTR-11.

24. Provisions relating to a goods and services tax practitioner

(1) An application in FORM GST PCT-1 may be made to the officer authorised in this behalf for enrolment as goods and services tax practitioner by any person who:

(a) (i) is a citizen of India;

(ii) is a person of sound mind;

(iii) is not adjudicated as insolvent;

(iv) has not been convicted by a competent court for an offence with imprisonment not less than two years,-

and satisfies any of the following conditions: -

(b) that he is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Excise and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower in rank than that of a Group-B gazetted officer for a period of not less than two years; or

(c) he has passed:

(i) a graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force; or

(ii) a degree examination of any Foreign University recognized by any Indian University as equivalent to the degree examination mentioned in sub-clause (i); or

(iii) any other examination notified by the Government for this purpose; or

(iv) any degree examination of an Indian University or of any Foreign University recognized by any Indian University as equivalent of the degree examination and has also passed any of the following examinations, namely.-

(a) final examination of the Institute of Chartered Accountants of India; or

(b) final examination of the Institute of Cost Accountants of India; or

(c) final examination of the Institute of Company Secretaries of India.

(2) On receipt of the application referred to in sub-rule (1), the authorised officer shall, after

making such enquiry as he considers necessary, either enrol the applicant as a goods and services tax practitioner and issue a certificate to that effect in FORM GST PCT - 2 or reject his application where it is found that the applicant is not qualified to be enrolled as a goods and services tax practitioner.

(3) The enrolment made under sub-rule (2) shall be valid until it is cancelled.

(4) If any goods and services tax practitioner is found guilty of misconduct in connection with any proceedings under the Act, the authorised officer may, by order, in FORM GST PCT direct that he shall henceforth be disqualified under section 48, after giving him a notice to show cause in FORM GST PCT against such disqualification and after giving him a reasonable opportunity of being heard.

(5) Any person against whom an order under sub-rule (4) is made may, within thirty days from the date of the order under sub-rule (4), appeal to the Commissioner against such order.

(6) A list of goods and services tax practitioner enrolled under sub-rule (1) shall be maintained on the Common Portal in FORM GST PCT -5 and the authorised officer may make such amendments to the list as may be necessary from time to time, by reason of any change of address or death or disqualification of any goods and services tax practitioner.

(7) Any registered person may, at his option, authorise a goods and services tax practitioner on the Common Portal in FORM GST PCT -6 or, at any time, withdraw such authorisation in FORM GST PCT -7 and the goods and services tax practitioner so authorised shall be allowed to undertake such tasks as indicated in FORM GST PCT -6 during the period of authorisation.

(8) Where a statement required to be furnished by a registered person has been furnished by the goods and services tax practitioner authorised by him, a confirmation shall be sought from the registered person over email or SMS and the statement furnished by the goods and services tax practitioner shall be made available to the registered person on the Common Portal:

Provided that where the taxable person fails to respond to the request for confirmation till the last date of furnishing of such statement, it shall be deemed that he has confirmed the statements furnished by the goods and services tax practitioner.

(9) A goods and services tax practitioner can undertake any or all of the following activities on behalf of a registered person, if so authorised by the registered person to:

(a) furnish details of outward and inward supplies;

(b) furnish monthly, quarterly, annual or final return;

(c) make deposit for credit into the electronic cash ledger;

(d) file a claim for refund; and

(e) file an application for amendment or cancellation of registration.

(10) Any registered person opting to furnish his return through a goods and services tax practitioner shall-

1. give his consent in FORM GST PCT -6 to any goods and services tax practitioner to prepare and furnish his return; and

2. before confirming submission of any statement prepared by the goods and services tax practitioner, ensure that the facts mentioned in the return are true and correct before signature.

(11) The goods and services tax practitioner shall-

(a) prepare the statements with due diligence; and

(b) affix his digital signature on the statements prepared by him or electronically verify using his credentials.

25. Conditions for purposes of appearance

(1) No person shall be eligible to attend before any authority, as a goods and services tax practitioner, in connection with any proceedings under the Act on behalf of any registered person or un-registered person unless his name has been entered in the list maintained under sub-rule (6) of rule 24 .

(2) An Accountant or a goods and services tax practitioner attending on behalf of a registered person or an un-registered person in any proceedings under the Act before any authority shall produce before such authority, if required, a copy of the authorisation given by the taxable person or person in Form GST PCT -6.

Relevant forms for GST Return

1.	Form GSTR-1	Details of outward supplies
2.	Form GSTR-1A	Details of inward supplies as added, corrected or deleted by the recipient made available to the supplier
3.	FORM GSTR-2	Details of inward supplies of goods or services or both received
4.	FORM GSTR-2A	Details of outward supplies made available to the recipient on the basis of FORM GSTR-1 furnished by the supplier
5.	Form GSTR-3	Monthly return on the basis of finalization of details of outward supplies and inward supplies along with the payment of amount of tax
6.	Form GSTR-3A	Notice to a registered taxable person who fails to furnish return under section 39 and section 45
7.	Form GSTR-3B	Monthly return in lieu of Form GSTR-3, when the time limit for filing details outward and inward return (FORM GSTR-2 and FORM GSTR-2) are extended
8.	FORM GSTR-4	Quarterly Return by thecomposition supplier
9.	FORM GSTR-4A	Details of outward supplies made available to the recipient registered under composition scheme on the basis of FORM GSTR-1 furnished by the supplier
10.	Form GSTR-5	Return for Non-Resident taxable person
11.	FORM GSTR-6	ISD return
12.	FORM GSTR-6A	Details of outward supplies made available to the ISD recipient on the basis of FORM GSTR-1 furnished by the supplier
13.	FORM GSTR-7	Return by a person required to deduct tax at source
14.	FORM GSTR-7A	TDS Certificate
15.	FORM GST MIS-1	Final acceptance of input tax credit and communication thereof (including Duplication of claims of input tax credit in the details of inward supplies) to registered person making such claim
16.	FORM GST MIS-2	Communication and rectification of discrepancy in claim of input tax credit to supplier
17.	FORM GST MIS-3	Communication and rectification of discrepancy in reduction in output tax liability and reversal of claim of reduction to the registered person making such claim (Including Duplication of claims for reduction in output tax liability in the details of outward supplies)
18.	FORM GST MIS-4	Communication and rectification of discrepancy in reduction

		in output tax liability and reversal of claim of reduction to the recipient
19.	FORM GST MIS-5	Communication and rectification of discrepancy in details furnished by the e-commerce operator and the supplier made available to the supplier
20.	FORM GST MIS-6	Communication and rectification of discrepancy in details furnished by the e-commerce operator and the supplier made available to the e-commerce
21.	Form GSTR-8	Details of supplies effected through e-commerce operator
22.	Form GSTR-9	Annual return
23.	Form GSTR-9A	Annual return by person paying tax under section 10
24.	Form GSTR-9B	Reconciliation Statement
25.	Form GSTR-10	Final return
26.	Form GSTR-11	Details of inward supplies to be furnished by a person having UIN
27.	FORM GST PCT-1	Application for enrolment as goods and services tax practitioner
28.	FORM GST PCT-2	Either accept or reject the application filed in FORM GST PCT-1 (for enrolment as goods and services tax practitioner)
29.	FORM GST PCT	SCN for disqualifying Goods and Services tax practitioner
30.	FORM GST PCT-5	List of Goods and Services tax practitioner on the Common Portal
31.	FORM GST PCT-6	Consent for furnish return through a goods and services tax practitioner, given by a registered person to goods and services tax practitioner
32.	FORM GST PCT-7	Withdrawal of authorisation provided in FORM GST PCT -6

Chapter ---

ASSESSMENT AND AUDIT

1. Provisional Assessment

(1) Every registered person requesting for payment of tax on a provisional basis in accordance with the provisions of sub-section (1) of section 60 shall furnish an application in FORM GST ASMT-01, along with the documents in support of his request, electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner.

(2) The proper officer may, on receipt of the application under sub-rule (1), issue a notice in FORM GST ASMT-02 requiring the registered person to appear in person or furnish additional information or documents in support of his request and the applicant shall file a reply to the notice in FORM GST ASMT – 03.

(3) The proper officer shall issue an order in FORM GST ASMT-04, either rejecting the application, stating the grounds for such rejection or allowing payment of tax on provisional basis indicating the value or the rate or both on the basis of which the provisional assessment is to be made and the amount for which the bond is to be executed and security to be furnished not exceeding twenty five per cent. of the amount covered under the bond.

(4) The registered person shall execute a bond in accordance with the provisions of sub-section (2) of section 60 in FORM GST ASMT-05 along with a security in the form of a bank guarantee for an amount as determined under sub rule (3):

Provided that a bond furnished to the proper officer under the *Central/State* Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of this Act and the rules made thereunder.

Explanation.- For the purposes of this rule, the term “amount” shall include the amount of integrated tax, central tax, State tax or Union territory tax and cess payable in respect of such transaction.

(5) The proper officer shall issue a notice in FORM GST ASMT-06, calling for information and records required for finalization of assessment under sub-section (3) of section 60 and shall issue a final assessment order, specifying the amount payable by the registered person or the amount refundable, if any, in FORM GST ASMT-07.

(6) The applicant may file an application in FORM GST ASMT- 08 for release of security furnished under sub-rule (4) after issue of order under sub-rule (5).

(7) The proper officer shall release the security furnished under sub-rule (4), after ensuring that the applicant has paid the amount specified in sub-rule (5) and issue an order in FORM GST ASMT–09 within a period of seven working days from the date of receipt of the application under sub-rule (6).

2. Scrutiny of returns

(1) Where any return furnished by a registered person is selected for scrutiny, the proper officer shall scrutinize the same in accordance with the provisions of section 61 with reference to the information available with him, and in case of any discrepancy, he shall

issue a notice to the said person in FORM GST ASMT-10, informing him of such discrepancy and seeking his explanation thereto within such time, not exceeding fifteen days from the date of service of the notice, as may be specified in the notice and also quantifying the amount of tax, interest and any other amount payable in relation to such discrepancy.

(2) The registered person may accept the discrepancy mentioned in the notice issued under sub-rule (1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same or furnish an explanation for the discrepancy in FORM GST ASMT-11 to the proper officer.

(3) Where the explanation furnished by the taxable person or the information submitted under sub-rule (2) is found to be acceptable, the proper officer shall inform the registered person accordingly in FORM GST ASMT-12.

3. Assessment in certain cases.

(1) The order of assessment made under sub-section (1) of section 62 shall be issued in FORM GST ASMT-13.

(2) The proper officer shall issue a notice to an unregistered taxable person in accordance with the provisions of section 63 in FORM GST ASMT-14 containing the grounds on which the assessment is proposed to be made on best judgment basis and after allowing a time of fifteen days to such person to furnish his reply, if any, pass an order in FORM GST ASMT-15.

(3) The order of summary assessment under sub-section (1) of section 64 shall be issued in FORM GST ASMT-16.

(4) The person referred to in sub-section (2) of section 64 may file an application for withdrawal of the summary assessment order in FORM GST ASMT–17.

(5) The order of withdrawal or, as the case may be, rejection of the application under sub-section (2) of section 64 shall be issued in FORM GST ASMT-18.

4. Audit

(1) The period of audit to be conducted under sub-section (1) of section 65 shall be a financial year or multiples thereof.

(2) Where it is decided to undertake the audit of a registered person in accordance with the provisions of section 65, the proper officer shall issue a notice in FORM GST ADT-01 within the time specified in sub-section (3) of the said section.

(3) The proper officer authorised to conduct audit of the records and books of account of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify the documents on the basis of which the books of account are maintained and the returns and statements furnished under the Act and the rules made thereunder, the correctness of the turnover, exemptions and deductions claimed, the rate of tax applied in respect of supply of goods or services or both, the input tax credit availed and utilized, refund claimed, and other relevant issues and record the observations in his audit notes.

(4) The proper officer may inform the registered person of the discrepancies, if any, noticed as observations of the audit and the said person may file his reply and the proper officer shall finalise the findings of the audit after due consideration of the reply furnished.

(5) On conclusion of the audit, the proper officer shall inform the findings of audit to the registered person in accordance with the provisions of sub-section (6) of section 65 in FORM GST ADT-02.

5. Special Audit

(1) Where special audit is required to be conducted under section 66, the officer referred to in the said section shall issue a direction in FORM GST ADT-03 to the registered person to get his records audited by the chartered accountant or cost accountant specified in the said direction.

(2) On conclusion of special audit, the registered person shall be informed of the findings of special audit in FORM GST ADT-04.

List of GST Returns/Statements to be furnished by Registered Persons

1.	FORM GST ASMT-01	Application by registered person, requesting payment of tax on a provisional basis
2.	FORM GST ASMT-02	Notice by proper officer requiring the registered person to appear in person or furnishadditional information or documents in support of application furnished under FORM GST ASMT-01
3.	FORM GST ASMT-03	Reply to Notice (FORM GST ASMT-02)
4.	FORM GST ASMT-04	Order in respect payment of tax on a provisional basis by registered person
5.	FORM GST ASMT-05	Execution of a bond in accordance with section 60 (2)
6.	FORM GST ASMT-06	Notice for calling information and records required for finalization of assessment under Section 60(3)
7.	FORM GST ASMT-07	Final assessment order
8.	FORM GST ASMT- 08	Applicant for release of security furnished under Rule 1(4) of Rules on Assessment and Audit
9.	FORM GST ASMT–09	Order for release of security
10.	FORM GST ASMT-10	Notice seeking explanation in respect of discrepancy found in Scrutiny of returns
11.	FORM GST ASMT-11	Reply to SCN and payment of tax, interest and any other amount made thereof.Payment is made also needs to informed
12.	FORM GST ASMT-12	Reply to SCN in FORM GST ASMT-11, found satisfactory, needs to be informed by proper officer

13.	FORM GST ASMT-13	Order of assessmentof non-filers of returns under section 62(1)
14.	FORM GST ASMT-14	Notice to an unregistered taxable person for best judgment basis
15.	FORM GST ASMT-15	Reply of Notice to an unregistered taxable person for best judgment basis
16.	FORM GST ASMT-16	Order of summary assessment
17.	FORM GST ASMT–17	Withdrawal of the Summary Assessment Order
18.	FORM GST ASMT-18	Order of withdrawal
	Audit	
19.	FORM GST ADT-01	Noticefor conducting auditby proper officer to registered person.
20.	FORM GST ADT-02.	Findings of audit to the registered person.
21.	FORM GST ADT-03	Issuance of direction of Special Audit to the registered person.
22.	FORM GST ADT-04.	Findings of special auditto the registered person.

Chapter ---

ELECTRONIC WAY BILL

1. Information to be furnished prior to commencement of movement of goods and generation of e-way bill

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees —

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

shall, before commencement of movement, furnish information relating to the said goods in Part A of FORM GST INS-01, electronically, on the common portal and

(a) where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one, the said person or the recipient may generate the e-way bill in FORM GST INS-1 electronically on the common portal after furnishing information in Part B of FORM GST INS-01; or

(b) where the e-way bill is not generated under clause (a) and the goods are handed over to a transporter, the registered person shall furnish the information relating to the transporter in Part B of FORM GST INS-01 on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST INS-01:

Provided that the registered person or, as the case may be, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees.

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST INS-01 on the common portal in the manner prescribed in this rule.

Explanation.- For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of movement of goods.

(2) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.

(1) Any transporter transferring goods from one conveyance to another in the course of transit shall, before such transfer and further movement of goods, generate a new e-

way bill on the common portal in FORM GST INS-01 specifying therein the mode of transport.

(2) Where multiple consignments are intended to be transported in one conveyance, the transporter shall indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST INS-02 shall be generated by him on the common portal prior to the movement of goods:

Provided that where the consignor has not generated FORM GST INS-01 in accordance with provisions of sub-rule (1) and the value of goods carried in the conveyance is more than fifty thousand rupees, the transporter shall generate FORM GST INS-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and also generate a consolidated e-way bill in FORM GST INS-02 on the common portal prior to the movement of goods.

(5) The information furnished in Part A of FORM to the registered supplier on the common portal who details in FORM GSTR-1: GST INS-01 shall be made available may utilize the same for furnishing

Provided that when information has been furnished by an unregistered supplier in FORM GST INS-01, he shall be informed electronically, if the mobile number or the e mail is available.

(6) Where an e-way bill has been generated under this rule, but goods are either not being transported or are not being transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within 24 hours of generation of the e-way bill:

Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 3.

(7) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance the goods have to be transported, as mentioned in column (2):

Table

Sr. no.	Distance	Validity period
(1)	(2)	(3)
1.	Less than 100 km	One day
2.	100 km or more but less than 300km	Three days
3.	300 km or more but less than 500km	Five days
4.	500 km or more but less than 1000km	Ten days
5.	1000 km or more	Fifteen days

Provided that the Commissioner may, by notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein.

Explanation.— For the purposes of this rule, the "relevant date" shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated.

(8) The details of e-way bill generated under sub-rule (1) shall be made available to the recipient, if registered, on the common portal, who shall communicate his acceptance or rejection of the consignment covered by the e-way bill.

(9) Where the recipient referred to in sub-rule (8) does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.

(10) The e-way bill generated under rule 1 of the CGST rules or GST rules of any other State shall be valid in the State.

Explanation. - The facility of generation and cancellation of e-way bill may also be made available through SMS.

2. Documents and devices to be carried by a person-in-charge of a conveyance

(1) The person in charge of a conveyance shall carry —

(a) the invoice or bill of supply or delivery challan, as the case may be; and

(b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device (RFID) embedded on to the conveyance in such manner as may be notified by the Commissioner.

(2) A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV-1, and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.

(3) Where the registered person uploads the invoice under sub-rule (1), the information in Part A of FORM GST INS-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.

(4) The Commissioner may, by notification, require a class of transporters to obtain a unique RFID and get the said device embedded on to the conveyance and map the e-way bill to the RFID prior to the movement of goods:

(5) Notwithstanding anything contained clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of conveyance to carry the following documents instead of the e-way bill:

(i) tax invoice or bill of supply or bill of entry; or

(ii) a delivery challan, where the goods are transported other than by way of supply.

3. Verification of documents and conveyances

(1) The Commissioner or an officer empowered by him in this behalf may authorise the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intra-State movement of goods.

(2) The Commissioner shall get RFID readers installed at places where verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such RFID readers where the e-way bill has been mapped with RFID.

(3) Physical verification of conveyances shall be carried out by the proper officer as authorized by the Commissioner or an officer empowered by him in this behalf:

Provided that on receipt of specific information of evasion of tax, physical verification of a specific conveyance can also be carried out by any officer after obtaining necessary approval of the Commissioner or an officer authorized by him in this behalf.

4. Inspection and verification of goods

(1) A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of FORM GST INS - 03 within twenty four hours of inspection and the final report in Part B of FORM GST INS - 03 shall be recorded within three days of the inspection.

(2) Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the said conveyance shall be carried out again in the State, unless specific information relating to evasion of tax is made available subsequently.

5. Facility for uploading information regarding detention of vehicle

Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in FORM GST INS- 04 on the common portal.

List of E-Way Bill Relevant Forms

1.	FORM GST INS-01	Furnish information prior to commencement of movement of goods.
2.	FORM GST INS-02	Furnish information regarding consolidated e-way bill in case of multiple consignments.
3.	FORM GST INS-03	Summary report of every inspection of goods in transit recorded by proper officer.
4.	FORM GST INS- 04	Uploading of information regarding detention of vehicle.

Chapter –

ADVANCE RULING

1. Qualification and appointment of members of the Authority for Advance Ruling

The Central Government and the State Government shall appoint an officer having the experience of not less than three years in the rank of Joint Commissioner as member of the Authority for Advance Ruling.

2. Form and manner of application to the Authority for Advance Ruling

(a) An application for obtaining an advance ruling under sub-section (1) of section 97 of the Act shall be made on the common portal in FORM GST ARA-1 and shall be accompanied by a fee of five thousand rupees, to be deposited in the manner specified in section 49 of the Act.

(b) The application referred to in sub-rule (1), the verification contained therein and all relevant documents accompanying such application shall be signed in the manner specified in rule Registration.19.

3. Certification of copies of the advance rulings pronounced by the Authority

A copy of the advanced ruling shall be certified to be a true copy of its original by any member of the Authority for Advance Rulings.

4. Form and manner of appeal to the Appellate Authority for Advance Ruling

(1) An appeal against the advance ruling issued under sub-section (6) of section 98 of the Act shall be made on the common portal in FORM GST ARA-2 and shall be accompanied by a fee of ten thousand rupees, to be deposited in the manner specified in section 49 of the Act.

(2) The appeal referred to in sub-rule (1), the verification contained therein and all relevant documents accompanying such appeal shall be signed, -

(a) in case of concerned officer or jurisdictional officer, by an officer authorized in writing by such officer; and

(b) in the case of an applicant, in the manner specified in rule Registration.19.

5. Certification of copies of the advance rulings pronounced by the Authority

A copy of the advance ruling pronounced by the Appellate Authority for Advance Ruling and duly signed by the Members shall be sent to-

(a) the applicant and the appellant;

(b) the concerned officer of Central Tax and State / Union Territory Tax;

(c) the jurisdictional officer of Central Tax and State / Union Territory Tax; and

(d) the Authority,

in accordance with the provisions of sub-section (4) of section 101 of the Act.

Chapter –

APPEALS AND REVISION

1. Appeal to the Appellate Authority

(a) An appeal to the Appellate Authority under sub-section (1) of section 107 of the Act shall be filed in FORMGSTAPL-01,[either] electronically [or otherwise] as may be notified by the Commissioner, and a provisional acknowledgement shall be issued to the appellant immediately.

(b) The grounds of appeal and the form of verification as contained in FORM GST APL-01 shall be signed in the manner specified in rule Registration.19.

(c) A hard copy of the appeal in FORM GST APL-01shall be submitted in triplicate to the Appellate Authority and shall be accompanied by a certified copy of the decision or order appealed against along with the supporting documents within seven days of filing of the appeal under sub-rule (1) and a final acknowledgement, indicating appeal number shall be issued thereafter in FORM GST APL-02 by the Appellate Authority or an officer authorized by him in this behalf:

Provided that where the hard copy of the appeal and documents are submitted within seven days from the date of filing the FORM GST APL-01, the date of filing of the appeal shall be the date of issue of provisional acknowledgement and where the hard copy of the appeal and documents are submitted after seven days, the date of filing of the appeal shall be the date of submission of documents.

Explanation. The appeal shall be treated as filed only when the final acknowledgement, indicating the appeal number is issued.

2. Application to the Appellate Authority

(1) An application to the Appellate Authority under sub-section (2) of section 107 of the Act shall be made in FORM GST APL-03,[either] electronically [or otherwise] as may be notified by the Commissioner.

(2) A hard copy of the application in FORM GST APL-03shall be submitted in triplicate to the Appellate Authority and shall be accompanied by a certified copy of the decision or order appealed against along with the supporting documents within seven days of filing the application under sub-rule (1) and an appeal number shall be generated by the Appellate Authority or an officer authorised by him in this behalf.

3. Appeal to the Appellate Tribunal

(1) An appeal to the Appellate Tribunal under sub-section (1) of section 112 of the Act shall be filed electronically, in FORM GST APL-05,on the common portal and a provisional acknowledgement shall be issued to the appellant immediately.

(2) A memorandum of cross-objections to the Appellate Tribunal under sub-section (5) of section 112 of the Act shall be filed in quintuplicate to the Registrar in FORM GST APL-06.

(3) The appeal and the memorandum of cross objections shall be signed in the manner specified in rule Registration.19.

(4) A hard copy of the appeal in FORM GST APL-05shall be submitted to the Registrar in quintuplicate and shall be accompanied by a certified copy of the decision or order appealed against along with the supporting documents and a fees as specified in sub-rule (5)within seven days of filing of the appeal under sub-rule (1) and a final acknowledgement, indicating the appeal number shall be issued thereafter in FORM GST APL-02 by the Registrar:

Provided that where the hard copy of the appeal and documents are submitted within seven days from the date of filing the FORM GST APL-05, the date of filing of the appeal shall be the date of issue of provisional acknowledgement and where the hard copy of the appeal and documents are submitted after seven days, the date of filing of the appeal shall be the date of submission of documents.

Explanation. – The appeal shall be treated as filed only when the final acknowledgement indicating the appeal number is issued.

(5) The fees for filing and restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to maximum of twenty five thousand rupees.

(6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors referred to in sub-section (10) of section 112.

4. Application to the Appellate Tribunal

(1) An application to the Appellate Tribunal under sub-section (3) of section 112 of the Act shall be made electronically, in FORM GST APL-07, on the common portal.

(2) A hard copy of the application in FORM GST APL-07shall be submitted to the Registrar in quintuplicate and shall be accompanied by a certified copy of the decision or order appealed against along with supporting documents within seven days of filing the application under sub-rule (1) and an appeal number shall be generated by the Registrar.

5. Production of additional evidence before the Appellate Authority or the Appellate Tribunal

(1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely –

(a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or

(b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or

(c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or

(d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

(2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

(3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -

(a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or

(b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).

(4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

6. Order of Appellate Authority or Appellate Tribunal

(1) The Appellate Authority shall, along with its order under sub-section (11) of section 107 of the Act, issue a summary of the order in FORM GST APL-04 clearly indicating the final amount of demand confirmed.

(2) The jurisdictional officer shall issue a statement in FORM GST APL-04 clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

7. Appeal to the High Court

(1) An appeal to the High Court under sub-section (1) of section 117 of the Act shall be filed in FORM GST APL-08.

(2) The grounds of appeal and the form of verification as contained in FORM GST APL-08 shall be signed in the manner specified in rule Registration.19.

8. Disqualification for misconduct

Where an authorised representative, other than those referred to in clause (b) or clause (c) of sub-section (2) of section 116 of the Act is found, upon an enquiry into the matter,

guilty of misconduct in connection with any proceedings under the Act, the Commissioner may, after providing him an opportunity of being heard, disqualify him from appearing as an authorised representative.

CHAPTER—

ACCOUNTS AND RECORDS

1. Maintenance of accounts by registered persons

(1) Every registered person shall keep and maintain, in addition to the particulars mentioned in sub-section (1) of section 35, a true and correct account of the goods or services imported or exported or of supplies attracting payment of tax on reverse charge along with relevant documents, including invoices, bills of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, refund vouchers and e-way bills.

(2) The account or records specified in sub-rule (1) shall be maintained separately for each activity including manufacturing, trading and provision of services, etc.

(3) Every registered person, other than a person paying tax under section 10, shall maintain accounts of stock in respect of each commodity received and supplied by him, and such account shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples and balance of stock including raw materials, finished goods, scrap and wastage thereof.

(4) Every registered person shall keep and maintain a separate account of advances received, paid and adjustments made thereto.

(5) Every registered person, other than a person paying tax under section 10, shall keep and maintain an account, containing the details of tax payable (including tax payable in accordance with the provisions of sub-section (3) and sub-section (4) of section 9 of the Act), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit note, debit note, delivery challan issued or received during any tax period.

(6) Every registered person shall keep the particulars of -

(a) names and complete addresses of suppliers from whom he has received the goods or services;

(b) names and complete addresses of the persons to whom he has supplied the goods or services;

(c) the complete addresses of the premises where the goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.

(7) If any taxable goods are found to be stored at any place(s) other than those declared under sub-rule(6) without the cover of any valid documents, the proper officer shall determine the amount of tax payable on such goods as if such goods have been supplied by the registered person.

(8) Every registered person shall keep the books of account at the principal place of business and at every related place(s) of business mentioned in his certificate of

registration and such books of account shall include any electronic form of data stored on any electronic device.

(9) Any entry in registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries shall be scored out under attestation and thereafter correct entry shall be recorded, and where the registers and other documents are maintained electronically, a log of every entry edited or deleted shall be maintained.

(10) Each volume of books of account maintained by the registered person shall be serially numbered.

(11) Unless proved otherwise, if any documents, registers, or any books of account belonging to a registered person are found at any premises other than those mentioned in the certificate of registration, they shall be presumed to be maintained by the said registered person.

(12) Every agent referred to in clause (5) of section 2 of the Act shall maintain accounts depicting the -particulars of authorization received by him from each principal to receive or supply goods or services on behalf of such principal separately;

(a) particulars including description, value and quantity(wherever applicable) of goods or services received on behalf of every principal;

(b) particulars including description, value and quantity(wherever applicable) of goods or services supplied on behalf of every principal;

(c) details of accounts furnished to every principal; and

(d) tax paid on receipts or on supply of goods or services effected on behalf of every principal.

(13) Every registered person manufacturing goods shall maintain monthly production accounts, showing the quantitative details of raw materials or services used in the manufacture and quantitative details of the goods so manufactured including the waste and by products thereof.

(14) Every registered person supplying services shall maintain the accounts showing the quantitative details of goods used in the provision of each service, details of input services utilised and the services supplied.

(15) Every registered person executing works contract shall keep separate accounts for each works contract showing -

(a) the names and addresses of the persons on whose behalf the works contract is executed;

(b) description, value and quantity(wherever applicable) of goods or services received for the execution of works contract;

(c) description, value and quantity(wherever applicable) of goods or services utilized in the execution of each works contract;

(d) the details of payment received in respect of each works contract; and

(e) the names and addresses of suppliers from whom he has received goods or services.

(16) The records under these rules may be maintained in electronic form and the record so maintained shall be authenticated by means of a digital signature.

(17) Accounts maintained by the registered person together with all invoices, bills of supply, credit and debit notes, and delivery challans relating to stocks, deliveries, inward supply and outward supply shall be preserved for the period as provided in section 36of the Act and shall be kept at every related place of business mentioned in the certificate of registration.

(18) Any person having custody over the goods in the capacity of a carrier or a clearing and forwarding agent for delivery or dispatch thereof to a recipient on behalf of any registered person shall maintain true and correct records in respect of such goods handled by him on behalf of the such registered person and shall produce the details thereof as and when required by the proper officer.

(19) Every registered person shall, on demand, produce the books of accounts which he is required to maintain under any law in force.

2. Generation and maintenance of electronic records

(1) Proper electronic back-up of records shall be maintained and preserved in such manner that, in the event of destruction of such records due to accidents or natural causes, the information can be restored within reasonable period of time.

(2) The registered person maintaining electronic records shall produce, on demand, the relevant records or documents, duly authenticated by him, in hard copy or in any electronically readable format.

(3) The registered person shall also provide, on demand, an account of the audit trail and inter-linkages including the source document, whether paper or electronic, and the financial accounts, record layout, data dictionary and explanation for codes used and total number of records in each field along with sample copies of documents.

3. Records to be maintained by owner or operator of godown or warehouse and transporters

(1) Every person required to maintain records and accounts in accordance with the provisions of sub-section (2) of section 35, if not already registered under the Act, shall submit the details regarding his business electronically on the Common Portal in FORM GST ENR-01, either directly or through a Facilitation Centre notified by the Commissioner and, upon validation of the details furnished, a unique enrollment number shall be generated and communicated to the said person.

(2) The person enrolled under sub-rule (1) as aforesaid in any other State or Union territory shall be deemed to be enrolled in the State or Union Territory.

(3) Every person who is enrolled under sub-rule (1) shall, where required, amend the details furnished in FORM GST ENR-01 electronically on the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.

(4) Subject to the provisions of rule 1, any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him and for each of his branches.

(5) Subject to the provisions of rule 1, every owner or operator of a warehouse or godown shall maintain books of accounts, with respect to the period for which particular goods remain in the warehouse, including the particulars relating to dispatch, movement, receipt, and disposal of such goods.

(6) The owner or the operator of the godown shall store the goods in such manner that they can be identified item wise and owner wise and shall facilitate any physical verification or inspection by the proper officer on demand.