Background Material
on
Revised Model GST Law

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

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Foreword

After passing of the 101st Constitutional Amendment (GST) Act, the much awaited Goods and Services Tax seems a reality in 2017. To ensure smooth transition, the government and all related nodal agencies like Goods and Services Tax Council, GSTN etc. have been regularly taking decisions to resolve the issues being faced at various levels. As a partner in nation building, the ICAI has been providing all necessary support to all agencies at every stage.

The Government had released the first draft of the Model GST Law in July, 2016 seeking comments and feedback from the stakeholders. Further, the revised Model GST law, after incorporation of the suggestions received from the stakeholders including the ones from ICAI, has also been released in December 2016.

A major breakthrough in this direction has been achieved recently when Goods and Services Tax Council at its meeting held in January 2017 has reached at a consensus on the contentious dual control issue preparing ground for the rollout of the biggest tax reform from 1st July, 2017. It's truly a historic moment and a great learning how the GST Council Chaired by Hon'ble Union Finance Minister and consisting of Union Minister of State for Finance of and Finance Ministers or any other Minister nominated by State Governments, having different interests and ideologies, could resolve numbers of contentious issues over few months with full commitment, persistence approach, patience hearing, understanding viewpoint, and adjustments. It is perfect example how one can achieve the desired results with consultative approach and strong determination.

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, which would be completed shortly.

The Institute has also been taking various initiatives for increasing awareness among its members, revenue officers and public at large about GST. Suggestions to make the GST law simple and easy for implementation are being done continuously. One of the efforts in this direction is this revised Background Material on Model GST Law. It contains a clause by clause analysis of the revised Model GST Law along with FAQ's, MCQ's, Flowcharts and Illustrations etc. and is improved version of earlier background material.

We 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. We welcome the readers for a fruitful and enriching experience.

CA. M. Devaraja Reddy
President
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CA. Nilesh S. Vikamsey
Vice-President
ICAI

Date: 07.02.2017

Place: New Delhi

Preface

The Government has released revised Model GST Law on November 26th 2016 after incorporating some of the inputs/suggestions from all the stakeholders. The major changes considered inter-alia includes raising threshold exemption limit to ₹ 10 lakhs for special categories States and ₹ 20 lakhs for other States, revamping of provision of provision relating to time of supply, allowing credit to traders registered as 1st/ 2nd Stage dealers, pro-rated distribution of input credit in case of output being taxable and exempt, categorising supply of goods and services to SEZ developer or SEZ unit as zero rated supply. These changes seem to be in right direction facilitating trade and industry.

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 suggestions given by the Institute have been partly considered favorably by the Government. The Committee has been organising large number of physical awareness program covering more than 25,000 members till date. It has also taken up online awareness/ in depth analysis by way of a series of webcasts, hosted Video lectures etc.

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

We thank CA. M Devaraja Reddy, President, CA. Nilesh Vikamsey, Vice-President, ICAI for giving us the space to deliver and support for this game changing law initiative.

We would like to acknowledge the members of the Committee especially CA. S. Venkatramani for their guidance and support in this initiative of the Committee. We also thank the Study Groups of the Indirect Tax Committee located at Delhi, Mumbai, Chennai, Delhi, Kolkata, Bhubaneswar, Guwahati, Pune, Andhra Pradesh, Ernakulam, Ahmedabad, Surat, Indore, Kanpur, Jaipur, Patna, Telangana and Gurgaon for their effort and contribution. We appreciate the Secretariat for their unstinted support and efforts.

We welcome the readers to an intellectual learning spree. Interested members may join the IDT update facility. We also welcome suggestions at idtc@icai.in and may visit website of the Committee www.idtc.icai.org.

CA. Madhukar Narayan Hiregange
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Indirect Taxes Committee

CA. Sushil Kumar Goyal
Vice-Chairman
Indirect Taxes Committee

Date: 07.02.2017

Place: New Delhi

Contents

Chapter I
Preliminary

1. Short title, extent and commencement

(1) This Act may be called the Central / State Goods and Services Tax Act, 2016.

(2) It extends to the whole of India / State's name.

(3) It shall come into force on such date as the Central or a State Government may, by notification in the Official Gazette, appoint in this behalf:

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.

2. Definitions

In this Act, unless the context otherwise requires, -

(1) "**actionable claim**" shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882);

Actionable claim represents a debt and the holder of the actionable claim enjoys the right to demand 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. 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. Assignment of actionable claim without permanently supplanting the holder of the claim would not be supply. In relation to actionable claims, Courts have held as follows:

(a) Actionable claims come within the definition of goods as generally understood

(b) VAT laws have deliberately excluded actionable claims from the definition of goods

(c) Actionable claims represent debt and accordingly carry a demand that can lawfully be made by one person against another

(d) Actionable claims represent property in non-physical (incorporeal) form.

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

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

(4) "**adjudicating authority**" means any authority competent to pass any order or decision

under this Act, but does not include the Board, the Revisional Authority, Authority for Advance Ruling, Appellate Authority for Advance Ruling, the First Appellate Authority and the Appellate Tribunal;

(5) "**agent**" means a person, including a factor, broker, commission agent, *arhatia*, *del crede re*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 on behalf of another, whether disclosed or not;

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

(6) "**aggregate turnover**" means the aggregate value of all taxable supplies, exempt supplies, exports of goods and/or services and inter-State supplies of a person having the same PAN, to be computed on all India basis and excludes taxes, if any, charged under the CGST Act, SGST Act and the IGST Act, as the case may be;

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 8 and the value of inward supplies.

This explanation removes any doubt that may arise in case of taxable persons who are liable to pay tax u/s 8(3); and it is not to be understood that the value of inward supplies is to be reduced from the value of outward supplies to arrive at aggregate turnover. The definition of exempted supply includes non- taxable turnover and the inclusion of non-taxable turnover like electricity, 5 specified petroleum products e.g. diesel, petrol, aviation fuel, liquor is not clear. Small assessees who have both non-taxable and taxable turnover may be affected.

(7) "**agriculture**" with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, the raising of crops, grass or garden produce and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forest or rearing of seedlings or plants;

Explanation.– For the purpose of this clause, the expression 'forest' means the forest to which the Indian Forest Act, 1927 (XVI of 1927) applies.

(8) "**agriculturist**" means a person who cultivates land personally, for the purpose of agriculture;

It need not be the owner.

(9) "**Appellate Tribunal**" means the National Goods and Services Tax Appellate Tribunal constituted under section 100;

(10) "**appointed day**'' means the date on which section 1 of this Act comes into effect;

(11) "**appropriate Government**" means the Central Government in case of the IGST and the CGST, and the State Government in case of the SGST;

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

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

(13) "**associated enterprise**" shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961(43 of 1961);

Section 92A of Income Tax Act - Meaning of associated enterprise.

(1) For the purposes of this section and sections 92, 92B, 92C, 92D, 92E and 92F, "associated enterprise", in relation to another enterprise, means an enterprise—

(a) which participates, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise; or

(b) in respect of which one or more persons who participate, directly or indirectly, or through one or more intermediaries, in its management or control or capital, are the same persons who participate, directly or indirectly, or through one or more intermediaries, in the management or control or capital of the other enterprise.

(2) 84 [For the purposes of sub-section (1), two enterprises shall be deemed to be associated enterprises if, at any time during the previous year, —]

(a) one enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in the other enterprise; or

(b) any person or enterprise holds, directly or indirectly, shares carrying not less than twenty-six per cent of the voting power in each of such enterprises; or

(c) a loan advanced by one enterprise to the other enterprise constitutes not less than fifty-one per cent of the book value of the total assets of the other enterprise; or

(d) one enterprise guarantees not less than ten per cent of the total borrowings of the other enterprise; or

(e) more than half of the board of directors or members of the governing board, or one or more executive directors or executive members of the governing board of one enterprise, are appointed by the other enterprise; or

(f) more than half of the directors or members of the governing board, or one or more of the executive directors or members of the governing board, of each of the two enterprises are appointed by the same person or persons; or

(g) the manufacture or processing of goods or articles or business carried out by one enterprise is wholly dependent on the use of know-how, patents, copyrights, trade-marks, licences, franchises or any other business or commercial rights of similar nature, or any data, documentation, drawing or specification relating to any patent, invention, model, design, secret formula or process, of which the other enterprise is the owner or in respect of which the other enterprise has exclusive rights; or

(h) ninety per cent or more of the raw materials and consumables required for the manufacture or processing of goods or articles carried out by one enterprise, are supplied by the other enterprise, or by persons specified by the other enterprise, and the prices and other conditions relating to the supply are influenced by such other enterprise; or

(i) the goods or articles manufactured or processed by one enterprise, are sold to the other enterprise or to persons specified by the other enterprise, and the prices and other conditions relating thereto are influenced by such other enterprise; or

(j) where one enterprise is controlled by an individual, the other enterprise is also controlled by such individual or his relative or jointly by such individual and relative of such individual; or

(k) where one enterprise is controlled by a Hindu undivided family, the other enterprise is controlled by a member of such Hindu undivided family or by a relative of a member of such Hindu undivided family or jointly by such member and his relative; or

(l) where one enterprise is a firm, association of persons or body of individuals, the other enterprise holds not less than ten per cent interest in such firm, association of persons or body of individuals; or

(m) there exists between the two enterprises, any relationship of mutual interest, as may be prescribed.

Associated Enterprise is referred to only in the context of time of supply whereas definition of related person is referred in the context of supply and valuation which includes associated enterprises also.

(14) **"audit"** means examination of records, returns and other documents maintained or furnished by the taxable person under this Act or rules made thereunder or under any other law for the time being in force to verify, inter alia,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 rules made thereunder;

The scope of audit appears to be very wide about the nature of the audit exercise that can be undertaken. Not only are the records furnished open for audit but also documents maintained by the taxable person can be called upon and be audited.

(15) "**authorized bank**" shall mean a bank or a branch of a bank authorized by the appropriate Government to collect the tax or any other amount payable to the appropriate government under this Act;

(16) "**Board**" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963);

(17) "**business**" includes –

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;

(b) any activity or transaction in connection with or incidental or ancillary to (a) above;

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

(d) supply or acquisition of goods including capital assets 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, as the case may be;

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

(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 total is at or a licence to book maker in such club;

Explanation.- Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities shall be deemed to be business.

This definition is very wide and covers all taxes that are being subsumed in the GST Laws. It may be noted that 'wager' is also included in the definition of business to impose GST on betting transactions. This definition may be understood in two parts, namely:

General activity - trade, commerce, etc., including incidental activities without reference to volume, frequency, continuity or regularity, and

Specific activity – acquisition of assets, supply by association, admission of persons, personal services and services by race-club.

Activities that are akin to business will also be included in the definition as – volume, frequency, continuity or regularity – are not required to substantiate business.

Principle of ejusdem generis provides that similar activity would be determined by the previous enumerated ones.

The activity of education could be understood as an occupation.

Charitable or religious activities may also not be specifically covered.

Clause (g) may require understanding of employment as differentiated from profession. If a CA in practice provides CFO or independent director services, he would be covered.

(18) **"business vertical"** means a distinguishable component of an enterprise that is engaged in supplying an individual product or service or a group of related products or services and that is subject to risks and returns that are different from those of other business verticals;

Explanation: Factors that should be considered in determining whether products or services are related include:

(a) the nature of the products or services;

(b) the nature of the production processes;

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

(d) the methods used to distribute the products or provide the services; and

(e) if applicable, the nature of the regulatory environment, for example, banking, insurance, or public utilities.

Reference to AS17 has been replaced with the incorporation of a modified form of that definition in the Act itself. It may be noted that geographic differentiation has been excluded from the list of factors of a business vertical.

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

An attempt to align to normal standards of accounting has been made. Capitalized value would include service where tax may have been paid.

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

Casual taxable person cannot enjoy threshold exemption because the threshold is in respect of aggregate turnover and not State turnover. For supply of services this aspect may be impracticable at times.

(21) "**CGST**" means the tax levied under the Central Goods and Services Tax Act, 2016;

(22) **"chartered accountant"** means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949);

(23) "**commissioner**" means the Commissioner of Central Goods and Services Tax / Commissioner of State Goods and Services Tax and includes Principal Commissioner of Central Goods and Services Tax / Principal Commissioner of State Goods and Services Tax / Chief Commissioner of State Goods and Services Tax appointed under section 4 of the Central/State Goods and Services Tax Act,2016;

(24) "**common portal**" means the common GST electronic portal approved by the Central Government and State Governments, on the recommendation of the Council, for the specified purposes, as may be notified under this Act;

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

(26) **"company secretary"** means a company secretary within the meaning of the Company Secretaries Act, 1980 (56 of 1980);

(27) **"composite supply"** means a supply made by a taxable person to a recipient comprising two or more supplies of goods or services, 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 the principal supply.

The way the supplies are bundled must be examined. Merely by conjointly, supplying 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. Please refer to comments under section 2(78) of the Act. If the ancillary supply were offered on a stand-alone basis, the same would not be accepted by the recipient. Even if separate prices were assigned to each of the supplies involved, the one that is ancillary would not become predominant. The ancillary supply becomes necessary only because of the acceptance of the predominant supply. The end use test could be important to decide. The method of billing may not be relevant. Further illustrations of composite supply are as follows:

A. Supply of laptop and carry case (laptop branded)

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 consumable medicaments

E. Post services along with warehousing.

(28) "**consideration**" in relation to the supply of goods or services 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, 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, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services, 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, whether refundable or not, given in respect of the supply of goods or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply;

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. Further, merely by altering the nomenclature of the payment as 'deposit' cannot defer the tax liability. Usage of trade and popular understanding of the terms play an important role in identifying whether the deposit is really a deposit or not.

Consideration can flow from anyone else. The payment to be considered as advance or deposit would depend on the circumstances and terms of contract. Nomenclature needs to be correctly done.

(29) "**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, '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.

(30) "**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;

The examples could be supply of gas through a pipeline or RMC supplied to site or TV signals through cables.

(31) "**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 obligation sand includes supply of such service as the Central or a State Government may, whether or not subject to any condition, by notification, specify;

Example could be annual repair service or internal audit.

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

(33) "**cost accountant"** means a cost accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959);

(34) "**Council**" means the Goods and Services Tax Council established under Article 279A of the Constitution;

(35) **"credit note"** means a document issued by a taxable person as referred to in sub-section (1) of section 31;

(36) **"debit note"** means a document issued by a taxable person as referred to in sub-section (3) of section 31;

(37) "**deemed exports**", as notified by the Central Government/State Government on the recommendation of the Council, refer to those transactions in which the goods supplied do not leave India, and payment for such supplies is received either in Indian Rupees or in convertible foreign exchange;

(38) "**document**" includes written or printed record of any sort and electronic record as defined in the Information Technology Act, 2000 (21 of 2000);

(39) "**earlier law**" means any of the following laws, that is to say,

(a) . . .

(b) . . .

(c) . . .

as amended from time to time and includes enactments which have validated anything done or omitted to be done under any of the above mentioned laws and also any law repealed by the earlier laws but continued in force under any provisions of the above enumerated laws;

(40) "**electronic cash ledger**" means the electronic cash ledger referred to in sub-section (1) of section 44;

(41) '**electronic commerce**' means supply of goods and/or services including digital products over digital or electronic network;

Physical stores that supply goods or services with the help of a digital network 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.

(42) '**electronic commerce operator**' means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

It may be noted that there need not be a brand and will include an aggregator.

(43) "**electronic credit ledger**" means the electronic credit ledger referred to in sub-section (2) of section 44;

(44) "**exempt supply**" means supply of any goods and/or services which are not taxable under this Act and includes such supply of goods and/or services which attract nil rate of tax or which may be exempt from tax under section 11;

Exempt supplies comprise of 3 types of supplies, namely: (i) Supplies that are not taxable under the Act (petroleum products and alcohol) (ii) Supplies that have a rate of tax of 'nil' prescribed and (iii) Supplies that are fully exempt either levy or payment of tax levied

(45) "**First Appellate Authority**" means an authority referred to in section98;

(46) "**first stage dealer**" means a dealer, who purchases the goods directly from, -

(i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or

(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;

Under the Central Excise law, first stage dealer is one who is registered as such u/s 9 r/w Rule 6 of Central Excise Rules, 2002. But the definition here, does not make any reference to one duly registered under the Central Excise law. As such, any person who purchases goods from a manufacturer or importer will be treated as an FSD. Please note this difference in the understanding of FSD in Central Excise as compared to FSD under GST.

(47) "**fixed establishment**" means a place, other than the 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;

Not every temporary or interim location of a project site or transit-warehouse will become a fixed establishment of the taxable person. Apart from the place of business, if the taxable person were to effect supply from a place which has (a) sufficient degree of permanence and (b) human and technical resources. If these two elements are not

present then such place will not be a fixed establishment. It will also not be a fixed establishment if even these elements are partially missing. Please refer to discussion in place of business section 2(74).

(48) "**fund**" means the Consumer Welfare Fund established under section 51;

(49) "**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;

Courts have explained that 'goods' includes actionable claim although under VAT laws, actionable claims have been kept outside the scope of taxation. Now, the GST Law seeks to change this understanding by including actionable claim in the definition of goods. Also, note that 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, then such forms of actionable claims continue to be excluded.

Intangibles like DEPB license, copyright and carbon credit could be covered in goods.

(50) "**government**" means Central Government and its departments, a State Government and its departments and a Union territory and its departments, but shall not include any entity, whether created by a statute or otherwise, the accounts of which are not required to be kept in accordance with Article 150 of the Constitution or the rules made thereunder;

(51) **"IGST**" means the tax levied under the Integrated Goods and Services Tax Act, 2016;

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

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

This wide definition could avoid disputes on what is eligible. It could also draw strength from section 37 of the Income Tax Act, which is settled Law.

(54) "**Input Service Distributor**" means an office of the supplier of goods and/ or services which receives tax invoices issued under section 28 towards receipt of input services and issues a prescribed document for the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST paid on the said services to a supplier of taxable goods and / or services having same PAN as that of the office referred to above;

'Every supplier is liable to registered in the State from where he makes a taxable supply – Schedule V. As such, every supplier becomes a taxable person in the entire State when he is liable to register in any place in that State. When a supplier is registered as a taxable person in a State, then it appears that he is not qualified to be registered as an ISD in that State. The only exception is where registration is obtained for separate business verticals. Refer comments in section 2(73) and 2(98) of this Law.

ISD may be available where one does not have registration as Taxable person but only expenses are incurred.

(55) "**input tax**" in relation to a taxable person, means the IGST, including that on import of goods, CGST and SGST charged on any supply of goods or services to him and includes the tax payable under sub-section (3) of section 8, but does not include the tax paid under section 9;

Input tax comprises:

- all taxes paid – IGST, CGST and SGST
- on forward charge or reverse charge basis including imports
- on goods and / or services
- excluding taxes paid on composition basis

Provision is silent on tax paid by e-commerce operator.

(56) "**input tax credit"** means credit of 'input tax' as defined in sub-section (55);

(57) "**intra-State supply of goods**" means the supply of goods in the course of intra-State trade or commerce in terms of sub-section (1) of section 4 of IGST Act, 2016;

(58) "**intra-State supply of services** " means the supply of services in the course of intra-State trade or commerce in terms of sub-section (2) of section 4of IGST Act, 2016;

(59) **"invoice"** shall have the meaning as assigned to it under section 28;

(60) "**inward supply**" in relation to a person, shall mean receipt of goods and/or services whether by purchase, acquisition or any other means and whether or not for any consideration;

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

The situation of unregistered person supplying goods to unregistered job worker does not seem to be covered here.

(62) "**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 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 (41 of 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;

(63) **"manufacturer"** shall have the meaning assigned to it by the Central Excise Act, 1944 (1 of 1944);

The settled law under Central Excise may be referred.

(64) "**market value**" shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods and/or services 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 concept could lead to substantial disputes.

(65) "**money**" means 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 recognized by the Reserve Bank of India when used as 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;

(66) "**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 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.

Two (or more) supplies that have individual identity and can be supplied separately but are deliberately supplied conjointly by assigning a single consolidated price without any indication of the allocation of the total price to the individual supplies comprised in this supply. Each of the supplies that are intended to be acquired by the recipient. Further illustrations that may be considered are: (i) Supply of toothpaste and brush (ii) Supply of laptop and printer (iii) Supply of tuition in a coaching centre and board prescribed text books The Method of billing separately for unrelated supplies or together could be examined where rates are differing.

(67) "**motor vehicle**" has the meaning assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988 (59 of 1988);

(68) "**non-resident taxable person**" means a taxable person who occasionally undertakes transactions involving supply of goods and/or services whether as principal or agent or in any other capacity but who has no fixed place of business in India;

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

> Supply taking place outside the taxable territory denies the jurisdiction to impose tax. High sea sales (first supply) are not liable to GST for the reason that goods that involve movement are located outside the taxable territory even though the recipient may be inside.

(70) "**notification**" means notification published in the Official Gazette and the expressions 'notify' and 'notified' shall be construed accordingly;

(71) "**output tax**" in relation to a taxable person, means the CGST/SGST chargeable under this Act on taxable supply of goods and/or services made by him or by his agent and excludes tax payable by him on reverse charge basis;

> IGST is not included in the definition of output tax. Please refer to chapter V on input tax credit where the implications are discussed.

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

> Even when it is 'agreed to supply', it constitutes outward supply. This is important to validly impose GST on advance payment made under agreements for 'supply in future'.

(73) "**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, State or Provincial Act or a Government company as defined in section 2(45) of the Companies Act, 2013 (18 of 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 cooperative societies;

(j) a local authority;

(k) government;

(l) society as defined under the Societies Registration Act, 1860 (21 of 1860);

(m) trust; and

(n) every artificial juridical person, not falling within any of the preceding sub-clauses;

This definition is to be read along with the fiction in section 10 where taxable persons are understood as sub-units of a person such that transactions between two taxable persons is also a taxable supply.

(74) "**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, provides or receives goods and/or services; 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;

Business is well understood but the place where business is carried on may not be the project site or the warehouse where the goods are deposited. Often place of business is associated with the place of delivery / storage of the goods. Let us consider the following illustrations:

(i) Builder has his registered-cum-corporate office in Delhi and construction site in Noida – Place of business is Delhi and that is where 'business is ordinarily carried on' or where business decisions are made. Construction site is equipped only with engineering team and as such it lacks a 'sufficient degree of permanence' in 'technical and human resources' to itself be the place where business decisions can be ordinarily taken.

(ii) Factory located in Jaipur of a company whose registered-cum-corporate office is in Ahmedabad – place of business is Jaipur and that is where 'business is ordinarily carried on' as a factory cannot be deficient in its 'degree of permanence'

(iii) Customer site in Indore of a lift manufacturing company whose registered-cum-corporate office is in Mumbai – place of business is Mumbai because that is where 'business is ordinarily carried on'.

(75) "**prescribed**'' means prescribed by the rules, regulations or by any notification issued under this Act;

(76) **"principal"** means a person on whose behalf an agent carries on the business of supply or receipt of goods and/or services;

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

This definition recognizes that there may be more than one 'places of business' and that the one that is considered in the certificate of registration is admitted as the 'principal place of business'. Please refer comments in section 2(73) on 'place of business.

(78) "**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 and does not constitute, for the recipient an aim in itself, but a means for better enjoyment of the principal supply;

Principal supply recognises two (or more) supplies and arranges them in a hierarchy – predominant and ancillary – based on an 'end-user test'. It is the opinion of the end-user that is relevant in deciding which of the supplies is predominant and which is ancillary. Let us consider some illustrations:

i) Supply of laptop and carry case (laptop branded) – In this case the customer (end-user) did not purchase the laptop to get the carry case. In fact, a carry case with the same brand as the laptop is normally not available for independent purchase. The predominant supply is laptop and ancillary supply is carry case. It would be a case of mixed supply if the carry case was an independent brand capable of being used to carry several brands of laptops.

ii) Supply of equipment and installation / commissioning of the same – here the customer (end-user) has just the amount of understanding about the equipment to contract for its supply and measures its satisfactory performance based on commissioning tests. The predominant supply is supply of equipment and ancillary supply is its installation.

iii) Supply of repair services of laptop with parts – here the customer (end-user) is not knowledgeable about laptops to be able to approve or reject which part is to be replaced. The sole criterion that the customer follows is whether the laptop has resumed function or not. As such, it is the skill and expertise of supplier that makes the laptop function as desired. Whether replacement is necessary or merely resetting the existing part restores the functioning of the laptop is unknown to the customer. Where the object of the contract is unknown to the customer, then that object cannot be the purpose of the contract. The only object that is known to the customer is the 'repair service' which is the predominant object of supply. This would be the position even if the cost of parts replaced is higher than the cost of service

iv) Supply of health care services along with consumable medicaments – here the patient (end-user) has no understanding of the consumable medicaments (dressing the wound, anti-inflammatory injection and medicines) and has minimal understanding about his recovery and well-being. This, he believes is assured by the services provided and not about the equipment to contract for its supply and measures its satisfactory performance based on commissioning tests. The predominant supply is supply of health care services and ancillary supply is the medicaments consumed.

(79) **"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 Commissioner of CGST / SGST;

(80) "**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;

(81) "**recipient**" of supply of goods and/or services means-

(a) where a consideration is payable for the supply of goods and/or services, 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;

Explanation.- The expression "recipient" shall also include an agent acting as such on behalf of the recipient in relation to the goods and/or services supplied.

Recipient is defined as the 'payer of the consideration' (where consideration is due on the supply). As seen earlier in the definition of consideration in section 2(28), a third party to a contract may also contribute the consideration. It is also seen that consideration is not the amount paid by the recipient but the total amount received by the supplier. Here the payer of the consideration being defined as the recipient, there may be concerns as to how this conflict may be resolved.

(82) "**registered importer**" means the importer registered in terms of the provisions of Central Excise Rules, 2002;

(83) "**regulations**" means the regulations made by the Commissioner under any provision of the Act on the recommendation of the Council;

(84) persons shall be deemed to be "**related persons**'' if only -

(a) they are officers or directors of one another's businesses;

(b) they are legally recognized partners in business;

(c) they are employer and employee;

(d) 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;

(e) one of them directly or indirectly controls the other;

(f) both of them are directly or indirectly controlled by a third person;

(g) together they directly or indirectly control a third person; or

(h) they are members of the same family;

Explanation I. - The term "person" also includes legal persons.

Explanation II. - 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.

(85) "**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;

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

(87) "**reverse charge**'' means the liability to pay tax by the recipient of supply of goods or services instead of the supplier of such goods or services in respect of such categories of supplies as notified under sub-section (3) of section 8;

(88) "**rules**" means the rules made by the Central/State Government under any provision of the Act on the recommendation of the Council;

(89) **"schedule"** means a schedule appended to this Act;

(90) "**securities**" shall have meaning assigned to it in sub-section (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(91) "**second stage dealer"** means a dealer who purchases the goods from a first stage dealer as defined in sub-section (46);

Please refer comments in section 2(46) in relation to first stage dealer and the same may be extended to second stage dealer.

(92) **"services''** means anything other than goods;

Explanation 1.- Services include transactions in money but does not include money and securities;

Explanation 2.- Services does not include transaction in money other than an activity 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 in order to recognize all those articles that come within this definition and be excluded from the definition of services. Transactions in money (other than its conversion) are excluded both from the definition of goods and from the definition of services.

Word "anything" could be read as "everything".

(93) **"SGST"** means the tax levied under the State Goods and Services Tax Act, 2016;

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

(95) **"supply''** shall have the meaning as assigned to it in section 3;

(96) "**tax**" means goods and services tax levied on the supply of goods and/or services under this Act and includes any amount payable under section 9 or sub-section (10) of section 18;

(97) "**tax period**'' means the period for which the return is required to be filed;

(98) **"taxable person''** shall have the meaning as assigned to it in section 10;

(99) "**taxable supply**'' means a supply of goods and/or services which is chargeable to tax under this Act;

The words 'chargeable' and 'leviable' do not mean the same. Leviable is where the ingredients for imposition of GST are attracted. And chargeable is where the assessment of the impost results in ₹ zero is payable for reasons of exemption from payment of tax levied.

(100) "**non-taxable supply**'' means a supply of goods or services which is not chargeable to tax under this Act;

The words 'not chargeable' is also not to be equated with 'not leviable'. Tax that is leviable (because the taxing ingredients have been satisfied) but resulting in an assessment with a liability of ₹ zero. Hence, this form of definition presents concerns about impact on allowability of credit. Please also refer to comment in section 2(44) regarding exempt supplies.

(101) "**taxable territory**'' means the territory to which the provisions of this Act apply;

(102) **"Tax Return Preparer"** means any person who has been approved toast as a Tax Return Preparer under the scheme framed under section 43;

(103) "**telecommunication service**" means service of any description(including electronic mail, voice mail, data services, audio text services, videotext 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 electro-magnetic means;

(104) "**time of supply of goods**'' shall have the meaning as assigned to it in section 12;

(105) "**time of supply of services**'' shall have the meaning as assigned to it in section 13;

(106) "**to cultivate personally"** means to carry on any agricultural operation on one's own account-

(a) by one's own labour, or

(b) by the labour of one's family, or

(c) by servants on wages payable in cash or kind **[**(but not in crop share)**]** or by hired labour under one's personal supervision or the personal supervision of any member of one's family;

Explanation 1. - A widow or a minor or a person who is subject to any physical or mental disability or is a serving member of the armed forces of the Union, shall be deemed to cultivate land personally if it is cultivated by her or his servants or by hired labour.

Explanation 2. - In the case of a Hindu Undivided Family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family.

(107) "**turnover in a State**" means the aggregate value of all taxable supplies, exempt supplies, exports of goods and / or services made within a State by a taxable person and inter-state supplies of goods and / or services made from the State by the said taxable person excluding taxes, if any charged under the CGST Act, SGST Act and the IGST Act, as the case may be;

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 8 and the value of inward supplies.

(108) "**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, as defined in sub-section (73), is incorporated or otherwise legally constituted;

(109) "**valid return**" means a return furnished under sub-section (1) of section34 on which self-assessed tax has been paid in full;

(110) "**works contract**" means a contract wherein transfer of property in goods is involved in the execution of such contract and includes contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification,

repair, maintenance, renovation, alteration or commissioning of any immovable property;

There are two parts to this definition by the words 'means' and 'includes'. The following aspects may be considered:

(a) The 'means' limb of the definition does not use the words from section 366(29A)(d), namely, 'whether as goods or in some other form' while referring to the 'such contract'

(b) The 'includes' limb of the definition contains 14 verbs and none of these are exclusively akin to movable property and at best only some are common to both immovable and movable property

(c) The restriction of this second limb only to 'immovable property' at the end appears to be deliberate

As such, it appears the GST may seek to treat works contracts in relation to immovable property alone are to be treated as supply of services (section 3 r/w schedule II) and those in relation to movable property may be treated as supply simiplicitor – as goods or as services – in view of the concept of composite supply and mixed supply being provided for, interestingly, in section 3(5) of the Act

Therefore, activities like electroplating, powder coating of auto parts, annual maintenance contracts may not be Works Contract.

(111) "**zero-rated supply**" means supply of any goods and/or services in terms of section 15 of the IGST Act 2016; and

Reference to section 15 must be read as reference to section 16 of IGST Act. With this definition of zero-rated supply, supplies which may be taxed at 'zero percent' rate of GST may need to be understood as being different from zero-rated supplies which are supplies of goods or services which have their rates of tax prescribed but are rendered zero-rated due to the supply in the circumstances of section 16 of IGST Act

(112) Words and expressions not defined in this Act shall have the meaning assigned to them in the Integrated Goods and Services Tax Act, 2016.

3. Meaning and scope of supply

(1) Supply includes—

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

(b) importation of services, for a consideration whether in the course or furtherance of business, and

(c) a supply specified in Schedule I, made or agreed to be made without a consideration.

(2) Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services.

(3) Notwithstanding anything contained in sub-section (1),

(a) activities or transactions specified in schedule III; or

(b) activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as specified in Schedule IV,

shall be treated neither as a supply of goods nor a supply of services.

(4) Subject to sub-section (2) and sub-section (3), the Central or a State Government may, upon recommendation 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; or

(c) neither a supply of goods nor a supply of services.

(5) The tax liability on a composite or a mixed supply shall be determined in the following manner —

(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;

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

The definition of the word supply has been analysed in the appropriate sections.

Chapter-II
Administration

4. Classes of officers under the Central Goods and Services Tax Act

Statutory provision [CGST Act]

There shall be the following classes of officers under the Central Goods and Services Tax Act, namely;

(a) Principal Chief Commissioners of CGST or Principal Directors General of CGST, (b) Chief Commissioners of CGST or Directors General of CGST,

(c) Principal Commissioners of CGST or Principal Additional Directors General of CGST,

(d) Commissioners of CGST or Additional Directors General of CGST,

(e) Additional Commissioners of CGST or Additional Directors of CGST,

(f) Joint Commissioners of CGST or Joint Directors of CGST,

(g) Deputy Commissioners of CGST or Deputy Directors of CGST,

(h) Assistant Commissioners of CGST or Assistant Directors of CGST, and

(i) Such other class of officers as may be appointed for the purposes of this Act.

4.1 Introduction

4.1.1 This section specifies different ranks/ class of officers from higher to lower levels for the administration of CGST law.

4.1.2 There are 8 classes of officers as per CGST Act, with 16 officers and a general class, whereas SGST Act contains 6 classes of officers, with a general class.

4.1.3 Section 5 of the Act empowers the 'Government' to appoint officers under the Act. Thus, the only authority which can appoint such officers is the Government. Officers below the rank of the Assistant Commissioner of CGST may be appointed by specified Officers, if authorised by the Board. SGST Officers are deemed to be officers under CGST Act for the purpose of section 7.

4.1.4 The ranks of officers stated under Section 4 are illustrative and the Board may appoint such other class of officers which are required for better administration.

4.2 Analysis

4.2.1 Section 4(1) prescribes different class of officers and their hierarchy thereof under the CGST Law. It starts with the Principal Chief Commissioners or Principal Director Generals of CGST as the top level officer who will be directly responsible to the Board.

4.2.2 Each officer in the chain will have a different role to play and will be responsible to his immediate superior.

4.2.3 The duties and responsibilities of such officers can be fixed either on functional basis or on the basis of territorial jurisdiction or a mixture of two.

4.3 Comparative Review

4.3.1 The administrative set up under this law is almost similar to the present set up under the Central Excise / Service Tax law.

4.4 Related Provisions

4.4.1 Section 5 confers powers upon the Government to appoint officers under CGST law.

4.4.2 Section 6 states the powers of officers under CGST law.

4.4.3 Section 98 prescribes the powers of the first Appellate Authority.

4.4.4 Section 99 prescribes the powers of the Revisional Authority.

4. Classes of officers under the State Goods and Services Tax Act

Statutory provision [SGST Act]

(1) There shall be the following classes of officers and persons under the State Goods and Services Tax Act namely.

(a) [Principal/Chief] Commissioner of SGST,

(b) Special Commissioners of SGST,

(c) Additional Commissioners of SGST,

(d) Joint Commissioners of SGST,

(e) Deputy Commissioners of SGST,

(f) Assistant Commissioners of SGST, and

(g) such other class of officers and persons as may be appointed for the purposes of this Act.

(2) The Commissioner shall have jurisdiction over the whole of the State of (….). All other officers shall have jurisdiction over the whole of the State or over such areas as the Commissioner may, by notification, specify.

4.1 Introduction

4.1.1 This Section specifies the different ranks / class of officers for administration of SGST law.

4.1.2 SGST Act refers to 6 classes of officers with a general class.

4.1.3 The power to appoint such officers will be prescribed under the SGST laws.

4.2 Analysis

4.2.1 The Principal/Chief Commissioner of SGST will be the supreme authority in the State under SGST law and they will have jurisdiction over the whole of the appropriate State.

4.2.2 Jurisdiction of all other officers will be over the respective States, unless otherwise the area of jurisdiction of such officers is notified by the Commissioner.

4.3 Comparative Review

4.3.1. The class of officers as stated in Section 4(1) is more or less similar to the present hierarchy under various State VAT laws.

4.3.2. The provisions relating to appeals to First Appellate / Revisional Authority is prescribed under Section 98 / 99.

4.3.3. In SGST, Principal/Chief Commissioner is the highest authority, whereas in CGST, Principal Chief Commissioner/Principal Directors General are at the top.

5. Appointment of officers under the Central Goods and Services Tax Act

Statutory provision [CGST Act]

(1) The Board may appoint such persons as it may think fit to be officers under the Central Goods and Services Tax Act.

IF the persons appointed as officers under the State Goods and Services Tax Act of a State shall be deemed to be appointed as officers under this Act for the purposes of section 7 of this Act.

(2) Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner/Commissioner of Central Goods and Services Tax or an Additional/Joint or Deputy/Assistant Commissioner of Central Goods and Service Tax to appoint officers of Central Goods and Services Tax below the rank of Assistant Commissioner of Central Goods and Services Tax.

5.1 Introduction

5.1.1 This Section specifies the powers for appointment of Officers under CGST law. Such power invariably vests in the "Board" under provisions of sub Section (1) of Section 5. The "**Board**" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 as defined under sub-section (16) of Section 2 of this Act.

5.1.2 In exercise of the powers under the said provision, the Board may authorize the specified class of officers as under Sub Section (2) of Section 5 for appointing certain class of officers of CGST.

5.2 Analysis

5.2.1 The administrative set up under the CGST law shall be guided by this Section along with Section 4 of this law.

5.2.2 Similar provisions may be prescribed under the SGST law in respect of the class of officers and persons as prescribed under Section 4 of the SGST law.

5.2.3. Rules may prescribe further details relating to jurisdiction.

5.3 Comparative review

5.3.1 In the Central Excise Act, 1944, the term —" Central Excise Officer" has been defined in Section 2(b). This provision empowers Board to entrust any other officer of the Central Excise Department or any person (including an officer of the State Government) with any of the power of the Central Excise Officer under Central Excise Act, 1944.

Rule 3 of the Central Excise Rules, 2002 empowers the Board to appoint any person to be Central Excise officer as well as specify power to be exercised by such officer. It also empowers Board to specify jurisdiction.

In term of Section 2(b) of the Central Excise Act, 1944 and Rule 3 of the Central Excise Rules, 2002, several notifications have been further issued by the Board for constituting various Directorates and officers to be appointed under such Directorates.

5.3.2 In respect of Service Tax, the Rule 3 of the Service Tax Rules, 1994 deals with appointment of officers for exercise of powers under Chapter V of the Finance Act, 1994. There is no special category of Service tax officer as it exists in case of Central Excise.

The term – "**Central Excise Officers"** has not been defined under the Finance Act, 1994 (Chapter V) or under Service Tax Rules,1994. However, in terms of Clause (55) of the Section 65B of the Finance Act, 1994, the meaning of term – "Central Excise Officer" for the purposes of service tax law administration has to be seen in terms of section 2(b) of the Central Excise Act, 1944.

5.3.3 Section 37A of the Central Excise Act, 1944 and Section 83 of the Finance Act, 1994 contain provisions for delegation of powers of Board or other higher authorities to lower authorities like Section 5 of the CGST law.

5.4 Related provisions

Section	Description
Section 2(16)	Definition of "Board"
Section 2(21)	Definition of "CGST"
Section 2(93)	Definition of "SGST"
Section 2(79)	Definition of "proper officer"
Section 4	Classes of officers
Section 6	Powers of Officers

5. Appointment of officers under the State Goods and Services Tax Act

Statutory provision [SGST Act]

(1) The Government may appoint such persons as it may think fit to be officers under the State Goods and Services Tax Act:

PROVIDED that the persons appointed as officers under the Central Goods and Services Tax Act shall be deemed to be appointed as officers under this Act for the purposes of section 7 of this Act.

(2) The Commissioner shall have jurisdiction over the whole of the State, the Special Commissioner and an Additional Commissioner shall have jurisdiction over the whole of the State or where the State Government so directs, over any local area thereof, and all other officers shall, subject to such conditions as may be specified, have jurisdiction over the whole of the State or over such local areas as the State Government may specify.

5.1 Introduction

5.1.1 This Section specifies the powers for appointment of Officers under SGST law by the Government.

5.2 Analysis

5.2.1 The administrative set up under the SGST law shall be guided by this Section along with Section 4 of this law.

5.2.2. The Officers appointed under CGST law are deemed to be SGST Officers for section 7.

5.2.3. The Commissioner has jurisdiction over the whole of the State. The Special and Additional Commissioners and other officers would have jurisdiction over the whole of the State or notified/specified local areas.

5.3 Comparative review

This is broadly based on the existing VAT law provisions.

5.5 Related provisions

Section	Description
Section 2(21)	Definition of “CGST”
\Section 2(93)	Definition of “SGST”
Section 2(79)	Definition of “proper officer”
Section 4	Classes of officers
Section 6	Powers of Officers

6. Powers of officers under the Central Goods and Services Tax Act

Statutory provision [CGST Act]

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

(2) An officer of Central Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of Central Goods and Services 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 its powers to any other officer subordinate to him.

(4) Notwithstanding anything contained in this section, a First Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on an officer of Central Goods and Services Tax other than those specified in section 98 of this Act.

6.1 Introduction

6.1.1 This provision empowers the Board to impose conditions and limitations under which an officer under CGST law may exercise and/ or delegate powers and / or discharge duties under the CGST law.

6.1.2 It also empowers an officer under CGST law to exercise powers and / or discharge duties of himself or his subordinate officers.

6.1.3 The powers of the First Appellate Authority have been restricted to those specified under Section 98 of the Act.

6.2 Comparative review

6.2.1 Section 12E of the Central Excise Act, 1944 contains provisions for exercise of powers and discharge of duties by Central excise officer.

6.3 Related provisions

Section	Description
Section 2(45)	Definition of "First Appellate Authority"

6.4 FAQs:

Q1. Can a Joint Commissioner assign functions to another Officer?

Ans. No. Only CBEC or Commissioner is empowered to assign the functions of the officers.

Q2. Who is empowered to make regulations on any provisions of the Act?

Ans. The CBEC or Commissioner is empowered to make regulations on any provisions of the Act, on recommendation of the council.

Q3. Can a Commissioner delegate his powers?

Ans. Yes. Commissioner maydelegate the powers to the subordinate officers subject to conditions.

Q4. Who is empowered to extend the time limit for submission of the returns?

Ans. The Commissioner is empowered to extend the time limit for submission of the returns with sufficient reasons.

Q5. Who is empowered to extend the time limit for details of inward supplies?

Ans. The Commissioner is empowered to extend the time limit for submission of the inward supplies.

Q6. Can the period for conducting audit be extended?

Ans. Yes. Commissioner is empowered to further extend the period for conducting the Audit not exceeding six months.

Q7. Can the date of payment of any amount due under the Act be extended?

Ans. Yes. Commissioner/Chief Commissioner is empowered to extend the time for payment or allow payment of any amount due under the Act (other than the amount self-assessed in return) in monthly installments not exceeding twenty four.

Q8. Who is empowered to withhold the refund?

Ans. Commissioner is empowered to withhold the refund till such time as he may determine, where an order giving rise to a refund is the subject matter of an appeal/further proceeding, where he is of the opinion that grant of such refund is likely to adversely affect the revenue.

Q9. Who can notify the class of taxable persons for the maintenance of the books of accounts?

Ans. Commissioner/Chief Commissioner is empowered to notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified.

Q10. Who is empowered to undertake the audit?

Ans. Commissioner of CGST/SGST is empowered to conduct the audit of business transactions of any taxable person for such period and at such frequency and in such manner as may be prescribed.

Q11. Can a Professional conduct the audit?

Ans. Yes, Commissioner is empowered to orderaudit of records including books of account of a Taxable person by a CA/CWA (nominated by the Commissioner), as directed by a Deputy/Assistant Commissioner.

Q12. Who decides the remuneration of the Professionals conducting the audit?

Ans. Commissioner is empowered to determine and pay the expenses of, and incidental to, the examination and audit of records under sub-section (1), including the remuneration of the chartered accountant or cost accountant.

Q13. Can a Joint Commissioner attach any property belonging to the taxable person?

Ans. No. Only Commissioner can provisionally attach a property under Section 77(1) of the Act.

Q14. Can the place of business of an operator of warehouse or godown be inspected?

Ans. Yes. Any CGST/SGST officer or any officer authorized by an officer not below the rank of Joint Commissioner, can do such inspection.

Q15. Can a Deputy Commissioner authorize search and seizure as per Section 79(2) of the Act?

Ans. No. Only an officer who is not below the rank of Joint Commissioner may authorize search and seizure.

Q16. Who has the same powers as an officer-in-charge of a police station?

Ans. Deputy Commissioner or the Assistant Commissioner of CGST/SGST

Q17. Can a Deputy Commissioner direct to collect statistics under Section 141(1) of the Act?

Ans. No, the Commissioner is empowered to issue such direction.

Q18. Can an officer below the rank of Assistant Commissioner draw samples from a taxable person?

Ans. Yes. If the officer is authorized by Commissioner of CGST/SGST, he may draw samples.

6. Powers of officers under the State Goods and Services Tax Act

Statutory provision [SGST Act]

(1) Subject to such conditions and limitations as the Commissioner may impose, an officer of the State Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.

(2) An officer of State Goods and Services Tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of State Goods and Services 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.

6.1. Introduction

1. This provision empowers the Commissioner to impose conditions and limitations under which an officer under SGST law may exercise and/ or delegate powers and / or discharge duties under the SGST law.

2. It also empowers an officer under SGST law to exercise powers and / or discharge duties of himself or his subordinate officers.

6.2 Analysis

Refer to the analysis w.r.t. powers of officers in section 6 of CGST Act.

6.3 Comparative review

1. There are similar provisions for exercise of powers and discharge of duties by the Commissioner and officers in VAT laws.

6.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 6	Powers of officers	There is no equivalent provision like Section 6(4) of CGST Act in SGST relating to exercise of powers by first appellate authority

7. [Powers of SGST/CGST officers under the Act (Draft I)

(1) Notwithstanding anything contained in this Act, the proper officers for the purposes of any one or more sections (……..) of the {SGST/CGST Act}, shall be deemed to be the proper officers for the purposes of the corresponding section or sections, as the case may be, of this Act to such extent and subject to such conditions as may be prescribed in the rules made in this behalf.

(2) Where any proper officer issues an order or acts under any one or more sections …… of this Act, he shall also issue an order or take action, as he may deem fit, under the corresponding section of the SGST / CGST} Act as being the proper officer under sub-section of the SGST/CGST Act as a part of his order or action under this Act, under intimation to the jurisdictional SGST/CGST officer.

(3) Any proceeding for rectification, appeal and revision, wherever applicable, of any order issued under sub-section (2) shall lie before the officer appointed under section 4 of this Act.

(4) Where a proper officer under the SGST/CGST Act has initiated a proceeding on a subject matter under any one or more sections (……) of this Act, no action under the relevant section shall be initiated under this Act on the same subject matter.

7. Powers of SGST/CGST officers under the Act (Draft II)

The officers appointed under the SGST Acts shall, to such extent and subject to such conditions, as may be prescribed in the rules made in this behalf, be the proper officers for the purposes of sections (.) of this Act.

Note: The provisions talk about powers of SGST/CGST Officers in general. The revised model law contains two sets of the same provision marked as Drafts I and II and seems to be inconclusive. Hence for the time being there is no analysis offered.

Chapter-III

Levy of, and exemption from, tax

8. Levy and collection of Central / State Goods and Services Tax

Statutory provision

(1) There shall be levied a tax called the Central/State Goods and Services Tax(CGST/SGST) on all intra-State supplies of goods and/or services on the value determined under section 15 and at such rates as may be notified by the Central/State Government in this behalf, but not exceeding fourteen percent, on the recommendation of the Council and collected in such manner as may be prescribed.

(2) The CGST/SGST shall be paid by every taxable person in accordance with the provisions of this Act.

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

(4) The Central or a State Government may, on the recommendation of the Council, by notification, specify categories of services the tax on 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 person 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.

8.1. 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 8 is the charging provision of the CGST / SGST Act. It provides that all intra-State supplies would be liable to CGST / SGST. It also provides for the value on which tax shall be paid, the 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.

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

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

(v) Additionally, where any supply of services is effected through e-commerce operators, 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 supplier of service/s nor the recipient of services. 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.

8.2. 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.

(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 as to whether a supply to determine

whether it 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 7 / 9 of the IGST Law. (Refer Section 3 &4 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' in terms of Section 10 read with Schedule V. Broadly, a taxable person is one who is carrying on business at any place in the State and who is registered or required to be registered. *Please refer to the discussion under Section 10 read with Schedule V 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

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 14%. 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 3 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.

Eg:

Supplies mentioned in Schedule II, Schedule III and Schedule IV of the Act,

Goods transferred for job-work purposes,

Goods sent on sale on approval basis, etc.

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).

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(28)) in the hands of the supplier 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 importation of service for consideration, where the service is considered to be 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) **Importation of service will be taxable in the hands of the recipient (importer):** The word 'supply' includes importation of a service, made for a consideration (as defined in Section 2(28)) 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: Importation 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(26) 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 the purpose of 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 10, 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 in Section 2(84)), or by one taxable person to another taxable person (as provided in Section 10 of the Act), when made without consideration, would qualify as 'supply'.

E.g.; Free supplies to related persons, samples sent to customers / prospective customers outside the State, 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) Importation 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 importation 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) Services by a foreign diplomatic mission located in India; and

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

(b) Activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as specified in Schedule IV (such as services towards citizenship, etc.)

(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' or neither of them. 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 3(1)(a)	Section 3(1)(b)	Section 3(1)(c)	Other matters
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,	Importation 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 2. Supplies between **related persons**/ **distinct**	• Composite Supply • Mixed Supply

• rental, • lease or • disposal		**persons** in the course or furtherance of business 3. Supply of goods by **principal (or agent) to agent (or principal)** 4. **Importation 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'.

8.3. 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. 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).

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 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.

8.4. Related provisions

Section	Description
Section 3 read with Schedule I, II, III and IV	Definition of 'supply'
Section 2(17)	Definition of 'business'
Section 10 read with Schedule V	Meaning of 'taxable person' and liability to register
Section 2(28)	Meaning of consideration
Section 2(27) read with Section 2(78)	Meaning of composite supply to be read with Principal supply
Section 2(66)	Meaning of mixed supply
Section 35	Payment of tax
Section 4	Meaning of intra-State supplies
Section 5	Levy and collection of IGST

8.5. 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 3. 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 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.

8.6. MCQ

Q1. As per Section 8, 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 or State Government

(c) GST Council

(d) None of the above

Ans. (b) Central Government or State Government.

9. Composition levy

Statutory provision

(1) Notwithstanding anything to the contrary contained in the Act but subject to subsection (3) of section 8, on the recommendation of the Council, the proper officer of the Central or a State Government may, subject to such conditions and restrictions as may be prescribed, permit a registered taxable person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not less than two and a half percent in case of a manufacturer and one percent in any other case, of the turnover in a State during the year:

PROVIDED that no such permission shall be granted to a taxable person-

(a) who is engaged in the supply of services; or

(b) who makes any supply of goods which are not leviable to tax under this Act; or

(c) who makes any inter-State outward supplies of goods; or

(d) who makes any supply of goods through an electronic commerce operator who is required to collect tax at source under section 56; or

(e) who is a manufacturer of such goods as may be notified on the recommendation of the Council:

PROVIDED FURTHER that no such permission shall be granted to a taxable person unless all the registered taxable persons, having the same PAN as held by the said taxable person, also opt to pay tax under the provisions of this sub-section.

(2) The permission granted to a registered taxable person under sub-section (1) shall stand withdrawn from the day on which his aggregate turnover during a financial year exceeds fifty lakh rupees.

(3) 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.

(4) If the proper officer has reasons to believe that a taxable person was not eligible to pay tax under sub-section (1), such person shall, in addition to any tax that may be payable by him under other provisions of this Act, be liable to a penalty and the provisions of section 66 or 67, as the case may be, shall apply mutatis mutandis for determination of tax and penalty.

9.1. 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.

9.2. 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. Once granted, the eligibility would be valid unless his permission is cancelled / stands 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 - it must be noted that a taxable person **cannot** opt for payment of taxes under composition scheme say for supply of class of goods and opt for regular scheme of payment of taxes for supply of other classes of goods.

Composition scheme is not available for services:

Suppliers of services are excluded from opting to pay tax under composition scheme.

Rate of tax:

The rate of tax would be as notified by the Government after recommendations of the Council. However, the law provides that such rate cannot be less than 2.5% (in case of manufacturers other than those who are not permitted to opt for composition scheme) and 1% (in other cases – for resellers), calculated on the turnover in a State ('turnover in a State' to be read as defined under Section 2(107) of the Act).

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. Rate of tax payable on supplies taxable under RCM will be regular rates and not the composition rate.

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.

In terms of Section 2(6) of the CGST / SGST law, 2016 'aggregate turnover' means 'Value of all (Taxable supplies + Exempt supplies + Exports + Inter-State supplies) – (GST + Value of inward supplies + 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 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;

— Goods supplied by the person which are chargeable to tax on reverse charge basis will not be includable in computing the aggregate turnover;

— 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.

Eg: 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 8. (Refer Section 18(3) for the provision).

(viii) **Additional conditions:** There may be other conditions or restrictions which may be prescribed under the Rules. Fulfilling those conditions, if any, would also be necessary to opt for payment of taxes under the Composition Scheme.

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 66 or 67.

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.

9.3. 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.

9.4. Related provisions

Section	Description	Remarks
Section 8(3)	Levy of CGST / SGST	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 8
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	Description	Remarks
Section 2(107)	Meaning of 'turnover in a State'	The composition rate of tax will be payable on the 'turnover in a State'
Sections 66, 67	Demand provisions	These provisions would determine the quantum of penalty, if any

9.5. 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). Accordingly, 'aggregate turnover' means 'Value of all (taxable supplies + Exempt supplies + Exports) – (Taxes + Value of inward supplies + 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 66 or 67.

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 from such day.

9.6. MCQ

Q1. What is the minimum rate of tax prescribed for composition scheme?

(a) 4%

(b) 2%

(c) 1%

(d) 5%

Ans. (c): 1%

10. Taxable person

Statutory provision

(1) Taxable Person means a person who is registered or liable to be registered under Schedule V of this Act.

(2) A person who has obtained or is required to obtain more than one registration, whether in one State or more than one State, shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

(3) An establishment of a person who has obtained or is required to obtain registration in a State, and any of his other establishments in another State shall be treated as establishments of distinct persons for the purposes of this Act.

10.1 Introduction

This provision explains the meaning of 'taxable person'. The understanding of 'taxable person' is important since he is the person who is required to:

— Pay tax,

— Obtain registration,

— File returns, and

— Comply with the provisions of this law

10.2 Analysis

Meaning of 'taxable person:

A taxable person is defined to mean a person who is registered or liable to be registered under this Act. Schedule V of the Act lists out persons who are liable to obtain registration.

(i) **Threshold-based liability to register:** Where the aggregate turnover of the person in a financial year exceeds ₹ 20 lacs (₹ 10 lacs in cases where the person makes taxable supplies from the States of Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland, Tripura, Sikkim, Jammu & Kashmir, Himachal Pradesh and Uttarakhand), such a person is required to obtain a registration under the GST law.

In computing the aggregate turnover, the following must be noted:

- 'Aggregate turnover' means 'Value of all (taxable supplies + Exempt supplies + Exports) – (Taxes + Value of inward supplies + Value of inward supplies taxable under reverse charge) of a person having the same PAN (i.e., across India).
- The value of supplies made by agents on behalf of their principals would be included in the aggregate turnover computed in the hands of the principal and also in the hands of the agent.
- Direct supply by principal from the premises of a registered job-worker would be

considered as turnover in the hands of the principal alone, and not in the hands of the job-worker *(to be read in conjunction with Section 55)*.

(ii) **The following persons shall be taxable persons irrespective of the threshold / value of aggregate turnover: (Refer Para 6 of Schedule V)**

(a) Persons making any inter-State supply;

(b) Casual taxable persons in terms of Section 2(20) - *a casual taxable person means a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business whether as principal, agent or in any other capacity, in a taxable territory where he has no fixed place of business;*

(c) Persons required to pay tax under reverse charge mechanism;

(d) Persons required to pay tax under Section 8(4) – presently, e-commerce operators who are liable to pay tax in respect of notified services that are effected through them;

(e) Non-resident taxable persons in terms of Section 2(68) - *a non-resident taxable person means a taxable person who occasionally undertakes transactions involving supply of goods and/or services whether as principal or agent or in any other capacity but who has no fixed place of business in India.*

(f) Any person who is required to deduct tax under Section 46 would be liable to be registered separately even if a registration is already obtained by them. This would include the following, based on a mandate issued by the Central/ State Government:

— Department or establishment of a Central or State Government; or

— Local authority; or

— Governmental agency; or

— Such other person or category of persons, as may be notified by the Central or State Government on the recommendation of the Council

(g) Persons required to collect tax under Section 56 (e-commerce operators) would be liable to be registered separately even if a registration is already obtained by them;

(h) Persons (being agents/ otherwise) who supply goods and/or services on behalf of other taxable persons

(i) Input service distributor in terms of Section 2(54) would be liable to be registered separately even if a registration is already obtained by it. An Input service distributor means an office the supplier of goods and/or services receiving or issuing prescribed documents for the purposes of distributing SGST / CGST / IGST paid on the said services to the supplier of taxable goods and / or services having the same PAN. Persons who supply goods and/or services through such

electronic commerce operator who is required to collect tax at source under Section 56 (Exception, Person who are engaged in the supply of notified services as mentioned in Section 8(4));

(j) e-commerce operators: In terms of Section 2(42), an electronic commerce operator means any person who owns, operates or manages a digital or electronic facility or platform for electronic commerce. It would, however, not include persons supplying goods and / or services on their own behalf.

(k) every person supplying online information and database access or retrieval services from a place outside India to an unregistered person in India;

(l) Such other persons or class of person as the Central Government or State Government may notify on recommendations from the Council.

(iii) **The following are specifically excluded from the meaning of 'taxable person':**

(a) agriculturist being a person who cultivate land personally (meaning assigned to in Section 2(106)), for agriculture;

(b) any person engaged exclusively in the business of supplying goods and/or services that are not liable to tax, or are wholly exempt from tax under this Act;

10.3 Comparative review

Under the current tax regime, the need for registration and the thresholds are different across States and legislations. Unlike this, GST would have a uniform basic exemption and the registration threshold.

10.4 Related provisions

Section	Description
Section 2(8)	Definition of agriculturist
Section 2(42)	Meaning of 'electronic commerce operator'
Section 2(106)	Definition of 'to cultivate' personally
Section 23	Registration
Schedule V	Liability to be registered

10.5 FAQ

Q1. What is the threshold to obtain registration?

Ans. — In case of persons specified in Schedule V, 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 North-Eastern States including Sikkim, or Special Category States.

Q2. Will a person supplying both taxable and exempted goods and/or services have to obtain registration?

Ans. Yes. Persons supplying taxable and exempted goods and/or services shall obtain registration when the aggregate turnover is in excess of specified limit.

Q3. Will a person not having any sales, but who is stock transferring all his production to another unit of his in another State have to obtain registration?

Ans. Yes. A person who is engaged in stock transfer of goods to another unit in another State shall be required to obtain registration since stock transfers would also be considered as supply.

Q4. If an agriculturist is also engaged in selling of fertilizers, will he have to obtain registration?

Ans. Yes. Registration is required for an agriculturist who is engaged in business of selling taxable goods namely fertilizers when his aggregate turnover exceeds specified limit. The requirement for registration is put aside only in case of an agriculturalist, for the purpose of agriculture.

Q5. If a person obtains voluntary registration though his turnover does not cross the threshold, would he be liable to pay tax on the turnover till it crosses the threshold?

Ans. Yes. A person who has obtained voluntary registration would be liable to pay tax on the supplies made by him from the day on which registration is granted to him, even if his turnover does not exceed the threshold.

10.6 MCQ

Q1. Which of the following person are excluded from the definition of 'taxable person':

(a) Agriculturist, for the purpose of agriculture;

(b) Persons engaged exclusively in supply of goods which are wholly exempted;

(c) Persons engaged wholly in supply of goods and / or services which are not liable to tax under this Act.

(d) All of the above

Ans. (d) All of the above

11. Power to grant exemption from tax

Statutory provision

(1) If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods and/or services of any specified description from the whole or any part of the tax leviable thereon with effect from the date of issue of notification or any date subsequent thereto as may be specified in the said notification.

Explanation.- Where an exemption in respect of any goods and/or services from the whole of the tax leviable thereon has been granted absolutely, the taxable person providing such goods and/or services shall not pay the tax on such goods and/or services.

(2) If the Central or a State Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by special order in each case, exempt from payment of tax, under circumstances of an exceptional nature to be stated in such order, any goods and/or services on which tax is leviable.

(3) The Central or a State 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) Every notification issued under sub-section (1) or sub-section (3) and every order issued under sub-section (2) shall

(a) unless otherwise provided, come into force on the date of its issue by the Central or a State Government for publication in the Official Gazette or from any date subsequent to the date of its issue as may be specified therein; and

(b) be made available on the official website of the department of the Central or a State Government.

11.1 Introduction

This provision explains the powers of the Central and State Governments to grant exemptions from payment of taxes (in respect of taxable goods and / or services) absolutely or subject to certain conditions or by way of special order in each case.

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.

With specific reference to the fourth condition indicated above, it is important to note that the exemption would be in respect of goods and / or services, 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 after sub-Section (1), 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 exempt 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 / State Government may exempt the tax payable under the CGST / SGST / 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:

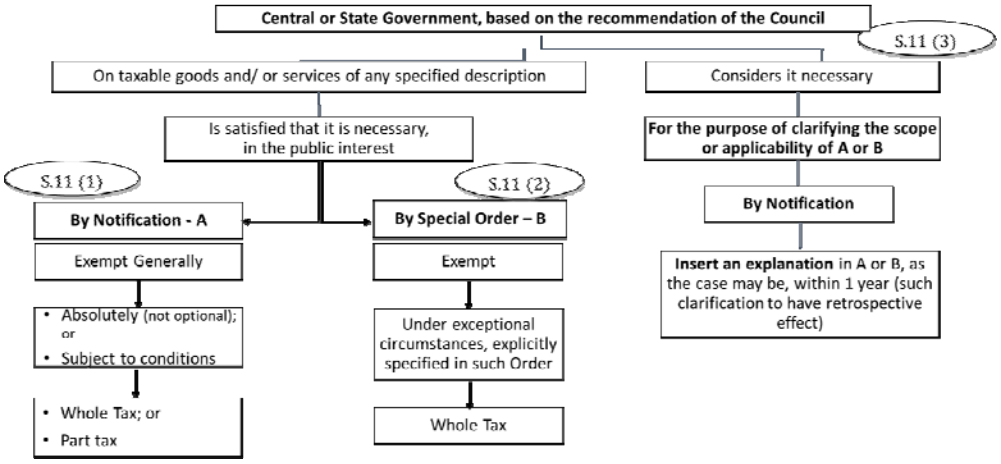
1. The Central Government / State Government may exempt the tax payable under the

CGST / SGST / IGST Acts by any taxable person on supply of "footwear costing less than ₹ 100" with effect from 01.04.2018

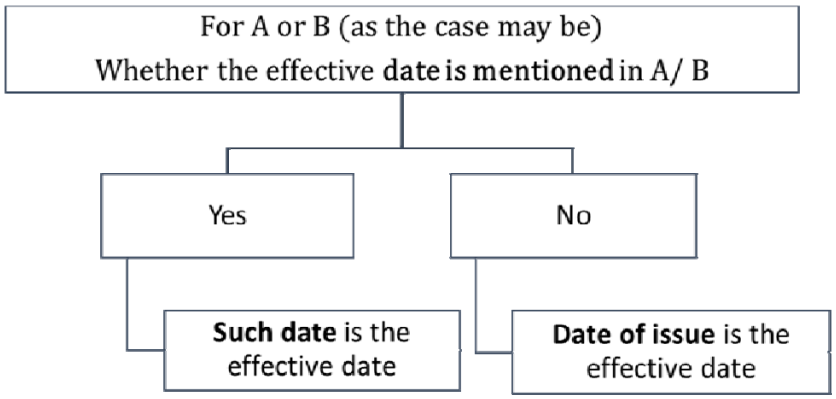
2. The Central Government / State Government may exempt the tax payable under the CGST / SGST / IGST Acts by any taxable person on sale of goods and / or services with effect from 01.12.2017 in respect of all hotels located in Patna in Bihar, for a period of 3 months with effect from 01.01.2018 to 31.03.2018 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, as the case may be 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 7, 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 10 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 7 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

11.3 Comparative review

The provisions relating to exemption are broadly similar to the exemption provisions under the current tax regime. There are no significant differences.

11.4 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.

11.5 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

12. Time of supply of goods

Statutory Provisions

(1) The liability to pay CGST / SGST on the goods shall arise at the time of supply as determined in terms of 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 section 28, 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 shall, at the option of the said supplier, be the date of issue of invoice.

Explanation 1.- For the purposes of clauses (a) and (b), 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.

Explanation 2.- For the purpose 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 accounts 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 on which the payment is made, or

(c) the date immediately following thirty days from the date of issue of invoice by the supplier:

PROVIDED that where it is not possible to determine the time of supply under clause (a), (b) or (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

Explanation.- For the purpose of clause (b), "the date on which the payment is made" shall be the date on which the payment is entered in the books of accounts of the recipient or the date on which the payment is debited in his bank account, whichever is earlier.

(4) In case of supply of vouchers, by whatever name called, 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) In case it is not possible to determine the time of supply under the provisions of sub-section (2), (3) or (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 CGST/SGST is paid.

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 – become encumbered with the tax upon occurrence of the taxable event – supply, but the tax levied in terms of section 8 come to reside at the time determined by section 12 and 13. Accordingly, these sections play a stellar role in the imposition of GST.

The time of supply "shall be" and 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 so declared by this section. In order to not allow any opportunity for a suggestion by the taxable person or even the tax administration as to else 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 into, that is, 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 date of issue of invoice and date of receipt of payment. Date of issue of invoice requires us to examine section 28 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(73) but taxable person is explained in great detail in section 10 (please refer to the relevant chapter for a detailed discussion). A proper reading of section 10 along with schedule V helps us understand – a State is the smallest registrable unit in GST – except where multiple business verticals are registered separately under section 23. 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.

> *Section 2 (85) "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 28 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 to 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 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 were to place an order at the exhibition with instructions for delivery to be 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 to the customer location.

It is for this reason that the lawmaker has deliberately employed seemingly similar or synonymous expressions – 'removal of goods' and 'movement of goods' – to which we must supply their due meaning 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 28 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 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 at this time that section 28 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 28 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 28 in the respective cases, will we be in a position 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 28 or date of receipt of payment with respect to the supply.

Exceptions:

(i) when amount in excess of ₹ 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 date of receipt of goods, date of payment or 30 days from the date of issue of invoice by the supplier. If for any reason, one or all of 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(87), 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 3 to section 8 of the Act.

Exception:

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 3 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 actionable claim within the definition of goods. So, actionable claims can be in physical or electronic form as long as they represent real property.

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:

(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 third class of transactions relating to vouchers, namely, a gift voucher issued by a bank which can bet exchanged only for cash. 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 have to be read with schedule II so as 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.

The above provisions are explained with an example as below:

Sl. No.	Particulars	Date of Removal	Date of invoice	Date made available to recipient	Date of receipt of payment	Time of supply
1	Supply involves movement of goods					
	Case (a)	21.04.17	22.04.17	21.04.17	20.06.17	**21.04.17**
	Case (b)	21.05.17	20.05.17	26.05.17	10.08.17	**20.05.17**
	Case (c)	10.06.17	11.06.17	16.06.17	09.05.17	**09.05.17**
2	Case apart from (1)	NA	18.05.17	16.05.17	21.07.17	**16.05.17**

E.g.:

When Brigade Limited issues a open purchase order on ACC Ltd. For continuous supply of goods (RMC) on a daily basis

Supply of goods by ACC Ltd. To Brigade Ltd.

CASE 1 : When successive statements of accounts/payments are involved

Sl. No. (1)	Particulars (2)	Date of invoice / removal (3)	Date of receipt of invoice (4)	Date of statement by supplier (5)	Date of expiry of successive statements of A/c (6)	Date of expiry of successive payment (7)	Time of Supply in (6) or (7)
1	Supply of RMC	10.04.2017	11.04.2017				
2	Supply of RMC (when successive statements/payments are involved)	11.04.2017	12.04.2017				
3	Supply of RMC (when successive statements/payments are involved)	13.04.2017	15.04.2017	18.04.2017	18.04.2017	21.04.2017	18.04.2017

CASE 2 : When no successive statements of accounts/payments are involved

Sl. No. (1)	Particulars (2)	Date of invoice (3)	Date of receipt of invoice (4)	Date of expiry of successive payment (5)	Time of Supply
1	Supply of RMC	21.06.2017	22.06.2017	10.05.2017	10.05.2017
2	Supply of RMC (when successive statements/payments are involved)	22.06.2017	23.06.2017	28.06.2017	22.06.2017
3	Supply of RMC (when successive statements/payments are involved)	26.06.2017	27.06.2017	30.07.2017	26.06.2017

Where tax is payable on **reverse charge** basis, the time of supply will be the earliest of the following dates:

— receipt of goods (by recipient)

— the date immediately following 30 days from the date of issue of invoice by the supplier

— making payment (to supplier)

Explanation provides that Date on which the payment is made shall be earliest of following

— the date on which the payment is entered in the books of accounts of the recipient or

— the date on which the payment is debited in his bank account.

Section 12 (5) - CGST - Goods sent/taken on approval basis or sale/return or similar terms

E.g.:

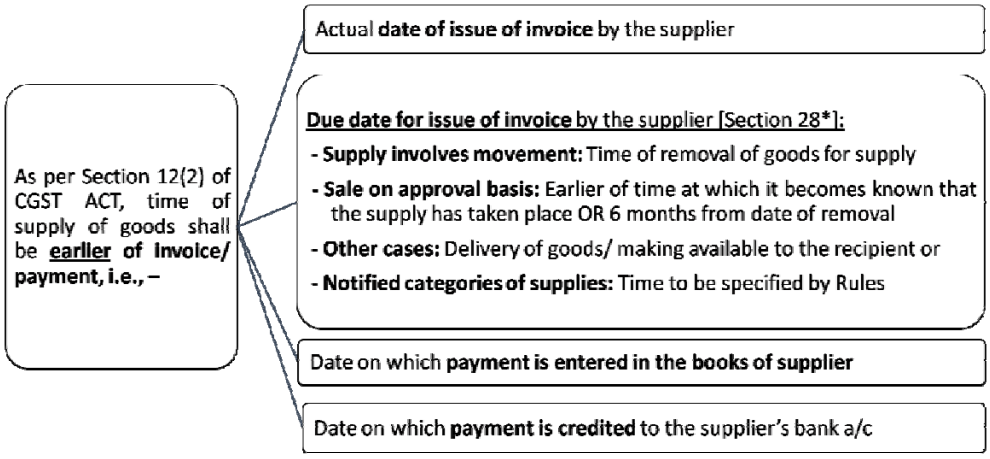
If a machine is sent to a recipient, Time of supply of goods shall be the earliest of the following dates

Sl. No.	Date of Removal	Date of receipt by recipient	Date of approval	Date of expiry of 6 months from the date of removal	Time of supply
1	10.07.2017	20.07.2017	11.08.2017	09.01.2018	11.08.2017
2	14.06.2017	19.06.2017	Awaited	13.12.2017	13.12.2017

Time of supply may be decided as the last-resort based date when periodical return is due or tax is paid.

The analysis of above provision in a pictorial form is summarised as follows:

Sec. 12(2): Time of Supply of Goods



Sec. 12: Time of Supply — Continuous Supply of Goods

In case of successive statements of accounts

Before/ at the time of issue of each SOA

In case of successive payments

Before/ at the time of receipt such each payment

Examples for Continuous Supply of goods u/s 12(2) read with Section 28(4)

Successive issue of SOA	Successive receipt of payments	Due date for issue of invoice
5-Jul-17	-NA-	5-Jul-17
-NA-	10-Jul-17	10-Jun-17

13. Time of Supply of Services

Statutory Provisions

(1) The liability to pay CGST/SGST on services shall arise at the time of supply, as determined in terms of the provisions of this section.

(2) The time of supply of services 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 section 28, 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 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 shall, at the option of the said supplier, be the date of issue of invoice.

Explanation 1.- For the purposes of clauses (a) and (b), 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.

Explanation 2.- For the purpose 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 accounts 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 on which the payment is made, or

(b) the date immediately following sixty days from the date of issue of invoice by the supplier:

PROVIDED that where it is not possible to determine the time of supply under clause (a) or (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 '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.

Explanation.- For the purpose of clause (a), "the date on which the payment is made" shall be the date on which the payment is entered in the books of accounts of the recipient or the date on which the payment is debited in his bank account, whichever is earlier.

(4) In case of supply of vouchers, by whatever name called, 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 of services in the manner specified in sub-sections (2), (3) or (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 CGST/SGST is paid.

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 28 which deals with the requirement to issue a "tax invoice". In relation to services, section 28 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 I** 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 ₹ 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

Example : **Time of supply of services**

Sl No.	Situation	Date of Completion of Services	Date of Invoice	Date of receipt of payment	Time of supply of services
1	Invoice issued within prescribed period of completion of service	16.04.17	20.04.17	28.04.17	20.04.17
2	Invoice issued within prescribed period of completion of service	30.09.17	01.10.17	24.09.17	24.09.17
3	Invoice issued after the prescribed period of completion of service	16.04.17	16.08.17	28.05.17	15.05.17
4	Invoice issued after the prescribed period of completion of service	10.06.17	18.08.17	30.04.17	30.04.17

(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 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(87), the above provision does not apply to payment of tax by an electronic commerce operator under sub-section 4 to section 8 of the Law.

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.

Where tax is payable on reverse charge basis, the time of supply will be the earliest of the following dates:

— The date on which payment is made

— the date immediately following 60 days from the date of issue of invoice by the supplier

Provided where it is not possible to determine the time of supply as above, the time of supply shall be the date of entry in the books of account of the recipient of supply.

The above provisions are explained with an example as below:

Sl. No. (1)	Particulars (2)	Date of receipt of invoice (3)	Date of Actual Payment (4)	Date of entry in BOA of the recipient (5)	Time of Supply (6)
1	CASE I	22.06.2017	10.05.2017	23.06.2017	**10.05.2017**
2	CASE II	23.06.2017	28.09.2017	24.06.2017	**21.08.2017**
3	CASE III	27.06.2017	30.09.2017	25.06.2017	**25.06.2017**
4	CASE IV (Associated Enterprises)	23.08.2017	28.09.2017	24.08.2017	**24.08.2017**

Time of supply may be decided as the last-resort based date, when periodical return is due or tax is paid.

Further, the distinction of Time of Supply of Services **(Reverse Charge case)** in case of Associated Enterprises and others is highlighted as below:

Particulars	Non-associated enterprises	Associated Enterprises
Date on which payment is entered in books of accounts of recipient	28.09.2017	28.09.2017
Date on which payment is debited to bank account of recipient	30.09.2017	30.09.2017
Date of issuance of invoice by supplier	23.08.2017	23.08.2017
Sixty days from the date of issuing invoice	21.10.2017	21.10.2017
Date of entry in the books of accounts of the recipient	24.08.2017	24.08.2017
Time of supply	**28.09.2017**	**24.08.2017**

(c) Time of Supply – Vouchers

Please refer to earlier chapter 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, 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 may be 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

When vouchers are issued for specific end-use, then they are taxable as supply provided they otherwise satisfy the requirements of section 3 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.

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.

Summary:

I. General provision

The time of supply of goods and services shall be the earlier of the following:

(a) Date of **issue of invoice** by the supplier or the **last date on which he is required, to issue the invoice** (under section 28) with respect to the supply

(b) Date on which the supplier **receives the payment** with respect to the supply.

Provisions for raising invoice as per section 28:	
Supply of goods	**Supply of services**
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	**Before or after the provision of service** but within a period prescribed [i.e. 30 days in all cases/ 45 days in case of banking and financial institution from the date of supply of services]

II. Supply under reverse charge mechanism ("RCM")

Time of supply for goods	Time of supply for services
Earliest of the following: (a) Date of **receipt of goods**, or (b) Date on which **payment is made**, or (c) Date **immediately following 30 days from the date of issue of invoice by the supplier**	Earliest of the following: (a) Date on which **payment is made**, or (b) Date **immediately following 60 days from the date of issue of invoice by the supplier**
Where it is not possible to determine the time of supply under the above clauses, the time of supply shall be the date of entry in the books of account of the recipient of supply	
-	**In case of associated enterprise:** 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 or the date of payment, whichever is earlier.

III Supply of vouchers

In case of supply of vouchers, by whatever name called, by a supplier, the time of supply for goods and services shall be:

(a) Date of **issue of voucher**, if the supply is identifiable at that point; or

(b) Date of **redemption of voucher**, in all other cases.

IV Residuary provision

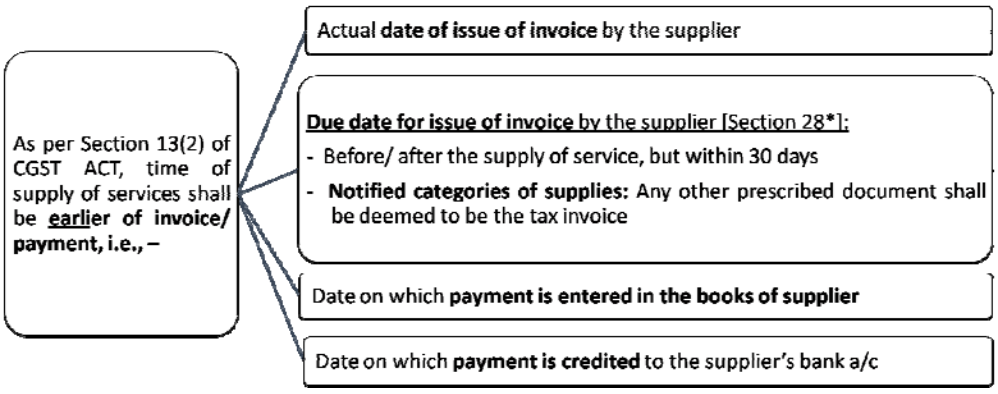
Where it is not possible to determine time of supply under the above provisions, time of supply for goods and services shall be:

(a) In a case where a periodical return has to be filed - Date on which such return is to be filed

(b) In any other case - Date on which the CGST/SGST or IGST is paid

The analysis of above provision in a pictorial form is summarised as follows:

Sec. 13(2): Time of Supply of Services



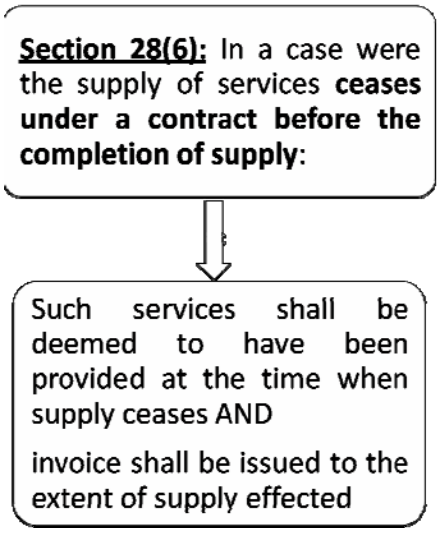
**Where payment is received in advance, the Supplier shall issue a receipt voucher, and not a tax invoice*

Section 28(5) prescribes due date for issue of invoice in case of continuous supply of services:

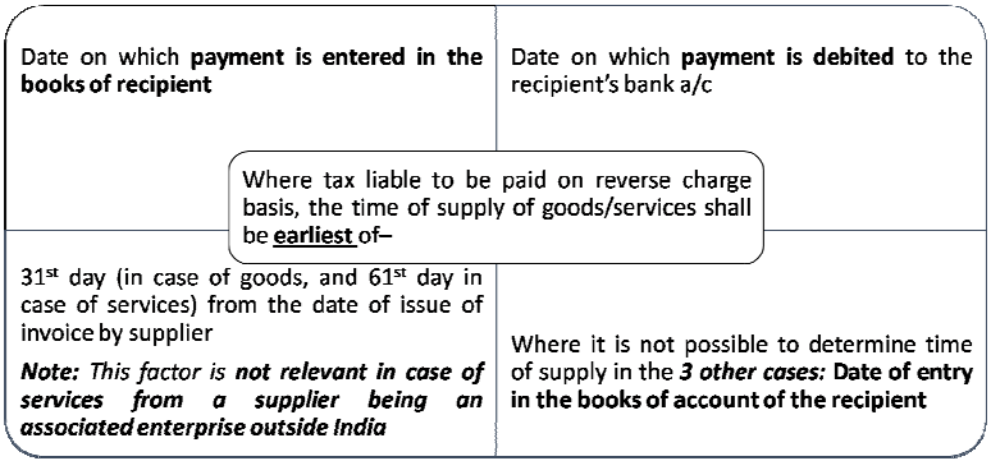
Where the due date of **payment** is **ascertainable** from the contract:	• **Within 30 days of recipient becoming liable for payment**
Where the due date of **payment is not ascertainable** from the contract, time of supply shall be **earliest** of-	• **Within 30 days of receipt of each payment**
Where the payment is **linked to the completion** of an event:	• **Within 30 days of completion of event**

Note: Government may notify supplies that shall be treated as continuous supply of goods (or services).

Sec.13: Time of Supply – Supply of Services Ceases Before Its Completion

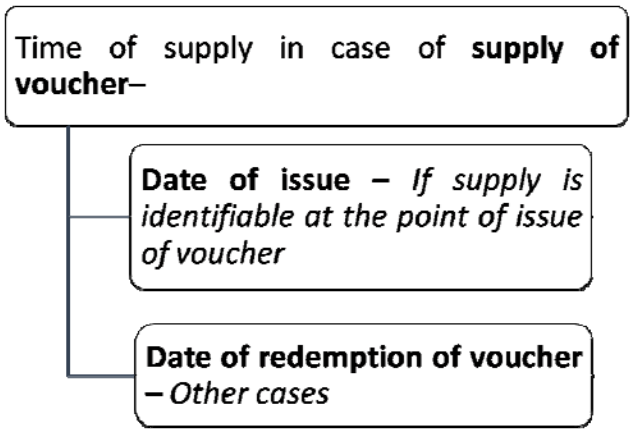


Time of Supply - Reverse Charge –S-12(3)/S- 13(3)



Note: *On the date of receipt of goods (or services) from a supplier being an unregistered person, the* ***recipient shall issue an invoice*** *[Section 28]*

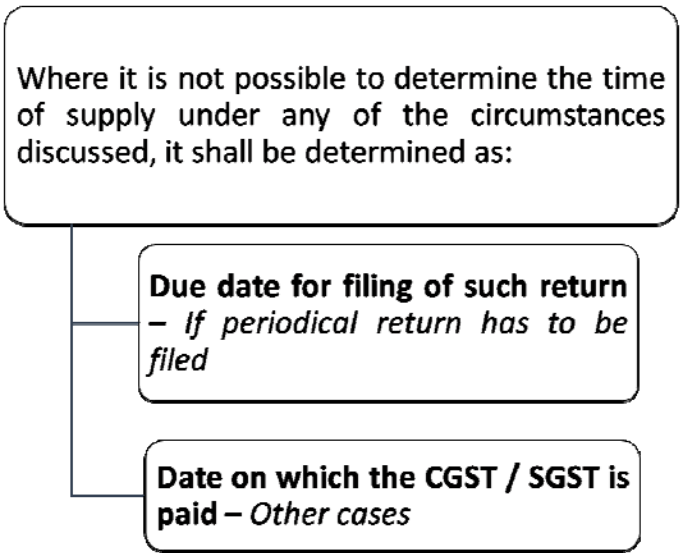
Residual Provision- Sec 12(4)/S- 13(4)



Note: *Voucher - not to be separately taxable*

Voucher – can be for goods or services

Residual Provision- Sec 12(5)/S- 13(5)



14. Change in rate of tax in respect of supply of goods or services

Statutory Provisions

Notwithstanding anything contained in section 12 or section 13, the time of supply, in cases where there is a change in the rate of tax in respect of goods or services, shall be determined in the following manner, namely: -

(a) in case the goods or services 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 change in rate of tax but the 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 is received before the change in rate of tax, but the invoice for the same has been 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 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 the 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 when such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation. - For this section, "the date of receipt of payment "shall be the date on which the payment is entered in the books of accounts of the supplier or the date on which the payment is credited to his bank account, whichever is earlier:

14.1 Introduction

The section relates to the situation of change in rate of tax in respect of supply of goods or services.

14.2 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.

Date of supply of goods or services	Date of invoice	Date of receipt of payment	Time of supply	Rate of tax
(1)	(2)	(3)	(5)	(4)
Before	After	After	Earlier of (2) and (3)	New
Before	Before	After	(2)	Old
Before	After	Before	(3)	Old
After	Before	After	(3)	New
After	Before	Before	Earlier of (2) and (3)	Old
After	After	Before	(2)	New

Summary:

Change in the rate of tax in respect of supply of goods or services

Here, the provisions provided under the GST Law are drawn on similar line as existing Rule 4 of the Point of Taxation Rules, 2011 (**"POTR"**). In other words, determination of rate of tax depends upon three important events viz.:

- Date of supply of goods or services,
- Date of invoice; and
- Date of receipt of payment.

Thus, the rate of tax would be the one prevailing when two out of three events occur either prior to or after the date of change in rate of tax.

Examples:

Some examples assuming change in rate of tax in respect of supply of services is w.e. f01.07.2017 (old rate 15% & new rate is 18%)

I. Service provided before change in rate of tax

Sl No.	Particulars	Date of providing service	Date of invoice by supplier	Date of Payment by recipient	Time of supply	Rate of tax
1	CASE I	12.05.2017	12.05.2017	15.07.2017	12.05.2017	15%
2	CASE I	10.06.2017	15.06.2017	18.07.2017	15.06.2017	15%
3	CASE I	21.06.2017	21.07.2017	12.06.2017	12.06.2017	15%

II. Service provided after change in rate of tax

Sl No.	Particulars	Date of providing service	Date of invoice by supplier	Date of Payment by recipient	Time of supply	Rate of tax
1	CASE I	20.07.2017	12.06.2017	26.07.2017	26.07.2017	18%
2	CASE I	26.07.2017	08.06.2017	11.06.2017	08.06.2017	15%
3	CASE I	28.07.2017	28.07.2017	12.06.2017	28.07.2017	18%

15 . Value of taxable supply

(1) The value of a supply of goods and/or services shall be the transaction value, that 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.

(2) The value of supply shall include:

(a) any taxes, duties, cesses, fees and charges levied under any statute, other than the {SGST Act/the CGST Act} and the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016, if charged separately by the supplier to the recipient

(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 and/or services;

(c) incidental expenses, such as, commission and packing, charged by the supplier to the recipient of a supply, including any amount charged for anything done by the supplier in respect of the supply of goods and/or services at the time of, or before delivery of the goods or, as the case may be, supply of the 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 and State governments;

Explanation. - 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 that is given:

(a) before or at the time of the supply provided such discount has been duly recorded in the invoice issued in respect of such supply; and

(b) after the supply, has been effected, provided that:

(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 has been reversed by the recipient of the supply as is attributable to the discount on the basis of document issued by the supplier.

(4) Where the value of the supply of goods or services 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 Central or a State Government in this behalf on the recommendation of the Council shall be determined in such manner as may be prescribed.

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.

"transaction value, that 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.

15.1. Analysis

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 SGST, CGST and IGST. Only rate of tax is separately provided in IGST Act but 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)
- Any amounts paid by recipient that are obligation of supplier to pay
- Expenses incurred by supplier before supply and charged separately
- Interest, late fee or penalty for delayed payment
- Subsidy realized by supplier on the supply

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 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 3(1)(a)
- Supplies covered by section 3(1)(a) but between related persons
- Supplies covered by section 3(1)(a) and not adjusted for aspects provided by sub-section 2

The analysis of above provision in a pictorial form is summarised as follows:

Transaction value: Inclusions & exclusions

Transaction Value INCLUDES:	**Transaction Value EXCLUDES discount:**
▪ Amounts charged by supplier to recipient in respect of any **taxes, duties, cesses, fees and charges levied** under any statute, other than taxes paid under GST regime; ▪ **Amount incurred by Recipient** which is liable to be paid by the Supplier; ▪ Charges by Supplier to Recipient being: o **Incidental expenses** (e.g.: packing, commission) o **Charges for anything done by the Supplier** at the time or before the supply, in respect thereof o **Interest/ late fee/** penalty for delayed payment of consideration o **Subsidies directly linked to price** – for supplier receiving the subsidy (excluding Central and State Govt subsidies; i.e., Government subsidies will not be included in transaction value)	▪ **Before/ at the time of supply** o **Single condition:** Such discount is duly recorded in the invoice ▪ **After the supply: Cumulative conditions:** o Agreement establishing discount entered into before/ at the time of supply o Discount specifically linked to relevant invoices o ITC reversed by the recipient to the extent of discount

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**

15.2. 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

Chapter-V
Input Tax Credit

16. Eligibility and conditions for taking input tax credit

Statutory Provision

(1) Every registered taxable person shall, subject to such conditions and restrictions as may be prescribed and within the time and manner specified in section 44, be entitled to take credit of input tax charged on any supply of goods or services 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

PROVIDED that credit of input tax in respect of pipelines and telecommunication tower fixed to earth by foundation or structural support including foundation and structural support thereto shall not exceed—

(a) one-third of the total input tax in the financial year in which the said goods are received,

(b) two-third of the total input tax, including the credit availed in the first financial year, in the financial year immediately succeeding the year referred to in clause (a) in which the said goods are received, and

(c) the balance of the amount of credit in any subsequent financial year.

(2) Notwithstanding anything contained in this section, but subject to the provisions of section 36, no registered taxable person shall be entitled to the credit of any input tax in respect of any supply of goods and/or services 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 taxpaying document(s) as may be prescribed;

(b) he has received the goods and/or services;

(c) the tax charged in respect of such supply has been actually paid to the account of the appropriate 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 34:

PROVIDED that where the goods against an invoice are received in lots or instalments, the registered taxable 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 services, the amount towards the value of supply of services along with tax payable thereon within a period of three months 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 the manner as may be prescribed.

Explanation—For the purpose of clause (b), it shall be deemed that the taxable 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 taxable 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.

(3) Where the registered taxable person has claimed depreciation on the tax component of the cost of capital goods under the provisions of the Income Tax Act, 1961(43 of 1961), the input tax credit shall not be allowed on the said tax component.

(4) A taxable person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services after furnishing of the return under section 34 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 GST Act deals with input tax credit. The chapter is divided into following sections:

(i) Section 16: Manner of taking input tax credit.

(ii) Section 17: Apportionment of credit and blocked credit

(iii) Section 18: Availability of credit in special circumstances

(iv) Section 19: Recovery of input tax credit and interest thereon

(v) Section 20: Taking input tax credit in respect of inputs sent for job work

(vi) Section 21: Manner of distribution of credit by ISD.

(vii) Section 22: 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 after allowing credit for the inputs. 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 and / or services will be eligible for set-off against the tax payable on supply of goods and / or services, based on the invoices. 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 transition without any misuse.

16.2 Analysis

(i) Relevant definitions:

(a) **Taxable person:** Means a person who is registered or liable to be registered under Schedule V of the Act.

(b) **Input tax credit**: It means credit of "input tax" as defined in section 2(55). [Section 2(56)]

(c) **Input tax:** "Input tax" in relation to a taxable person, means

— IGST including that on import of goods

— CGST and SGST charged on any supply of goods or services to him

— and includes the tax payable under reverse charge.

— Excludes tax paid under composition scheme [Section 2(55)].

Section 8(3) levies tax on goods and/or services on reverse charge. Therefore, 'input tax credit' is the tax paid by a taxable person under the Act whether on forward charge or reverse charge for the use of such goods and/or services in course or furtherance of his business.

(d) **Electronic credit ledger:** The input tax credit as self-assessed in return of taxable person credit to electronic credit ledger in accordance with section 36 to be maintained in the manner as may be prescribed. [Section 2(43) rw Section 44(2)].

(e) **"capital goods"** meAns. -

goods, the value of which is capitalised in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business [Section 2(19)].

(f) **Input:** "Input" means

— any goods,

— other than capital goods,

— used or intended to be used by a supplier

— for making an outward supply in the course or furtherance of business,

— subject to exceptions provided under this Act or the rules made thereunder. [section 2(54)]

(g) **Input service:** "Input service" means

— any service

— used or intended to be used

— by a supplier

— in the course or furtherance of business [Section 2(52)].

(ii) Section 16

(a) Registered person to take credit: Every registered taxable person subject to Section 44 shall be entitled to take credit of input tax charged on any supply of goods or services 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.

(b) **Input tax credit on Pipeline and telecommunication tower fixed to earth by foundation or structural support:** Input credit shall not exceed 1/3rd of total input tax in the year of purchase, 2/3rd of total input tax in second year (including credit availed in first year) and balance in subsequent financial year.

(c) **Conditions for availment of credit by registered taxable person:** Subject to section 36, input tax is availed only if –

(i) The said goods and / or services should be 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 by supplier registered under this Act

(iii) He has received the said goods and / or services

(iv) The supplier has uploaded the relevant invoice on the GSTN as part of his return filings

(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 has furnished return under section 34.

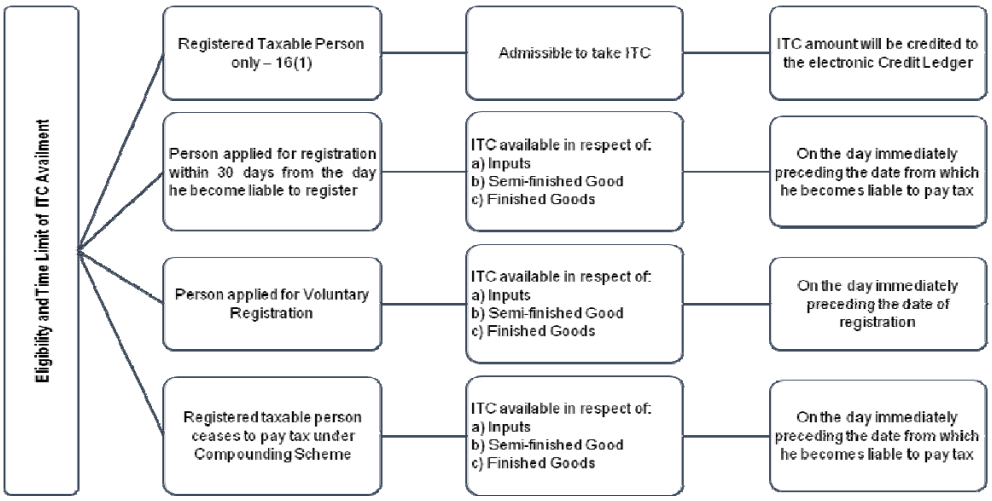
(d) **Goods received in instalments:** If goods are received in instalments against a single invoice, credit can be taken upon receipt of last instalment.

(e) **Failure to pay to supplier of service, the value of taxable service and tax thereon:** If recipient of service has not paid within 3 months from date of invoice, the amount equal to input tax credit availed along with the interest is added to output liability of recipient

(f) **Capital goods on which depreciation is claimed:** Where the registered taxable person has claimed **depreciation on the tax component of the cost of capital goods** under the provisions of the Income Tax Act, 1961, the input tax credit shall not be allowed on the said tax component.

(g) **Time limit to avail the input tax credit:** The taxable person is not entitled to input tax credit on invoice/ debit notes after furnishing returns under section 34 for the month of September of the subsequent financial year or furnishing of the relevant annual return, whichever is earlier.

Credit of any input tax shall be available to a registered taxable person only if invoice/challan is in his possession for the goods and/or services received and the payment of such tax has been made by the supplier and a return u/s 34 has been filed. Receipt of goods shall include delivery to another person as directed by the taxable person.



Examples:

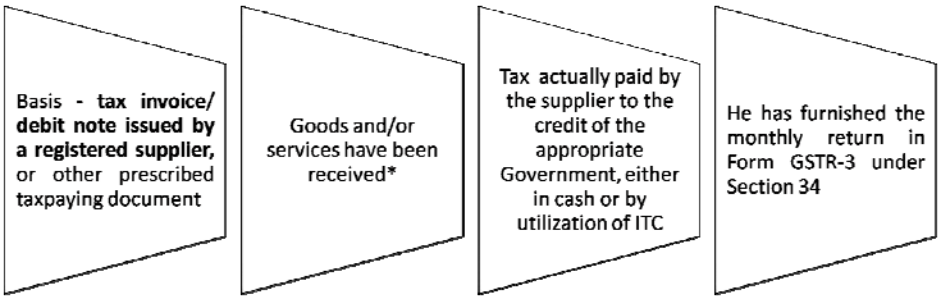
(a) A person becomes liable to pay tax on 1st August, 2017 and has obtained registration on 15th August, 2017. Such person is eligible for input tax credit on inputs held in stock as on 31st July, 2017.

(b) 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.

(c) Mr. B, registered taxable 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 on closure of business as on 30thJuly, 2017.

The analysis of above provision in a pictorial form is summarised as follows:

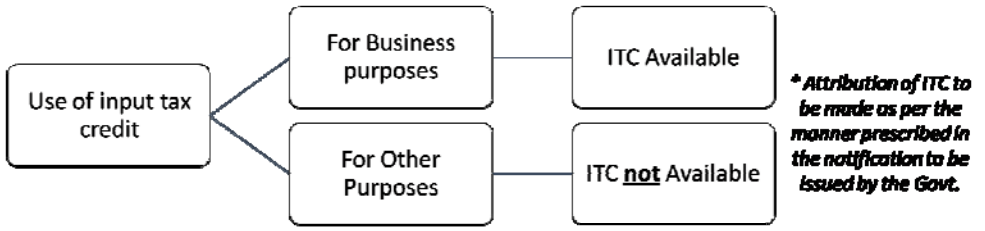
Conditions for Availment of ITC by a Registered Taxable Person



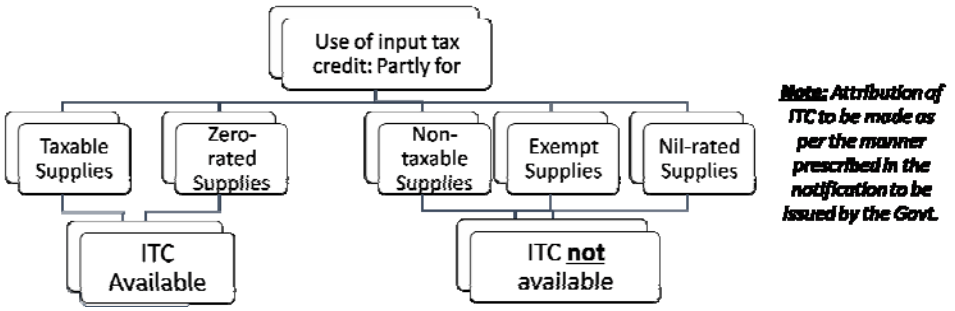
*Note:

- Credit only upon receipt of the last lot/ instalment in case of goods received in lots/ instalments.
- Goods deemed to be received by a taxable person when the supplier delivers the goods to the recipient/ any other person, on the direction provided by the taxable person to the supplier.

ITC on the Basis of use of Inputs



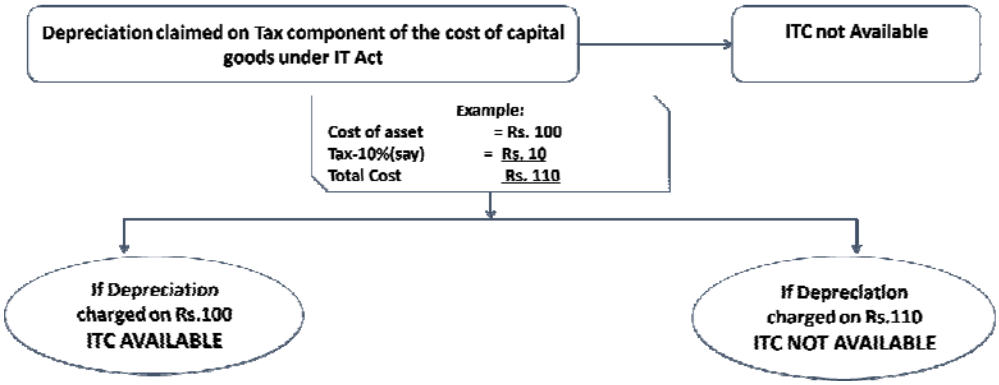
ITC on the Basis of use of Inputs



Alternative to apportionment between taxable & exempt supplies in case of **banking companies & financial institutions:**

- **Yearly option** to avail a standard rate of 50% of eligible ITC on inputs, capital goods and input services on a **monthly basis**

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 "inputs"	Defined in Cenvat credit Rules which has inclusion and exclusion limb.	Inclusive definition and does not contain inclusion or exclusion limb.
Definition of "inputs services"	Defined in Cenvat credit Rules which has inclusion and exclusion limb.	Inclusive definition and does not contain inclusion or exclusion limb.
Electronic credit ledger	No such concept	Electronic credit ledger required to be maintained for crediting and utilising input tax credit

Section 17: Apportionment of credit and blocked credit

Statutory Provision

(1) Where the goods and/or services are used by the registered taxable 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 and / or services are used by the registered taxable person partly for effecting taxable supplies including zero-rated supplies under this Act or under the IGST Act, 2016 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.

Explanation. - For the purposes of this sub-section, exempt supplies shall include supplies on which recipient is liable to pay tax on reverse charge basis under subsection (3) of section 8.

(3) 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.

Explanation. - The option once exercised shall not be withdrawn during the remaining part of the financial year.

(4) Notwithstanding anything contained in sub-section (1) of section 16 and subsection (1), (2), (3) and (4) of section 18, input tax credit shall not be available in respect of the following:

(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) supply of goods and services, namely,

(i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where such inward supply of goods or services of a category is used by a registered taxable person for making an outward taxable supply of the same category of goods or services;

(ii) membership of a club, health and fitness centre,

(iii) rent-a-cab, life insurance, health insurance except where 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; 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 received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, even when used in course or furtherance of business;

Explanation 1.- For the purpose of this clause, the word "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

Explanation 2.- 'Plant and Machinery' means apparatus, equipment, machinery, pipelines, telecommunication tower fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports but excludes land, building or any other civil structures.

(e) goods and/or services on which tax has been paid under section 9;

(f) goods and/or services used for personal consumption;

(g) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and

(h) any tax paid in terms of sections 67, 89 or 90.

(5) The Central or a State Government may, by notification issued in this behalf, prescribe the manner in which the credit referred to in sub-sections (1) and (2) above may be attributed.

17.1 Introduction

The input tax credit eligibility is based on whether the same is used for taxable supplies. Where the goods or service is used for both taxable and exempted supplies, only proportionate credit is eligible for registered taxable person, Further, a list of ineligible input tax credit is also provided.

17.2 Analysis

(a) Proportionate credit:

(i) Where the goods and / or services are used by a registered taxable person partly for business and partly for non-business, he is eligible to input tax credit of goods and / or services attributable to the purposes of business. The manner of establishing such proportion particularly protecting directly attributable credits is

not provided for but expected in a manner perhaps similar to the recently amended Rule 6 of Cenvat Credit Rules.

(ii) Where the goods and / or services are used partly for effecting taxable supplies (plus zero-rated supplies) and partly for effecting non-taxable supplies (plus exempt supplies), he is eligible to credit attributable to the taxable supplies including zero-rated supplies.

In case, goods and/or services 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 non-taxable supplies shall include exempted 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 and / or services 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 either to follow Section 17(2) or to avail fifty per cent of the eligible input tax credit on inputs, capital goods and input services every month. The option once exercised cannot be withdrawn in a financial year.

(c) Ineligible input tax credit: input tax credit shall not be available in respect of the following

(i) Motor vehicle and other conveyance except used for taxable supplies of -

(a) supply of such vehicles or conveyances or

(b) Transportation of passenger or

(c) Imparting training on driving, flying, navigating such vehicles or conveyances;

(d) Motor vehicle and other conveyance except used for transportation of goods

(ii) Supply of goods and 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 same category of goods or services;

(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; and

(d) travel benefits to employees on vacation i.e. leave or home travel concession.

(iii) 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. Taking real estate developers as an example, some of the experts hold a view that where the works is sub contracted by the developers, the work executed by the sub contractors would qualify as works contract services, whereas the output service for such developers would really be 'construction of complex, building, civil structure or part thereof, services' (Para 5(b) of Schedule II is construction of complex services whereas Para 5(f) of Schedule II is works contract services'). Though this Schedule neither defines the meaning of service nor is relevant for classification or description of supplies, it will have persuasive value.

(iv) 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;

(v) Goods and/or service on which the tax paid under composition scheme

(vi) Goods and/or service used for personal consumption

(vii) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples

(viii) Tax paid in terms of sections 67, 89 or 90

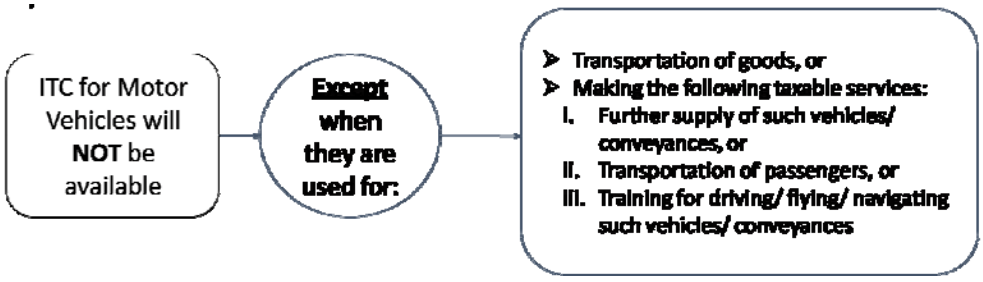
(d) Construction: includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.

(e) Plant and machinery: means apparatus, equipment, machinery, pipelines, telecommunication tower fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and **structural** supports but excludes land, building or any other civil structures

The analysis of above provision in a pictorial form is summarised as follows:

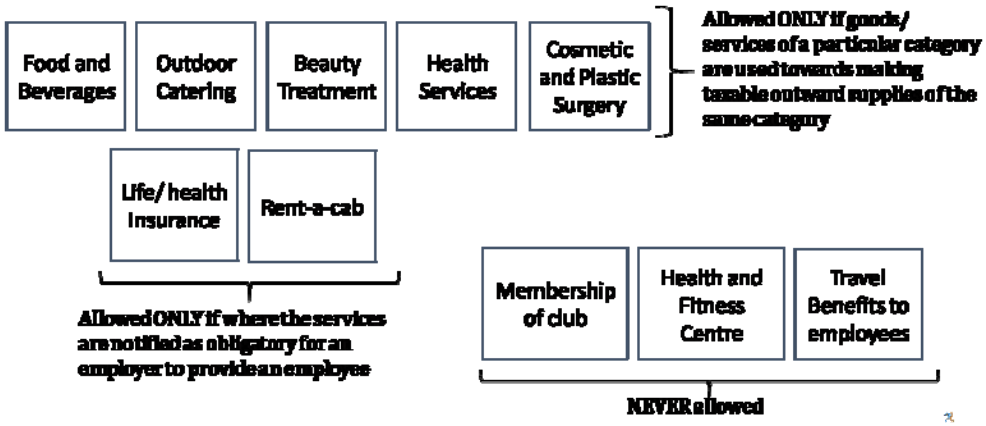
Restrictions on ITC : Sec 17(4)
Blocked credits

(a) Motor Vehicles

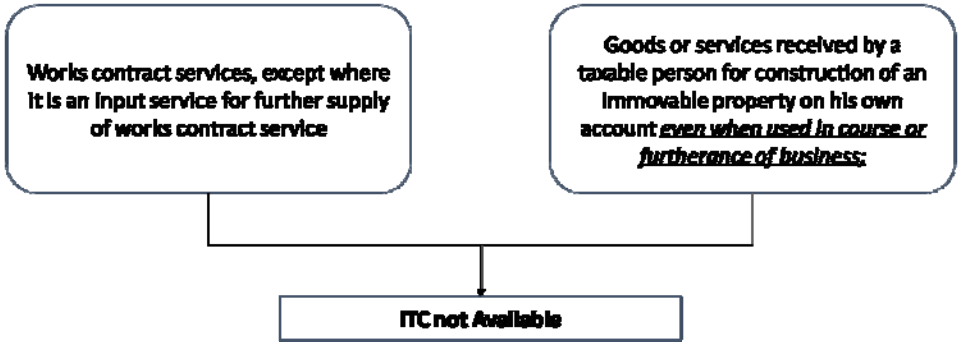


Note: Where any amount has been paid on goods and/or services, in lieu of tax, under composition scheme, no credit on such amount would be allowed.

(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 credit used for business and non-business	Specific distinction made between credit used for business and non-business
Works contract credit	Restriction to inputs only	Restriction to both inputs and input services
Credit on inputs used for construction of immovable property	Restriction to inputs only	Restriction to inputs only.
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 and/or service is received, which is used for both taxable and non-taxable supplies, what would be the input tax credit entitlement for the registered taxable person?

Ans. The input tax credit of goods and / or service used in taxable supplies can only be taken by registered taxable 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

Section 18: Availability of credit in special circumstances

Statutory Provision

(1) 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, subject to such conditions and restrictions as may be prescribed, 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.

(2) A person, who takes registration under sub-section (3) of section 23 shall, subject to such conditions and restrictions as may be prescribed, 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.

(3) Where any registered taxable person ceases to pay tax under section 9, he shall, subject to such conditions and restrictions as may be prescribed, 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 8

PROVIDED that the credit on capital goods shall be reduced by such percentage points as may be prescribed in this behalf

(4) Where an exempt supply of goods or services by a registered taxable person becomes a taxable supply, such person shall, subject to such conditions and restrictions as may be prescribed, 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 in this behalf.

(5) A taxable person shall not be entitled to take input tax credit under sub-section (1), (2), (3) or (4), as the case may be, in respect of any supply of goods and / or services to him after the expiry of one year from the date of issue of tax invoice relating to such supply.

(6) Where there is a change in the constitution of a registered taxable 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 taxable person shall be allowed to transfer the input tax credit that remains unutilized in its books of accounts to such sold, merged, demerged, amalgamated, leased or transferred business in the manner prescribed.

(7) Where any registered taxable person who has availed of input tax credit switches over as a taxable person for paying tax under section 9 or, where the goods and / or services

supplied by him become exempt absolutely under section 11, he shall pay an amount, by way of debit in the electronic credit or 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 such switch over 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.

(8) The amount payable under sub-section (7) shall be calculated in such manner as may be prescribed.

(9) The amount of credit under sub-section (1), (2), (3) and (4) shall be calculated in such manner as may be prescribed.

(10) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by the percentage points as may be specified in this behalf or the tax on the transaction value of such capital goods or plant and machinery under sub-section (1) of section 15, whichever is higher:

PROVIDED FURTHER 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 under sub-section (1) of section 15.

18.1 Introduction

Input tax credit is available to registered taxable 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

(a) **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**:**

Sl. No	Eligible persons	Credit entitled	As on	Conditions
1	Person applied for registration within 30 days from the date of liability to pay tax and is registered	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date from which he becomes	Cannot avail credit of goods and / or services after 1 year from tax invoice date

			liable to pay tax	
2	Person applied for registration after 30 days from the date of liability to pay tax, registers and registered	Nil	NA	
3	Person who is not required to register, but obtains voluntary registration	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock	The day immediately preceding the date of registration	Cannot avail credit of goods and / or services after 1 year from tax invoice date
4	Person ceases to pay composition tax	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods	The day immediately preceding the date from which he becomes liable to pay tax under regular scheme	Capital goods credit is reduced by percentage Percentage is yet to be prescribed
5	Exempt supply becomes taxable supplies	Inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods	The day immediately preceding the date from which supply becomes taxable	

In short, 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:

(a) 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.

(b) 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.

(c) Mr. B, registered taxable 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 as on 30th July, 2017.

(b) **Input tax credit and change in constitution of taxable person:** The change in constitution of taxable person due to sale merger, demerger, amalgamation, lease or transfer of business with provision for transfer of liabilities -

(i) the registered taxable person allowed to transfer the input tax credit remaining unutilized in the books of account

(ii) To such sold, merged, demerged, amalgamated, leased or transferred business.

(c) **When taxable 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 and
  - on capital goods and
  - inputs contained in semi-finished or finished goods held in stock
- 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 as may be prescribed

The above provision is also applicable where goods or services supplied by taxable person is absolutely exempt.

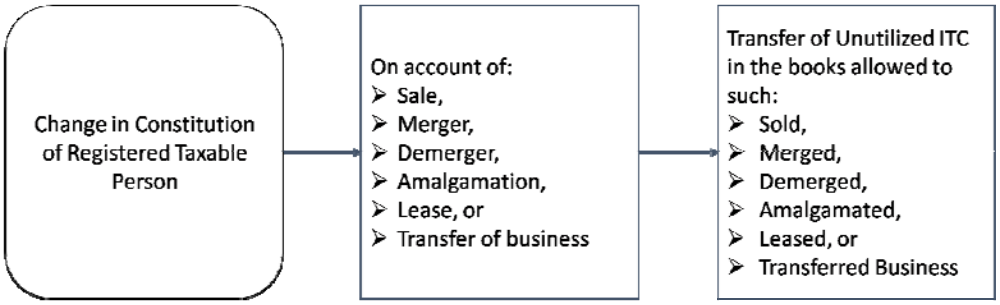
(d) **Supply of capital goods on which input tax credit is taken:** The registered taxable person shall:

- 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.

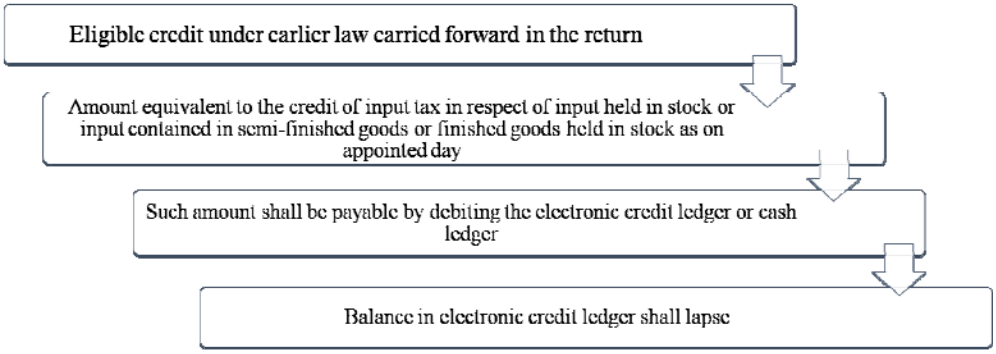
(e) **Refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap:** Taxable person may pay tax on transaction value under section 15(1).

The analysis of above provision in a pictorial form is summarised as follows:

ITC: Change in Constitution of Taxable Person

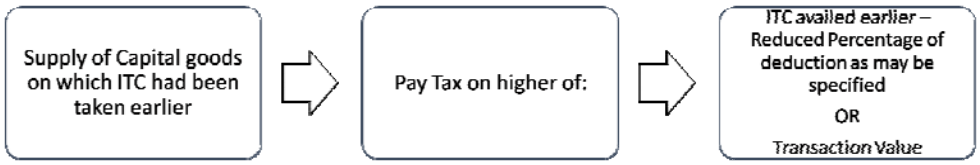


Switching from regular to over composition- Pay and Exit



Supply of Capital goods on which ITC already taken

- If the recipient of services fails to pay (value + tax) within 3 months from date of invoice, (ITC availed + interest) shall be added to his output tax liability



Note: Any credit wrongly taken shall be subjected to the recovery provisions

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

Section 19: Recovery of Input Tax Credit and Interest thereon

Statutory Provision

Where credit has been taken wrongly, the same shall be recovered from the registered taxable person in accordance with the provisions of this Act.

19.1 Analysis

Recovery when credit is wrongly taken: The input tax credit taken wrongly, the same shall be recovered from the registered taxable person in the manner prescribed.

20. Taking input tax credit in respect of inputs sent for job work

Statutory Provision

(1) The "principal" referred to in section 55 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 their 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 (b) of sub-section (1) of section 55 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:

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 their 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 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:

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.

20.1 Introduction

This provision relates to taking of input tax credit on goods sent for job work.

20.2 Analysis

(i) Relevant Definitions:

- **Job work:** Any treatment or process done by a person on goods belonging to another registered taxable person

- **Job worker:** A person who does any treatment or process on goods of registered taxable person.
- **Principal:** A person on whose behalf an agent carries on the business of supply or receipt of goods and/or services.

(ii) Entitlement of credit on inputs:

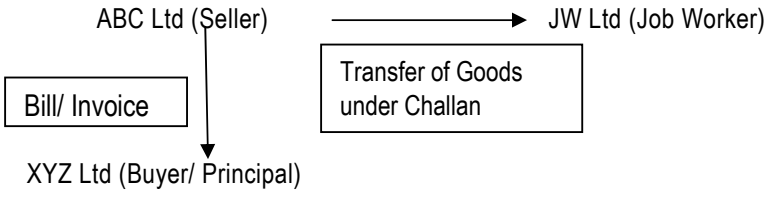
- The principal can take credit of input tax on inputs sent to job-worker, for job work
- subject to such conditions and restrictions as may be prescribed
- the inputs, after completion of job-work, are received back by him within 1 year of their being sent out
- credit of inputs can be taken even if inputs are sent directly to job-worker's place without bringing to principal's place of business.
- If input sent directly to job worker, the period of 1 year is counted from the date when job worker receives input.
- If the inputs are not received back within 1 year, the principal shall pay an amount equal to input tax credit taken on the said inputs.
- If the inputs are received back by the principal, he may reclaim the input tax credit and interest paid earlier.

(iii) Entitlement to credit on capital goods: The principal can take credit of input tax on capital goods sent to job-worker

- The said 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, the principal shall pay an amount equal to input tax credit taken on the said capital goods.

Example showing the treatment of credit on inputs and capital goods that are being sent to job worker for further processing is shown as under.

M/s XYZ Ltd. sends inputs/ capital goods to the factory of the job worker directly without receiving the same in its factory:



20.3 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 taxable 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	Credit to be reversed
Re-credit if goods returned after specified time	Re-credit allowed	No credit

20.4 Related provisions

Section	Description
55	Special procedure for removal of goods for certain purposes

20.5 FAQs

1. Whether the principal is eligible to avail input tax credit of inputs sent to job worker for job work?

Yes. The principal is eligible to avail the input tax credit on inputs sent to job worker for job work.

20.6 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) None of the above

Ans. (a) Principal has to pay amount equal to credit taken on such capital goods

21. Manner of Distribution of Credit by Input Service Distributor (ISD)

Statutory provision

(1) The Input Service Distributor may distribute, in such manner as may be prescribed, the credit of CGST as CGST or IGST and IGST as IGST or CGST, by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit are located in different States. - **CGST ACT**

(1) The Input Service Distributor may distribute, in such manner as may be prescribed, the credit of SGST as SGST or IGST by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit are located in different States. - **SGST ACT**

(2) The Input Service Distributor may distribute, in such manner as may be prescribed, the credit of CGST and IGST as CGST, by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit, being a business vertical, are located in the same State. – **CGST ACT**

(2) The Input Service Distributor may distribute, in such manner as may be prescribed, the credit of SGST and IGST as SGST, by way of issue of a prescribed document containing, inter alia, the amount of input tax credit being distributed or being reduced thereafter, where the Distributor and the recipient of credit, being a business vertical, are located in the same State. – **SGST ACT**

(3) The Input Service Distributor may distribute the credit subject to the following conditions, namely:

- (a) the credit can be distributed against a prescribed document issued to each of the recipients of the credit so distributed, and such invoice or other document shall contain 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 shall be distributed only 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 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 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 1. –For the purposes of this section, the "relevant period" shall be-

(a) if the recipients of the credit have turnover in their States in the financial year preceding the year during which credit is to be distributed, the said financial year; or

(b) if some or all recipients of the credit do not have any turnover in their States 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.

Explanation 2. - For the purposes of this section, 'recipient of credit' means the supplier of goods and / or services having the same PAN as that of Input Service Distributor.

Explanation 3. – For the purposes of this section, 'turnover' means aggregate value of turnover, as defined under sub-section (6) of section 2.

21.1 Introduction

This Section sets forth the manner in which input tax credit (of services) is distributed to supplier of goods and/or services of same entity having same PAN.

21.2 Analysis

(i) Input Service Distributor (ISD) is an office of the supplier of goods and/or services where 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 the output services are being provided there.

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.

(ii) It is deemed that an ISD is a supplier of services for the purposes of distributing the credit.

(iii) **Distribution of credit where ISD and recipient are located in different States under CGST Act**: ISD can distribute as prescribed, credit of CGST as CGST or IGST and credit of IGST as IGST or CGST 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 can distribute both CGST of ₹ 4 Lakhs as CGST or as IGST and credit of IGST of ₹ 7 Lakhs as IGST or CGST 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 SGST or IGST 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 SGST or 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 hasdifferent 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 and IGST **as CGST** 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 and ₹ 10 lakhs of IGST the credit attributable to ABC Ltd, Bangalore, can be distributed partially or fully, to Mysore location as CGST.

(vi) **Distribution of credit where ISD and recipient are located within the State under SGST Act**: Similar to the premises 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** 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 and ₹ 10 Lakhs of IGST can be distributed as SGST.

Note: However, since IGST is already transferred as CGST under CGST Act, again the same ₹ 10 Lakhs cannot be transferred as SGST as it would violate the condition contained in Section 17(3)(b). Therefore the IGST credit has to be distributed either under SGST Act or CGST Act. In order to make this aspect clear there should be clarity in law which requires amendment.

(vii) **Conditions to distribute credit by ISD:** The conditions to distribute the credit by ISD are as follows:

(i) Credit to be distributed to recipient under prescribed documents containing prescribed details. Such document should be issued to each of the recipient of credit.

(ii) Credit distributed should not exceed the credit available for distribution.

(iii) Tax paid on input services used by a particular location (registered as supplier), is to be distributed only to that location.

(iv) 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.

Illustration: A Ltd 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

Example showing 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 2016 & 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 2015-16 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 on the basis of 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:

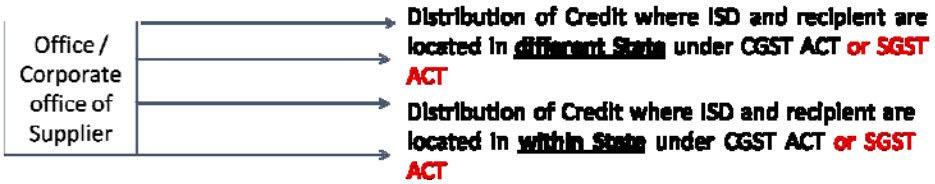
(a) If the recipient of credit has turnover in their State in preceding financial year of the year in which credit is distributed – Such financial year.

(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.

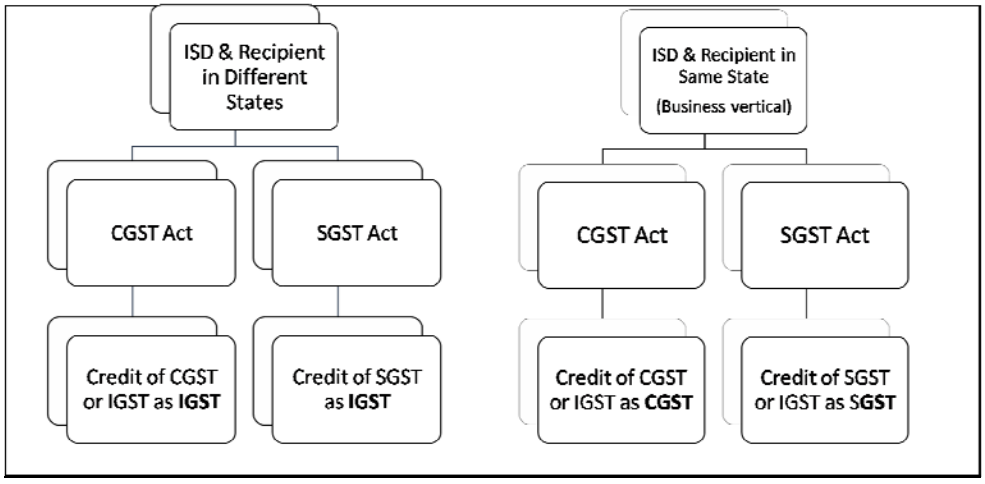
The analysis of above provision in a pictorial form is summarised as follows:

Input Service Distributor – Sec. 21

- ITC is distributed to supplier of goods and/or services of same entity having the same PAN
- Deemed as ISD is a supplier of Service for distributing credit
- Common Services used at for



Input Service Distributor



21.3 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.

21.4 Related provisions

Section / Rule / Form	Description
2(56)	Definition of Input Service Distributor
Explanation to Section 18(2)	Definition of relevant period.

21.5 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.

21.6 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.

22. Manner of recovery of credit distributed in excess

Statutory provision

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 21 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 66 or 67, as the case may be, shall apply mutatis mutandis for effecting such recovery.

22.1 Introduction

This Section deals with recovery of excess credit distributed by the ISD.

22.2 Analysis

(i) Excess Credit distributed in contravention of provision:

Excess credit distributed to one or more supplier (locations) in contravention of ISD provision under Section 21 is recoverable from the suppliers (locations) along with Interest.

The recovery will be under the provisions of Section 66 or 67.

There is no mechanism provided to return / reverse the excess credit to other locations which were rightly eligible.

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 51 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:

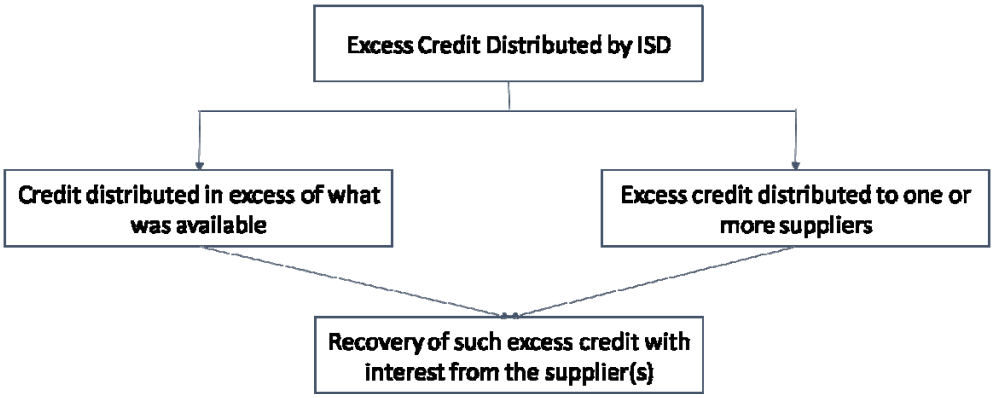
Delhi ₹ 7,00,000, Jaipur ₹ 6,00,000, Gujarat ₹ 2,00,000.

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 66 or 67 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



22.3 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.

22.4 Related provisions

Section / Rule / Form	Description
Section 21	Manner of distribution of credit by Input service distributor
Section 22	Manner of recovery of credit distributed in excess
Section 66	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 67	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.

22.5 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 provision of Act is to be recovered from the unit to which it is distributed along with interest.

Chapter–VI
Registration

23. Registration

Statutory provision

(1) Every person who is liable to be registered under Schedule V of this Act shall apply for registration in every such State 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.

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

(3) A person, though not liable to be registered under Schedule V, may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.

(4) 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 sub-section (1), (2) or (3):

Provided that a person required to deduct tax under section 46 shall have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number (TAN) issued under the said Act in order to be eligible for grant of registration.

(5) Notwithstanding anything contained in sub-section (4), a non-resident taxable person may be granted registration under sub-section (1) on the basis of any other document as may be prescribed.

(6) 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.

(7) Notwithstanding anything contained in sub-section (1),

(a) 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 shall be granted a Unique Identity Number; and

(b) any other person or class of persons, as may be notified by the Commissioner, shall obtain a Unique Identity Number, in the manner prescribed, for the purpose(s) notified, including refund of taxes on the notified supplies of goods and/or services received by them.

(8) 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.

(9) A certificate of registration shall be issued in the prescribed form, with effective date as may be prescribed.

(10) A registration or an Unique Identity Number shall be deemed to have been granted after the period prescribed under sub-section (8), if no deficiency has been communicated to the applicant by the proper officer within that period.

(11) Notwithstanding anything contained in sub-section (8), 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.

(12) 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 Unique Identity Number has not been rejected under SGST/CGST Act within the time specified in sub-section (8).

(13) The Central or a State Government may, on the recommendation of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

23.1 Introduction

Section 23 provides for registration of every person who is liable to be registered under Schedule V. 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 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.

23.2 Analysis

— Schedule V of the Act specifies the list of persons who are liable to be registered. Every supplier shall be liable to be registered under the Act in the State from which he makes a taxable supply of Goods and/or Services. 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 states 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 taxable person will have to take a separate registration even though the taxable person may be supplying goods and / 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(73) but taxable person is explained in detail in section 10 (please refer to chapter I & III for a detailed discussion). A proper reading of section 10 along with schedule V helps us understand – a State is the smallest registrable unit in GST – except where multiple business verticals are registered separately under section 23. 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.

— 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, for the purpose of agriculture

— For the purpose of 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 55 (i.e. Special Procedure for Removal of goods for Certain Purposes) 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;

— persons who are required to pay tax under reverse charge;

— persons who are required to pay tax under sub-section (4) of section 8 (electronic commerce operator)

— non-resident taxable persons;

— persons who are required to deduct tax under section 46 (Tax Deduction at Source);

— persons who are required to collect tax under 56(Tax Collected at Source);

— persons who supply goods and/or services 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 (4) of section 8, through such electronic commerce operator who is required to collect tax at source under section 56,

— 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 Schedule V, 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 23 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.

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 get voluntary Registration shall have a Permanent Account Number (PAN).

Every person required to deduct tax under section 46 shall 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 Board / 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 maybe prescribed.

A registration or a UID shall be deemed to have been granted after the period prescribed (under sub-section (8) of Section 23 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 complete a due process 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.

24. 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, at the request of the said taxable person, extend the aforesaid period of ninety days by a further period not exceeding ninety days.

(2) Notwithstanding anything to the contrary contained in this Act, 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 23, 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 44.

24.1 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 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.

25. Amendment of Registration

Statutory Provision:

(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 that furnished subsequently, in the 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 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.

(3) The proper officer shall not reject the request for amendment in the registration without giving a notice to show cause and without giving the person are as on able opportunity of being heard.

(4) Any rejection or approval of amendments under the CGST Act/SGST Act shall be deemed to be a rejection or approval of amendments under the SGST Act/CGST Act.

25.1 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 CGST Act / SGST Act shall be deemed to be a rejection or approval of amendments under the SGST Act / CGST Act respectively.

26. Cancellation of registration

(1) 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, 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 23, is no longer liable to be registered under Schedule V.

(2) The proper officer may, in the manner as may be prescribed, cancel the registration of taxable person from such date, including any anterior date, as he may deem fit, where, -

(a) the registered taxable 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 9 has not furnished returns for three consecutive tax periods; or

(c) any taxable 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 section23 has not commenced business within six months from the date of registration.

(3) Where any registration has been obtained by means of fraud, wilful misstatement or suppression of facts, the proper officer may cancel the registration with retrospective effect, subject to the provisions of section 37.

(4) The proper officer shall not cancel the registration without giving a notice to show cause and without giving the person a reasonable opportunity of being heard:

PROVIDED that such notice may not be issued where an application is filed by the registered taxable person or his legal heirs, in the case of death of such person, for cancellation of registration.

(5) The cancellation of registration under this section shall not affect the liability of the taxable person to pay tax and other dues under the Act or to discharge any obligation under the 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.

(6) The cancellation of registration under the CGST Act/SGST Act shall be deemed to be a cancellation of registration under the SGST Act/CGST Act.

(7) Every registered taxable person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit or 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 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, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods reduced by the percentage points as may be prescribed in this behalf or the tax on the transaction value of such capital goods under sub-section (1) of section 15, whichever is higher.

(8) The amount payable under sub-section (7) shall be calculated in such manner as may be prescribed.

26.1 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 Section 26 of the ACT.

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 Schedule V.

The proper officer may in the prescribed manner cancel registration of taxable person from such date, **including any anterior date** is possible after the person is afforded an opportunity of being heard (except no such opportunity in case of 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;

— Where registration has been obtained by means of fraud, willful 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 the CGST Act/ SGST Act shall be deemed to be a cancellation of registration under the SGST Act/CGST Act.

Where 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.

I**n 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.

27. Revocation of cancellation of registration

(1) Subject to such conditions and in such manner as may be prescribed, any registered taxable 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 in this behalf, by way of an order, either revoke cancellation of the registration or reject the application for revocation for good and sufficient reasons.

(3) The proper officer shall not reject the application for revocation of cancellation of registration without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(4) Revocation of cancellation of registration under the CGST Act / SGST Act shall be deemed to be a revocation of cancellation of registration under the SGST Act / CGST Act.

27.1 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 the CGST Act / SGST Act shall be deemed to be a revocation of cancellation of registration under the SGST Act / CGST Act.

Business Processes of Registration and other Procedures:

The discussions hereunder are based on the Report of the Joint Committee on Business Processes for GST on Registration Process which was finalized on 22nd and 23rd July 2015. Further Registration Rules along with draft formats of various forms have also been approved by GST Council. The various Business Processes (procedures) that are to be carried out on the subject of Registrations like Structure of Registration Number, Procedure for Obtaining the Registration, Dealing with New Applicants, Migration of existing registrants into the new GST regime, Registration of Compounding Dealers, Amendments in the Registration for, Cancellation /surrender of Registration and various forms prescribed for different activities have been discussed. In this section analysis of each one of them step by step is given.

Structure of Registration Number:

The taxpayer will be allotted a State wise PAN based 15 digit Goods and / or services

Taxpayer Unique Identification Number **(GSTIN).** The various digits in the GSTIN will denote the following: -

State Code		PAN										Entity Code	Blank	Check Digit
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

The first two digits represent the State in the Country where such registration is allowed. As an illustration in terms of the Indian Census 2011 the unique two-digit code of "09" has been allotted for the State of Uttar Pradesh while "27" has been allotted for the State of Maharashtra, so on and so forth.

The second set of 10 digits would be the Permanent Account Number (PAN) allotted by the Income tax department for each Legal entity.

The 13th digit would be alpha-numeric (1-9 and then A-Z) and would be assigned depending upon the number of Registrations a legal entity (having the same PAN Number) has within the State. To illustrate, a legal entity with single registration within the State would have "1" as its13th digit of GSTIN. If the same legal entity goes for a second registration for a second business vertical in the same State, the 13th digit of GSTIN assigned to this second entity would be "2□. This way 35 business verticals of the same legal entity can be registered within a State.

The 14th digit of GSTIN would be kept BLANK for future use. The 15th Digit will be the check digit.

Multiple Registrations within the same State:

The GST regime allows multiple registrations within a State for business verticals of a taxable person. This provision has been made available subject to the following specific stipulations;

— Input Tax Credit across the business verticals of such taxable persons shall not be allowed unless the goods and / or services are actually supplied across the verticals.

— For the purpose of recovery of dues, all business verticals, though separately registered, will be considered as a single legal entity.

Registration for Composition Levy Scheme:

In terms of Section 9 / Chapter III of the "ACT", a provision has been made that on the recommendation of the GST Council a Composition levy scheme has been envisaged wherein a registered Taxable person subject to certain conditions and safe-guards, may be permitted to compound his liabilities and pay in lieu of the Tax payable by him an amount calculated at such rate as may be prescribed but not less than two and a half percent in case of a manufacturer and one percent in any other case, of the total turnover in a State during the

year. The registrant will be permitted for switching from this Composition Scheme to Normal scheme and *vice-versa* in the manner prescribed as under.

— Any existing taxpayer not under Compounding scheme may opt for Compounding scheme, if eligible, only from the beginning of the next Financial Year. The application will have to be filed on or before 31st March of the previous year so that Returns can be filed accordingly.

— Compounding dealer may be allowed to switch over to Normal scheme even during the year if they so want, with a condition that they cannot switch over to Compounding scheme again during the same financial year.

— Any existing taxpayer under the Compounding scheme upon crossing the Compounding threshold will be switched over to the Normal scheme automatically from the day following the day of crossing the Compounding threshold.

Dealers below the Compounding ceiling will be provided with an option of availing the Compounding scheme i.e. they can pay the tax at Compounding rate (to be specified) without entering the credit chain. Although the Compounding scheme is only a temporary phase before the taxable person starts functioning as a normal taxable person, it has been prescribed for enabling such taxable persons to opt for Compounding scheme.

When the taxable person opts for Compounding scheme he should indicate so in the registration form and GST Common Portal would internally flag him as a Compounding dealer. Later, when he goes out of the Compounding scheme due to his turnover crossing the Compounding ceiling (change will be triggered by the tax return values) or he opts out of the scheme, the said flag will be removed and he would continue operating with the same registration number, without undertaking any fresh registration. There will not be any additional or new or a different Registration issued for different schemes. There will be one common Registration for one legal entity in terms of the GSTIN discussed supra.

Procedure for Obtaining Registration:

For obtaining registration, all the taxable persons shall interact with tax authorities through a common portal called “GST Common Portal” that would be set up by Goods and / or services Tax Network (GSTN). The portal will have backend integration with the respective IT systems of the Centre and States. A new applicant would be allowed to apply for registration without prior enrolment.

Once a complete application is submitted online, a message asking for confirmation will be sent through e-mail and SMS to the authorized signatory of the applicant. On receipt of such confirmation from the authorized signatory, Acknowledgement Number would be generated and intimated to the applicant. Once the application is approved and GSTIN is generated, the same along with Log-in ID and temporary Password will be sent to the authorized signatory.

This credential will be permanently used to access the GST Common Portal for all purposes, subsequently. Provision for capturing e-mail and Mobile Number of authorized representative

of the taxpayer has also been incorporated in the proposed GST Registration Form. It would be the responsibility of the taxpayer to keep this data updated to ensure seamless flow of two-way information.

It has also been perceived that online verification of PAN of the Business / Sole Proprietor/ Partner/Karta/Managing Director and whole time directors/Member of Managing Committee of Association, Managing trustee/authorized signatory etc. of the business would be mandatory and without such verification, registration application will not be allowed to be submitted though the exact methodology is yet to be formulated.

In order to cater to the needs of those Taxpayers who are not Computer savvy, a **Tax Return Preparer scheme** has been put into place. This authorized Tax return preparer (TRP) will prepare the said registration document / return in prescribed format on the basis of the information furnished to him by the taxable person. The legal responsibility of the correctness of information contained in the forms prepared by the TRP will rest with the taxable person only and the TRP shall not be liable for any errors or incorrect information A **Facilitation Centre (FC)** has also been perceived where **FC** shall be responsible for the digitization and / or uploading of the forms and documents including summary sheet duly signed by the Authorized Signatory and given to it by the taxable person. After uploading the data on common portal using the ID and Password of FC, a print-out of acknowledgement will be taken and signed by the FC and handed over to the taxable person for his records. The FC will scan and upload the summary sheet duly signed by the Authorized Signatory. This system is in line with the practice that is in vogue for submitting TDS returns by more than 2 million tax deductors to the Income Tax Department.

Registration for New Applicants:

The process highlighted in the paragraphs below is applicable for new applicants for registration, both mandatory and voluntary. New applicant can apply for registration:

— at the GST Common Portal directly; or

— at the GST Common Portal through the Facilitation Center (FC)

Multiple applications can be filed at one go where a taxable person seeks registration in more than one State or for more than one business vertical located in a single / multiple State(s). Following scanned documents are required to be filed along with the application for Registration –

Relevant Box No. in the Registration Form	Document required to be uploaded	Reason for requirement
2. Constitution of Business	Partnership Deed in case of Partnership Firm Registration Certificate in case of other businesses like Society, Trust etc. which are	In case of Companies, GSTN would strive for online verification of Company Identification

Relevant Box No. in the Registration Form	Document required to be uploaded	Reason for requirement
	not captured in PAN.	Number (CIN) from MCA21. Constitution of business/ applicant as per PAN would be taken except for businesses such as Society, Trust etc. which are not captured in PAN. Partnership Deed would be required to be submitted in case of Partnership Firms.
11. Details of the Principal Place of business	In case of Own premises – any document in support of the ownership of the premises like Latest Tax Paid Receipt or Municipal Khata copy or Electricity Bill copy. In case of Rented or Leased premises – a copy of the valid Rent / Lease Agreement with any document in support of the ownership of the premises of the Lessor like Latest Tax Paid Receipt or Municipal Khata copy or electricity Bill copy. In case of premises obtained from others, other than by way of Lease or Rent – a copy of the Consent Letter with any document in support of the ownership of the premises of the Consenter like Municipal Khata copy or Electricity Bill copy Customer ID or account ID of the owner of the property in the record of electricity providing company, wherever available should be sought for address verification.	This is required as an evidence to show possession of business premises. If the documentary evidence in Rent Agreement or Consent letter shows that the Lessor is different from that shown in the document produced in support of the ownership of the property, then the case must be flagged as a "Risk Case", warranting a post registration visit for verification. GST Law Drafting Committee may add penalty provision for providing wrong lease details
12. Details of Bank Account (s)	Opening page of the Bank Passbook held in the name of the Proprietor / Business Concern – containing the Account No.,	This is required for all the bank accounts through which the

Relevant Box No. in the Registration Form	Document required to be uploaded	Reason for requirement
	Name of the Account Holder, MICR and IFS Codes and Branch details	taxpayer would be conducting business
17. Details of Authorized Signatory	For each Authorized Signatory: Letter of Authorization or copy of Resolution of the Managing Committee or Board of Directors to that effect	This is required to verify whether the person signing as Authorized Signatory is duly empowered to do so.
Photograph	- Proprietary Concern – Proprietor - Partnership Firm / LLP – Managing/ Authorized Partners (personal details of all partners is to be submitted but photos of only ten partners including that of Managing Partner is to be submitted) - HUF – Karta - Company – Managing Director or the Authorized Person - Trust – Managing Trustee - Association of Person or Body of Individual – Members of Managing Committee (personal details of all members is to be submitted but photos of only ten members including that of Chairman are to be submitted) - Local Body – CEO or his equivalent - Statutory Body – CEO or his equivalent - Others – Person in Charge	

The GST common portal shall carry out preliminary verification / validation, including real-time PAN validation with CBDT portal, Aadhar No validation with UIDAI, CIN (Company Identification) with MCA and other numbers issued by other Departments through inter-portal connectivity before submission of the application form. Taxpayers would have the option to sign the submitted application using valid digital signatures (if the applicant is required to obtain DSC under any other prevalent law then he will have to submit his registration application using the same).

In the absence of digital signature, taxpayers would have to send a signed copy of the summary extract of the submitted application form printed from the portal to a central processing centre to be operated by GSTN. The location details of this central processing centre would be intimated to the applicant along with the application acknowledgement number. The application will be processed even without waiting for receipt of the signed copy of the summary extract.

If the signed copy is not received within 30 days, a reminder will be sent through e-mail and SMS to the authorized signatory through the portal. If the copy is not received within 30 days

after such reminder being sent, the system will prompt the concerned tax authority to initiate the action for cancellation of the registration. Such cancellation will have prospective effect i.e. from the date of cancellation. GST portal would acknowledge the receipt of application for registration and issue an Acknowledgement Number which could be used by the applicant for tracking his application. Such Acknowledgement Number would not contain the details of jurisdictional officers.

The application form will be passed on by GST portal to the IT system of the concerned State/Central tax authorities for onward submission to appropriate jurisdictional officer (based on the location of the principal place of business) along with the following information –

(a) Uploaded scanned documents;

(b) State specific data and documents;

(c) Details if the business entity is already having registration in other States. This should also include GST compliance rating;

(d) Details of the PAN(s) of individuals mentioned in the application which are part of the other GST registrations;

(e) Acknowledgment number;

(f) Details of any record of black-listing or earlier rejection of application for common PAN(s).

(g) Last day for response as per the 3 common working day limits for both tax authorities as set out through Holiday Master.

On receipt of application in their respective system, the Centre / State authorities would forward the application to jurisdictional officers who shall examine whether the uploaded documents (as detailed in Para 6.3 above) are in order and respond back to the common portal within 3 common working days, excluding the day of submission of the application on the portal, using the Digital Signature Certificates.

The processing of registration application will commence resulting in either grant of registration or refusal to grant registration. If either of the two authorities (Centre or State) refuses to grant registration, the registration will not be granted. In case registration is refused, the applicant will be informed about the reasons for such refusal through a speaking order. The applicant shall have the right to appeal against the decision of the Authority. **A deeming provision to the effect that rejection of the registration application by one authority amounts to rejection by both Centre and State has already been incorporated in the GST law**. The applicant shall be informed of the fact of grant or rejection of his registration application through an e-mail and SMS by the GST common portal. Jurisdictional details would be intimated to the applicant at this stage. In case registration is granted, applicant can download the Registration Certificate from the GST common portal.

Migration of the Existing Registrants:

As and when there is change in the system from the existing regime to GST regime, a very

important task required is capturing the data with reference to the existing taxpayers without pilferage and also ensure smooth transition from one system to another system.

The existing registrants are those who are either registered with Centre for Central Excise or Service tax purpose or with State for VAT purposes or with both. The process should involve a design to migrate cleaned and verified data from the existing data base to the GST Common Portal and after that GSTIN shall be generated. Since, lots of reports will be using registration database, purity of registration data will be of paramount importance. Migrating half-complete and incorrect data from existing registration databases to GST database will adversely impact the reports and intelligence derived out of it. Thus, data will have to be collected afresh from the existing taxpayers. GSTIN can be issued based on State and validated PAN. In case of taxpayers under Excise and VAT, source of data for issuing GSTIN should be VAT data as in most cases Excise assessee will also be registered under VAT. For taxpayers under Service Tax, the source of data for issuing GSTIN should be Service Tax. The Business process on Registration envisages upon roll out the following with reference to various existing registrants.

For Taxpayers Registered under State VAT/Excise

- GSTIN will be generated by NSDL in case of all VAT TINs where PAN has been validated. Along with a password, the GSTIN will be sent to respective State Tax Authorities.
- State tax authorities will communicate the GSTIN/password to taxpayers, with instruction to log on the GST portal and fill up the remaining data. State specific data over and above what is contained in the GST Registration Form can be collected after GST registration becomes operational.
- The State can verify, validate and facilitate filling up the void fields after collecting the information from the taxpayers.

In case of Service Tax, the taxpayers are not registered under a State; a different approach will have to be adopted.

- Since all Service Taxpayers have user ID and password and Service Tax has their email IDs, they will advise the taxpayers to intimate State(s) where they would like to get themselves registered in.
- Service Tax portal will check from GST portal whether GSTIN has been generated for combination of State and PAN of the taxpayer. If not generated, request GST portal to generate the same.
- GST portal will generate the GSTIN and communicate to Service Tax, which will be communicated to the taxpayer asking him/her to provide remaining data at GST Portal.

All verifications / updation of the information as outlined above would have to be done by the taxable person within a specified period. If the verification / updation are not done within the stipulated period, the GSTIN will be suspended till the taxable person does the needful. Any verification by State / Central authorities can be done after GSTIN is issued.

Amendments in Registration Form:

Amendments to the Registration under Section 23 of the ACT are allowed in terms of Section 25 and a Business Process on this procedure has also been recommended by the Committee. In fact, capturing registration information is not a one-time activity and any change in critical information should be entered at the common portal within a stipulated time period. Changes in most of the fields except under Composition Scheme can be done on self-service basis. The changes to fields under Composition scheme will require submission of reasons and prescribed relevant documents, and will be subject to approval by the concerned tax authorities. All amendments in the details in registration application form will be retained in the database of the GSTN and will be made visible to the tax authorities.

Cancellation / Surrender of Registration:

The provision of Section 26 of the ACT also provides for Cancellation of Registration or Surrender of Registration already issued. The Business Process on Registration envisages that in the following cases, the registration can be either surrendered by the registrant or cancelled by the tax authorities:

- Closure of business of tax payer;
- Gross Annual Turnover including exports and exempted supplies (to be calculated on all-India basis) falling below threshold for registration;
- Transfer of business for any reason including due to death of the proprietor of a proprietorship firm; Amalgamation of taxable person with other legal entities or de-merger;
- Non-commencement of business by the tax payer within the stipulated time period of 6 months as prescribed under the GST laws.

Suitable provisions have already been made in the GST law.

In case of surrender, the system will send an acknowledgment by SMS and e-Mail to the applicant regarding his surrender of registration and he will be deemed to be unregistered from the date of such acknowledgement. There will be a provision in the system to prompt such surrendered registrants to update their address and mobile number at a prescribed periodicity till all dues are cleared/refunds made.

The cancellation of registration may also be done by tax authorities in the following situations:

- In case signed copy of the summary extract of submitted application form is not received even after a reminder;
- In case a tax payer contravenes specified provision of the GST law;
- In case a taxpayer has not filed any return at all during a predetermined period (say six months). In case a taxpayer has filed a nil return continuously for this period, then the provisions of cancellation will not be applicable

The Revised Model GST Law has also provided for the time period for which if there is a continuous contravention of any of the provisions of the law, the registration shall be cancelled.

List of Forms prescribed under the Business Process of Registration

Sl. No	Form	Purpose of the Form
1	REG-01	Application for Registration
2	REG-02	Acknowledgement
3	REG-03	Notice for Seeking Additional Information relating to Registration/Amendment/ Cancellation
4	REG-04	Application for filing clarification Registration/Amendment/Cancellation/ Revocation of Cancellation
5	REG-05	Order of Rejection of Application for Registration/Amendment/ Cancellation/Revocation of Cancellation
6	REG-06	Registration Certificate issued of the GST Act.
7	REG-07	Application for Registration as Tax Deductor or Tax Collector at Source
8	REG-08	Order of Cancellation of Application for Registration as Tax Deductor or Tax Collector at Source
9	REG-09	Application for Allotment of Unique ID to UN Bodies/Embassies /any other person
10	REG-10	Application for Registration for Non-Resident Taxable Person.
11	REG-11	Application for Amendment in Particulars subsequent to Registration
12	REG-12	Order of Amendment of existing Registration
13	REG-13	Order of Allotment of Temporary Registration/ Suo Moto Registration
14	REG-14	Application for Cancellation of Registration under GST 20--.
15	REG-15	Show Cause Notice for Cancellation of Registration
16	REG-16	Order for Cancellation of Registration
17	REG-17	Application for Revocation of Cancelled Registration under GST 20--.
18	REG-18	Order for Approval of Application for Revocation of Cancelled Registration
19	REG-19	Notice for Seeking Clarification/Documents relating to Application for Revocation of Cancellation
20	REG-20	Application for Enrolment of Existing Taxpayer
21	REG-21	Provisional Registration Certificate to existing taxpayer
22	REG-22	Order of cancellation of provisional certificate
23	REG-23	Intimation of discrepancies in Application for Enrolment of existing taxpayer

Sl. No	Form	Purpose of the Form
24	REG-24	Application for Cancellation of Registration for the Migrated Taxpayers not liable for registration under GST 20--.
25	REG-25	Application for extension of registration period by Casual/Non-Resident taxable person
26	REG-26	Form for Field Visit Report

27.2 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 Model Draft GST Law	Title	Corresponding Section in Central Excise Act, 1944	Corresponding Section in Finance Act, 1994	VAT/New Provision
23	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.

27.3 Related Provisions

Statute	Section or Rule	Description	Remarks
CGST	Schedule V	Liability to be registered	Provides for persons liable to be registered

27.4 FAQ's

Q1. Who is the person liable to take a Registration under the Model GST Law?

Ans. In terms of Sub-Section (1) of Section 23 of the Model GST Law, every person who is liable to be registered under Schedule V of this Act shall apply for registration.

Q2. What is the time limit for taking a Registration under Model 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 23 of Model 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 23, 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 23 a person, though not liable to be registered under Schedule V, 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 23 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 6 of Section 23, 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 an Application for Registration?

Ans. In terms of Sub-Section 8 of Section 23, 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, suspended 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 (1) of section 23, 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 25, 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 26 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. No, The Proper Officer cannot cancel the Registration once issued on his own Volition without following the principles of natural justice by issuing a Notice and pass an appealable order.

Chapter VII

Tax Invoice, Credit and Debit Notes

28. Tax invoice

Statutory Provisions

(1) A registered taxable 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 Central/State Government may, on the recommendation of the Council, by notification, specify the categories of goods and/or supplies in respect of which the tax invoice shall be issued within such time as may be prescribed.

(2) A registered taxable person supplying taxable services shall, before or after the provision of service but within a period prescribed in this behalf, issue a tax invoice, showing the description, value, the tax payable thereon and such other particulars as may be prescribed:

PROVIDED that the Central/State Government may, on the recommendation of the Council, by notification, specify the categories of services in respect of which any other document issued in relation to the supply shall be deemed to be a tax invoice, subject to such conditions and limitations as may be prescribed.

(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 starting from the effective date of registration till the date of issuance of certificate of registration to him;

(b) a registered taxable person supplying exempted goods and/or services or paying tax under the provisions of section 9 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 taxable person may not issue a bill of supply if the value of the goods or services supplied is less than one hundred rupees except where the recipient of the goods or services requires such bill.

(c) a registered taxable person shall, on receipt of advance payment with respect to any supply of goods or services by him, issue a receipt voucher or any other document, including therein such particulars as may be prescribed, evidencing receipt of such payment;

(d) a registered taxable person who is liable to pay tax under sub-section (3) of section 8 shall issue an invoice in respect of goods or services received by him on the date of receipt of goods or services from a person who is not registered under the Act.

(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) In case of continuous supply of services,

(a) where the due date of payment is ascertainable from the contract, the invoice shall be issued before or after the payment is liable to be made by the recipient but within a period prescribed in this behalf whether or not any payment has been received by the supplier of the service;

(b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or after each such time when the supplier of service receives the payment but within a period prescribed in this behalf;

(c) where the payment is linked to the completion of an event, the invoice shall be issued before or after the time of completion of that event but within a period prescribed in this behalf.

(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 effected before such cessation.

(7) For the purposes of sub section (4) and (5), the Central or a State Government may on the recommendation of the Council, specify, by notification, the supply of goods or services that shall be treated as continuous supply of goods or services.

(8) Notwithstanding anything contained in sub-section (1), where the goods (being sent or taken on approval or sale or return or similar terms) are removed before it is known whether a supply will take place, the invoice shall be issued before or at the time when it becomes known that the supply has taken place or six months from the date of removal, whichever is earlier.

Explanation - The expression “tax invoice” shall be deemed to include a document issued by an Input Service Distributor under section 21, and shall also include any revised invoice issued by the supplier in respect of a supply made earlier.

28.1 Introduction

Invoice is a document recording the terms of an underlying arrangement. 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 before or on the occurrence of certain event or within a prescribed time. Therefore, an invoice is required for every other form of supply such as transfer, barter, exchange, license, rental, lease or disposal.

28.2 Analysis

Supplier of goods is required to issue a tax invoice:

- At the time of removal of the goods, where the supply involves movement of goods 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 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 and time of delivery of goods and the role of supplier or recipient in determining these questions.

Supplier of services is required to issue a tax invoice:

- Before provision of the services or
- After provision of the services but within a time to be prescribed

Tax invoice should contain description of the supply, value, quantity, tax charged and such other particulars as may be prescribed.

Tax invoice is to be issued in all cases except where the taxable person has opted for composition of tax under section 9 of the Act. and within one from the date of issuance of registration, the taxable person may issue a revised invoice for supplies from the effective date registration till the date of issuance of registration certificate.

Where tax invoice is not permitted to be issued, a 'bill of supply' is prescribed, that is, in case of payment of composition tax and where the supply is for a value les that ₹ 100.

Payment of advance will require that a 'receipt' be issued and not an invoice (of either kind).

Where tax is payable on reverse charge basis, the recipient is required to prepare an invoice – tax invoice or bill of supply – to record and confirm facts relating to supplies received from persons who are not registered under the Act. The document issued by an Input Service Distribution will be deemed to be considered as a tax invoice.

2(30) "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;

2(31) "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 service as the Central or a State Government may, whether or not subject to any condition, by notification, specify

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

And for continuous supply of services, it is required to be issued:

— when payment is due as per the contract or

— when payment is actually received without a due date or

— when the event occurs that is linked to accrual of the payment

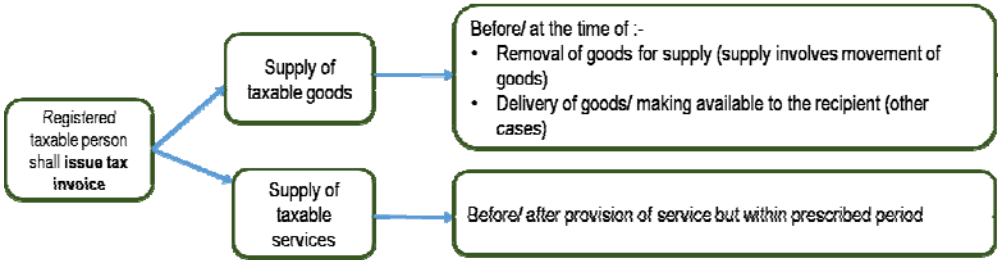
The Appropriate Government will notify supplies that shall be treated as continuous supply

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.

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.

The analysis of above provision in a pictorial form is summarised as follows:

Tax Invoice — Sec 28



28.3 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 issued.

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 tax charged in the GST regime.

28.4 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.

Q2. What particulars are required to be mentioned in the tax invoice by registered taxable person supplying goods?

Ans. The tax invoice should mention description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed

Q3. What particulars are required to be mentioned in the tax invoice by registered taxable person supplying services?

Ans. The tax invoice should mention description, value, the tax charged thereon and such other particulars as may be prescribed;

Q4. Is it mandatory to mention the details of tax amount in the invoice?

Ans. Yes, the tax invoice should mandatorily mention the details of tax amount in invoice.

Q5. 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.

Q6. Can a revised invoice be issued for taxable supplies?

Ans. Yes, the registered taxable person can issue revised invoice.

29. Tax not to be collected by unregistered taxable person

Statutory Provisions

A person who is not a registered taxable person shall not collect in respect of any supply of goods and/or services any amount by way of tax under the CGST/SGST Act and no registered taxable person shall make any such collection except in accordance with the provisions of this Act and the rules made thereunder.

29.1 Analysis

Collection of tax is not a statutory right but a contractual right. 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) remained 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 with regard to tax.

This provision casts an obligation on each – unregistered taxable person and registered taxable person with regard to collection of tax on supply:

- unregistered taxable person is not to collect tax or any sum 'by way of' tax and
- registered taxable person is not 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. Please refer to section 69 regarding tax that is collected be paid to the Government. Only tax that is collected as 'CGST-SGST' or 'IGST' is to be paid to the Government. Any other loss recoupment of input tax credit foregone or forfeited does not come within this restriction.

30. Amount of tax to be indicated in tax invoice and other documents

Statutory Provisions

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 will form part of the price at which such supply is made.

30.1 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 assessed on the supply.

31. Credit and debit notes

Statutory Provisions

(1) Where a tax invoice has been issued for supply of any goods and/or services and the taxable value and/or tax charged in that tax invoice is found to exceed the taxable value and/or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where services supplied are found to be deficient, the registered taxable person, who has supplied such goods and/or services, may issue to the recipient a credit note containing such particulars as may be prescribed.

(2) Any registered taxable person who issues a credit note in relation to a supply of goods and/or services 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 year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in the manner specified in this Act:

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 and/or services and the taxable value and/or tax charged in that tax invoice is found to be less than the taxable value and/or tax payable in respect of such supply, the taxable person, who has supplied such goods and/or services, shall issue to the recipient a debit note containing such particulars as may be prescribed.

Explanation: - 'Debit Note' shall include a supplementary invoice.

(4) Any registered taxable person who issues a debit note in relation to a supply of goods and/or services 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 in the manner specified in this Act.

31.1 Analysis

Credit note and debit note has 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 to 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 to 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) 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.

Now, this provision considers four situations where supplier says 'I OWE' and issues credit note:

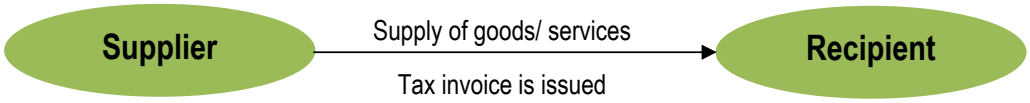
- value of supply is less than that stated in the tax invoice issued previously
- Tax charged in that invoice is higher than that correctly applicable on the supply
- goods supplied are returned by the recipient
- services supplied are deficient

And it considers two situations where the supplier says 'THEY OWE' and issues debit note:

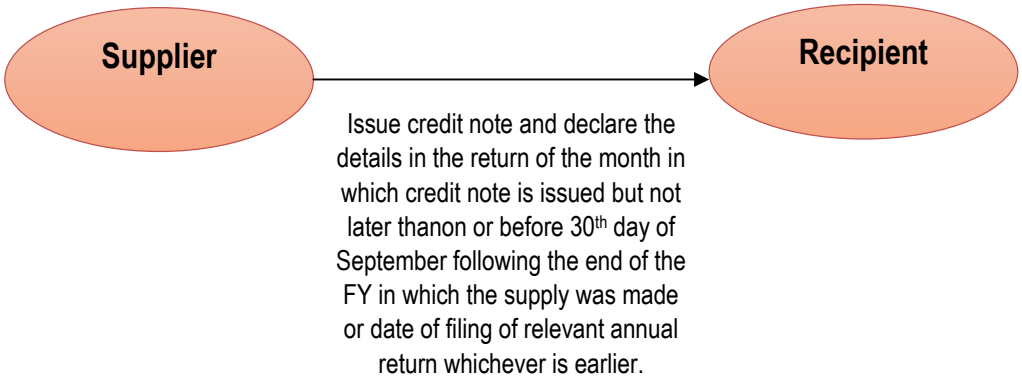
- value of supply is higher than that stated in the tax invoice issued previously
- Tax charged in that invoice is lower than that correctly applicable on the supply

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 there 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.

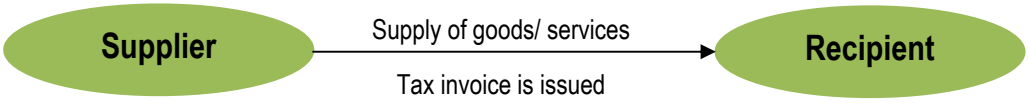
Scenario-1 Credit note issue



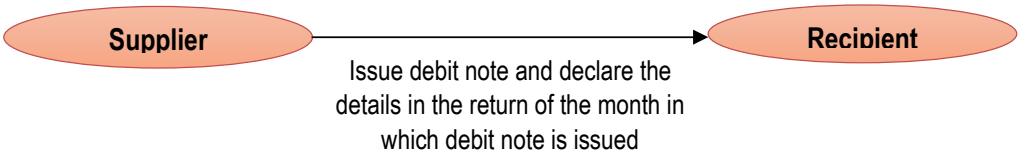
Scenario 1: Tax Charged/ Taxable Value/ Goods returned/ Deficient Services> Tax Charged/ Taxable Value (w.r.t. that supply), then



Scenario-2 Debit note issue (include Supplementary invoice)



Scenario 2: Tax Charged/ Taxable Value < Tax Charged/ Taxable Value (w.r.t. that supply), then



(i) The credit notes and debit notes shall contain such particulars as may be prescribed. Rules are yet to be notified to prescribe such particulars.

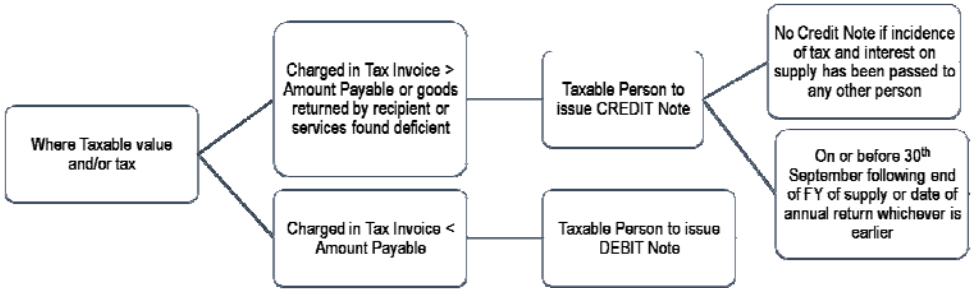
(ii) No credit note shall be issued if the incidence of tax and interest on such supply has been passed by him to any other person.

(iii) The details of credit notes/debit notes have to 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.

(iv) If the details are not shown as above, the credit/debits notes may not be considered for adjustment of tax liability.

The analysis of above provision in a pictorial form is summarised as follows:

Credit/ Debit Notes– Sec 31



* Registered taxable person issuing Debit/ Credit notes to declare its details in the return for the month during which such notes are issued /received or in the return for any subsequent month but not later than September following the end of F.Y. of supply, or the date of filing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in the manner specified in this Act.

31.2 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, 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).

31.3 FAQ's

Q1. Can credit note/debit notes be raised without raising an appropriate tax invoice?

Ans. No, credit note/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.

31.4 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) Whichever is earlier

(d) None of the above

Ans. (c) Whichever is earlier

Chapter– VIII
Returns

32. Furnishing details of outward supplies

Statutory Provision

(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 9, section 46 or section 56, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services 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 Commissioner may, for valid and sufficient reasons, by notification, for such class of taxable persons as may be specified therein, extend the time limit for furnishing such details:

PROVIDED FURTHUR that any extension of time limit approved by the Commissioner of [Central / State] Goods and Services Tax shall be deemed to be approved by the Commissioner of [State/Central] Goods and Services Tax

Explanation - For the purposes of this section, 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.

(2) Every registered taxable person who has been communicated the details under sub-section (3) of section 33 or the details pertaining to inward supplies of input service distributor under sub-section (4) of section 333, shall either accept or reject the details so communicated, on or before the seventeenth day of the month succeeding the tax period and the details furnished by him under subsection (1) shall stand amended accordingly:

(3) Any registered taxable person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 37 or section 38, 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 (1) shall be allowed after furnishing of the return under section 34 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.

32.1 Introduction

This provision relates to furnishing of details of outward supplies.

32.2 Analysis

This e-return should be furnished by every registered taxable person, for prescribed tax period to present "Details of outward supplies". 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.

The Commissioner may notify any extension in time limit for filing such returns for valid and sufficient reason.

Any extension of time limit by the Commissioner of State Goods and Services/Central Goods and Services Tax shall be deemed approved by the Commissioner of Central Goods and Services Tax/ State Goods and Services Tax.

This Return is not applicable to Input Service Distributor, non-resident taxable person, collector of tax (Section 56), deductor of Tax (Section 46) and Taxable persons opting for Composition Levy (Section 9)

Revision / Rectification of original return –

The details of GSTR-1 furnished by the supplier shall be made available to the recipients in PART-A of Form GSTR-2A after the due date of filing of GSTR-1 i.e. 11th day of the succeeding month.

In case any outward supplies are not matched with the respective recipients' return of inward supplies (discussed under section 33), the return for outward supplies requires rectification. All such modifications made by the recipient shall be made available to the outward supplier in FORM GSTR-1A.

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.

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 Outward Supplies made by the Taxpayer (GSTR-1)

This return form would capture the following information:

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Gross 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.

4. Final invoice-level supply information pertaining to the tax period separately for goods and services:

   (i) For all B2B supplies (whether inter-state or intra-state), invoice level specified details will be uploaded.

   (ii) For all inter-state B2C supplies (including to non-registered Government entities, Consumer / person dealing in exempted / NIL rated / non GST goods or services), the suppliers will upload invoice level details in respect of every invoice whose value is more than ₹ 2,50,000/-. For invoices below this value, State-wise summary of supply statement will be filed covering those invoices where there is address on record.

   (iii) The following recommendations of the Committee on IGST and GST on Imports with respect to the details about HSN code for goods and Accounting code for services to be captured in an invoice have been accepted:-

      (a) HSN code (4-digit) for Goods and Accounting Codes for Services will be mandatory initially for all taxpayers with turnover in the preceding financial year above ₹ 5 Crore.

      (b) For taxpayers with turnover between ₹ 1.5 Crores and ₹ 5 Crores in the preceding financial year, HSN codes may be specified only at 2-digit chapter level as an optional exercise to start with.

      (c) Any taxpayer, irrespective of his turnover, may use HSN code at 6- digit or 8-digit level if he so desires.

      (d) To start with, composition dealers may not be required to specify HSN at 2-digit level also.

      (e) Prescribed Accounting code will be mandatory for those services for which Place of Supply Rules are dependent on nature of services to apply the destination principle, irrespective of turnover.

      (f) HSN Codes at 8-digit level and Accounting Codes for services will be mandatory in case of exports and imports.

   (iv) The above parameters with respect to HSN code for goods and Accounting Code for services will apply for submitting the information in return relating to relevant invoice level information for B2B supplies (both intra-state and inter-state) and inter-state B2C supplies (where taxable value per invoice is more than ₹ 2.5 lakhs). It is proposed that in the return form 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. 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 ₹ 1.5 Crore will have to mention the description of goods/service, as the case may be, wherever applicable.

(v) For all Intra-State B2C supplies (including to non-registered Government entities, consumer / person dealing in exempted / NIL rated / non GST goods or services), consolidated sales (supply) details will be uploaded. However, a dealer may at his option furnish invoice wise information in respect of exempted and nil rated supplies also.

(vi) The supply information will also have details relating to the Place of Supply in order to identify the destination State as per the Place of Supply Rules where it is different from the location of the recipient.

(vii) Details relating to supplies attracting Reverse charge will also be submitted

5. Details relating to advance received against a supply to be made in future will be submitted in accordance with Time of Supply provisions as framed in the GST law.

6. Details relating to taxes already paid on advance receipts for which invoices are issued in the current tax period will be submitted.

7. Details relating to supplies exported (including deemed exports) both on payment of IGST as well as without payment of IGST would be submitted.

8. There will be a separate table for submitting the details of revisions in relation to the outward supply invoices pertaining to previous tax periods. 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.

9. There will be a separate table for effecting modifications/correcting errors in the returns submitted earlier. The time period for correcting these errors has been provided in the GST Law.

10. There will be a separate table for submitting details in relation to NIL rated, Exempted and Non-GST outward supplies to (both inter-state and intra-state) to registered taxpayers and consumers.

The return (GSTR-1) would be filed by the 10th of the succeeding month. Late filing would be permitted on payment of late fees only.

33. Furnishing details of inward supplies

Statutory Provision

(1) Every registered taxable person, other than an input service distributor or a nonresident taxable person or a person paying tax under section 9, section 46 or section 56, shall verify, validate, modify or, if required, delete the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 32 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 32

(2) Every registered taxable person, other than an input service distributor or a nonresident taxable person or a person paying tax under the provisions of section 9, section 46 or section 56 , shall furnish, electronically, the details of inward supplies of taxable goods and/or services, including inward supplies of goods or services on which the tax is payable on reverse charge basis under this Act and inward supplies of goods and/or services taxable under the IGST Act, and credit or debit notes received in respect of such supplies during a tax period after the tenth 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 valid and sufficient reasons, by notification, for such class of taxable persons as may be specified therein, extend the time limit for furnishing such details:

PROVIDED FURTHER that any extension of time limit approved by the Commissioner of [Central/State] Goods and Services Tax shall be deemed to be approved by the Commissioner of [State/Central] Goods and Services Tax.

(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 the manner and within the time as may be prescribed.

(4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-sections (2) or (4) of section 34 shall be communicated to the supplier concerned in the manner and within the time as may be prescribed.

(5) Any registered taxable person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 37 or section 38, 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 34 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.

33.1 Introduction

This provision relates to furnishing of details of inward supplies.

33.2 Analysis

In respect of the return for outward supplies filed by the supplier of goods / services (under section 32) the receiver is required to match his receipts with the details of supplies filed by the supplier. The details shall be made available to the recipient in **Part A of Form GSTR-2A**.

In fact, the receiver is required to –verify, validate, modify or even delete – the details furnished by the suppliers. Now, these details as accepted by the recipient will be filed in the return i.e. Form GSTR-2 for inward supplies of the recipient.

The receiver shall also furnish the details of other inward supplies which are not therein the Form GSTR-2A. further the details of inward supplies covered under Reverse Charge Basis and supplies covered under IGST Acts such as import of Goods and Services and Credit Notes/Debit Notes shall also be furnished by the receiver. Now, these details will be filed in the return i.e. Form GSTR-2 for inward supplies of the recipient.

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. Further the details of inward supplies of supplier registered under Section 9 i.e. Composition dealer and Input Service Distributor in part B of GSTR-2A shall also be communicated to the receiver.

This return has to be filed by the recipient of (goods/services) supplies **within 15 days** from the end of the relevant tax period. The Commissioner may notify any extension in time limit for filing such returns for valid and sufficient reason.

These details shall be communicated to the outward supplier in Form GSTR-1A.

In case the return for inward supplies requires rectification, it is allowed. Such rectification, however, is not permitted after filing of annual return or the return for the month of September of the following year, whichever is earlier.

Components of valid GST Return for Inward Supplies received by the Taxpayer (GSTR-2):

This return form would 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 for goods and services separately
4. 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.

5. There will be separate tables for submitting details relating to import of Goods/Capital Goods from outside India and for the services received from outside India.
6. The details of inward supplies would be auto-populated in the ITC ledger of the taxpayer on submission of his return. The taxable person will select the invoice details regarding the in-eligibility and eligibility of ITC in relation to these inward supplies and the quantum available in a particular tax period.
7. There will be a separate table for submitting details in relation to ITC received on an invoice on which partial credit has been availed earlier.
8. In respect of capital goods, there will be a field to capture appropriate information regarding availing ITC over a period as prescribed under Section 16.
9. In respect of inputs, there can be two situations. If inputs are received in one lot, the ITC will be given in the return period in which the purchase is recorded in the books of accounts. In case inputs covered under one invoice are received in more than one instance/lot, the ITC will be given in the return period in which the last purchase is recorded in the books of accounts.
10. There will be a separate table for submitting the details of revisions in relation to inward supply invoices pertaining to previous tax periods (including post purchase discounts received). This will include the details of Credit/Debit Note issued by the suppliers and the differential value impact and associated tax payable or refund/tax credit sought.
11. There will be a separate table for effecting modifications/correcting errors in the returns submitted earlier. The time period for correcting these errors has been provided in the GST Law.
12. There will be a separate table for submitting details in relation to NIL rated, Exempted and Non-GST inward Supplies (Both Inter-State and Intra-State) including those received from compounding taxpayers and unregistered dealers.
13. There will be a separate table for the ISD credit received by the taxpayer.
14. There would be a separate table for TDS Credit received by the taxpayer.

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.

34. Returns

Statutory Provision

(1) Every registered taxable person, other than an input service distributor or a nonresident taxable person or a person paying tax under the provisions of section 9, section 46 or section 56 shall, for every calendar month or part thereof, furnish, in such form and in such manner as may be prescribed, a return, electronically, of inward and outward supplies of goods and/or services, input tax credit availed, tax payable, tax paid and 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 9 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 46 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 in such 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 validity period of registration, whichever is earlier.

(6) The Commissioner of [CGST/SGST] may, for valid and sufficient reasons, by notification, for such class of taxable persons as may be specified therein, extend the time limit for furnishing the returns under sub-section (1), (2), (3), (4) or under sub-section (5):

PROVIDED that any extension of time limit approved by the Commissioner of [CGST/ SGST] shall be deemed to be approved by the Commissioner of [SGST/ CGST].

(7) Every registered taxable person, who is required to furnish a return under subsection (1), (2), (3) or, as the case may be, under sub-section (5) shall pay to the account of the appropriate 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 taxable person who is required to furnish a return under subsection (1), or as the case may be, under sub-section (2), shall furnish a return for every tax period whether or not any supplies of goods or services have been effected during such tax period.

(9) Subject to the provisions of sections 32 and 33, if any taxable person after furnishing a return under sub-section (1), (2) or, as the case may be, under subsection (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 return to be furnished for the month or quarter, as the case may be, during which such omission or incorrect particulars are noticed, subject to payment of interest, where applicable and as specified in the 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, as the case may be, following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.

34.1 Analysis

Every registered taxable person:

(i) Shall file his return in form GSTR-3 other than a taxable person registered under section 9 i.e. composition dealer, or under section 46 i.e. deduct or of tax at source or section 56 i.e. a person liable to collect tax at source or an Input Service Distributor, a non-resident taxable person.

(ii) For every calendar month furnish, in prescribed form and manner, a electronic return:

- (a) of 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

within 20 days after the end of such month:

(iii) Part A of the GSTR-3 shall be auto generated on the basis of the information furnished through the Form GSTR-1 and GSTR-2, electronic credit ledger, electronic cash ledger, electronic tax liability register of such taxable person.

(iv) The liability of the payment of tax, interest, penalty, fees and any other amount payable shall be discharged by debiting electronic credit ledger/ electronic cash ledger as per the details contained in part B of the form GSTR-3.

(v) can make an application for refund in the return itself. He can claim refund of the any balance in electronic cash ledger in part B of the GSTR-3.

(vi) paying tax under composition scheme shall furnish a return in Form GSTR-4 for each quarterly basis, electronically, in prescribed form and manner, 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.

(vii) who is required to furnish a return shall pay to the credit of the appropriate Government the tax due as per such return not later than the last date on which he is required to furnish such return.

(viii) 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.

(ix) Deduct tax at source shall furnish are 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.

(x) 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

(xi) Every Input Service Distributor(ISD) shall, for every calendar month or part thereof, furnish a return in Form GSTR -6 electronically, in prescribed form and manner 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 GSTR-6A shall be verified, added, corrected or deleted for the purpose of preparing GSTR-6.

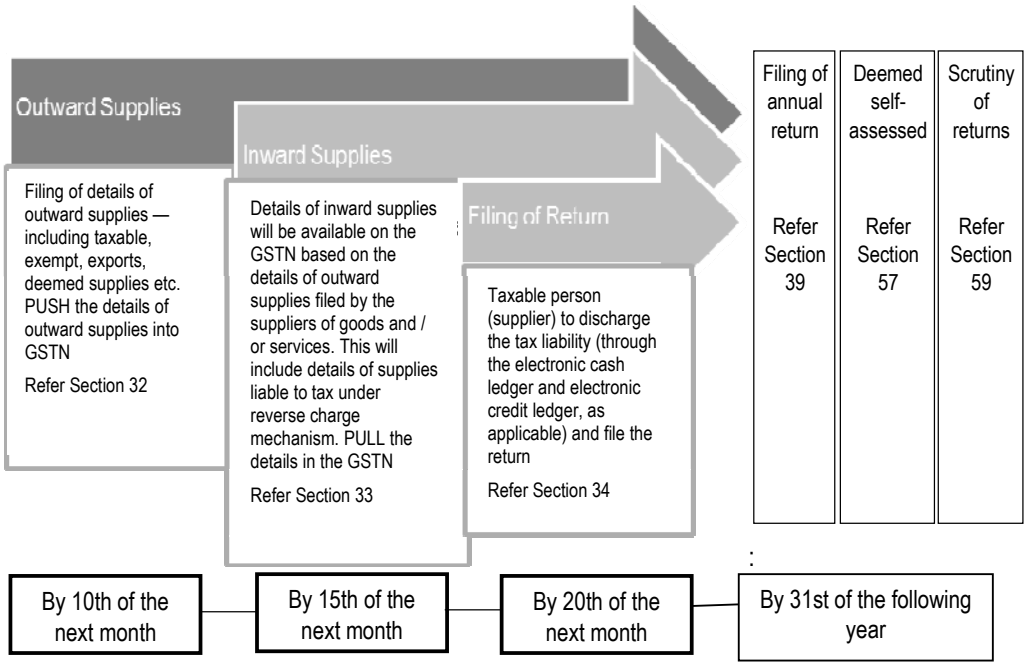
(xii) If any taxable person after furnishing a return discovers any omission or incorrect therein, shall rectify in the return to be filed for the month or quarter, during which such omission or incorrect particulars are noticed, subject to payment of specified interest as applicable.

(xiii) 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,

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

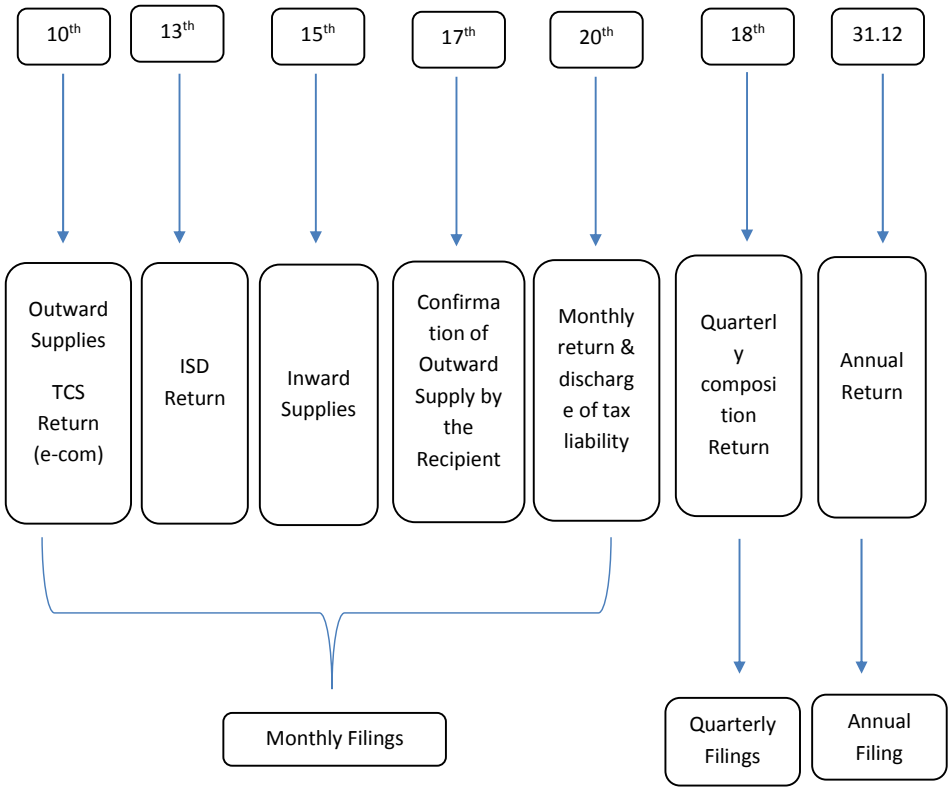
Valid Return -

Three returns are involved with respect to inward / outward supplies for each tax period. The following chart may be referred to in this regard



However, in case of tax payer who is under Composition levy, such returns shall be required to be filed every quarter.

For easy reference, one may use the following chart for various due dates in respect of filing returns:



Every registered taxable person – whether he has any transaction in a particular tax period or not – shall furnish the e returns mentioned above without fail.

Components of valid GST Return (GSTR-3) –

The GST Monthly Return form would 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 GSTR-1 and 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 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 Additional cess
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 Additional cess.
13. Details of the payment of tax under various tax heads of CGST, SGST, IGST and Additional cess separately would be populated from the debit entry in Credit/Cash ledger. GST Law may have provision for maintaining four head wise account for CGST, SGST, IGST and Additional cess 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 Additional 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 (GSTR-3) would be entirely auto-populated through GSTR-1 (of counterparty suppliers), own GSTR-2, ISD return (GSTR-6) (of Input Service Distributor), TDS return (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.

Brief Analysis on ISD Return (GSTR – 6)

Refer discussion under section 21 with regard to distribution of credit by Input Service Distributor.

This return form would 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 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 would be filed by 13th day of the succeeding month.

Brief Analysis on TDS Return (GSTR – 7)

Refer discussion under section 46 with regard to deduction of tax at source. The deduct or shall file a TDS return as prescribed.

What shall be the components of a valid TDS Return (GSTR-7):

This return would 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.

If the Process "Return Filing" has to 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 GSTR-1 return form either directly through data entry at the GST Common Portal or by uploading the file containing the said 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 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 GSTR-1.

Step 2: GST Common Portal (GSTN) will auto-draft the GSTR-2A of taxpayer based on the supply invoice details reported by the counter-party taxpayer (supplier) on a near real-time basis.

Step 3: Purchasing taxpayer will accept / reject/ modify such auto-drafted GSTR-2A. (A taxpayer 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: Purchasing taxpayer will also be able to add additional purchase invoice details in his GSTR-2 which have not been uploaded by counter-party taxpayer (supplier) as described in Step 1 and 2 above, provided he is in possession of valid invoice issued by counter-party taxpayer and he has actually received such supplies.

Step 5: Taxpayers will have the option to do reconciliation of inward supplies with counter-party taxpayers (suppliers) during the next 7 days by following up with their counter-party taxpayers for any missing supply invoices in the GSTR-1 of the counter-party taxpayers, and prompt them to accept the same as uploaded by the purchasing taxpayer. All the invoices

would be auto-populated in the ITC ledger of taxpayer. The taxpayer 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: Taxpayers will finalize their GSTR-1and 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 GSTR-3.

Step 7: Taxpayers will pay the amount as shown in the draft 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 GSTR-3 return and would submit the same.

35. First Return

Every registered taxable 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 filed by him after grant of registration

35.1 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 considered while filing this first return, namely:

Transaction to be reported	Consideration involved
Outward supplies	From date of liability to register till the end of month* when registration is granted

* Up to the quarter in case of composition levy under section 9

35.2 FAQ's

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

36. Claim of input tax credit and provisional acceptance thereof

Statutory Provision

(1) Every registered taxable person shall, subject to such conditions and restrictions as may be prescribed in this behalf, be entitled to take credit of input tax, as self-assessed, in his return and such amount shall be credited, on a provisional basis, to his electronic credit ledger to be maintained in the manner as may be prescribed.

(2) The credit referred to in sub section (1) shall be utilised for payment of self-assessed output tax liability as per the return referred to in sub-section (1).

36.1 Introduction

This Section relates to claim of input tax credit and its provisional acceptance.

36.2 Analysis

At the outset, every registered taxable person is entitled to claim the input tax credit. However, till he discharges his self-assessed tax liability he cannot utilize the input tax credit. In other words, one cannot enjoy Input Tax Credit till he ensures fair Self-assessment of Tax (even belatedly) vide relevant valid returns.

This section introduces us to the concept of 'electronic credit ledger' that will be put in place to record and carry the balance of credit either of CGST, SGST or IGST as the case may be which will receive additions of input tax credit from the return for outward supplies of supplier after it is matched with return for inward supplies and will have reductions of input tax credit from returns of inward supplies.

37. Matching, reversal and reclaim of input tax credit

Statutory Provision

(1) The details of every inward supply furnished by a registered taxable person (hereinafter referred to in this section as the 'recipient') for a tax period shall, in the manner and within the time prescribed, be matched -

(a) with the corresponding details of outward supply furnished by the corresponding taxable person (hereinafter referred to in this section as the 'supplier') in his valid return for the same tax period or any preceding tax period,

(b) with the additional duty of customs paid under section 3 of the Customs Tariff Act, 1975 (51 of 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 and/or debit notes relating to inward supply that match with the details of corresponding outward supply or with the additional duty of customs paid shall, subject to the provisions of section 16or 17 as the case may be , be finally accepted and such acceptance shall be communicated, in the 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 the manner as may be prescribed.

(4) The duplication of claims of input tax credit shall be communicated to the recipient 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 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 the 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 and/or debit note in his valid return within the time specified in sub-section (9) of section 34.

(8) A recipient in whose output tax liability any amount has been added under sub section (5) or, as the case may be, under sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 45 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 the 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 45.

37.1 Introduction

This provision relates to matching, reversal and reclaim of input tax credit.

37.2 Analysis

(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 (supplier)
- Additional customs duty paid on goods imported
- Any duplicate claims of input tax credit

When the credit availed by the recipient matches with the above, the same shall be finally accepted and communicated to the recipient in the prescribed manner.

Where the credit claimed is in excess in respect of inward supplies compared to the tax declared by the supplier, the discrepancies will be communicated to both parties. But discrepancies involving duplication of the credit claim by the recipient will be communicated to the recipient.

Discrepancies communicated to the outward supplier are not rectified by supplier in a valid return subsequently (not by revision of return for the month in which the discrepancy occurred). Since the outward supplier has not admitted the discrepancy, the tax amount involved will be added to the output liability of the recipient for the month in which the discrepancy is communicated. And if the supplier 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 recipient 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 recipient which will readily be reversed when the outward supplier admits and rectifies the discrepancy.

Discrepancies relating to duplication of credit will be added to the output liability of the recipient for the month in which the discrepancy is communicated.

Recipient will be liable to payment of interest in every case when discrepancy is added and interest will be paid on reversal of the liability added earlier after due rectification by the outward supplier. Refund provisions under section 48 are not to be applicable and the reversal of interest and this refund will be credited into the electronic cash ledger in prescribed manner. Interest paid that is reversed to the recipient will not exceed interest recovered from the supplier. ***Reference may be had to the discussion under section 38 which discusses this aspect of payment of interest by the supplier.***

Any reduction of liability by the recipient in contravention of the provisions of section 37(7) will be added to the output liability of the recipient and recovered along with applicable interest.

Example – 1

A Ltd supplies manufactured goods to B Ltd for ₹ 1000 in May 2017; CGST thereon is, say, ₹ 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 – 2

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.

38. Matching, reversal and reclaim of reduction in output tax liability

Statutory Provision

(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 34.

(8) A supplier in whose output tax liability any amount has been added under subsection (5) or, as the case may be, under sub-section (6), shall be liable to pay interest at the rate specified under sub-section (1) of section 45 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 the 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 provision 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 45.

38.1 Introduction

This provision relates to matching, reversal and reclaim of output tax liability.

38.2 Analysis

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:

— 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

— Any duplicate claims for reduction of output tax liability.

When claim for reduction of output tax liability by the supplier matches with the corresponding reduction in input tax credit by the recipient, the same will be accepted and communicated to the supplier.

When claim for reduction of output tax liability by the supplier exceeds, partly or wholly, with the corresponding reduction in input tax credit by the recipient, the discrepancy will be communicated to both parties.

With respect to duplicate claims for reduction of output tax liability, this discrepancy will be communicated only to the supplier concerned.

Discrepancies communicated to the recipient are not rectified in a valid return subsequently (There is no provision for rectification of discrepancy by revision of return for the month in which the discrepancy occurred). Since the recipient has not admitted the discrepancy, the tax amount involved will be added to the output liability of the supplier for the month in which the discrepancy is communicated. And 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.

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 48 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 37 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.

39. Annual return

Statutory Provision

(1) Every registered taxable person, other than an input service distributor, a person paying tax under section 46 or under 56, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and in such manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.

(2) Every registered taxable person who is required to get his accounts audited under subsection (4) of section 53 shall furnish, electronically, the annual return under sub-section (1) along with the audited copy of the annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the year with the audited annual financial statement, and such other particulars as may be prescribed.

39.1 Introduction

Every registered taxable person shall file Annual Return on or before 31st December following the end of the financial year in Form GSTR-9.

Provided that a person paying tax under Section 9 shall furnish the annual return in Form GSTR-9A

39.2 Analysis

Taxable persons who get their accounts audited under section 53(4) are required to electronically file annual return along with a copy of the audited accounts as well as a reconciliation statement, reconciling value of supplies declared in the return furnished for the year along with the audited annual financial statement and such other prescribed.

Input Service distributor, a person paying tax under section 46 (TDS) or 56 (TCS), casual taxable person and Non-Resident taxable person are not required to furnish annual return.

40. Final return

Statutory Provision

Every registered taxable person who applies for cancellation of registration shall furnish a final return within three months of the date of cancellation or date of cancellation order, whichever is later, in such form and in such manner as may be prescribed.

40.1 Introduction

This Section relates to final return to be filed by a taxable person.

40.2 Analysis

Every registered taxable person who applies for cancellation of registration shall furnish a final return within three months of the date of cancellation or date of cancellation order, whichever *is later*, in Form GSTR-10.

Processing of Return by the GST Administration:

After the GST Return has been uploaded onto the GST Common Portal, the Portal will undertake the following activities:

- Acknowledge the receipt of the return filed by the taxpayer after conducting required validations.
- Once a return is acknowledged, forward that GST Return to tax authorities of Central and appropriate State Govt. through the established IT interface.
- The ITC claim will be confirmed to purchasing taxpayer in case of matched invoices after 20th of the month succeeding the month of the tax period month provided counterparty supplying taxpayer has submitted the valid return (and paid self-assessed tax as per return).
- Communicate to the taxpayers through SMS/e-Mail, about the macro-results of the matching. The details will be in the taxpayers' dashboard/ledger which can be viewed after log-in at the Portal.
- Auto-populate the ITC reversals due to mismatching of invoices in the taxpayer's account in the return for the 2nd month after filing of return for a particular month.
- Aggregation of cross-credit utilization of IGST and SGST for each State and generation of settlement instructions based on IGST model and as finalized by the Payments Committee. This has to be with dealer-wise details as the concerned tax administration's follow on activities will be dependent on that detailing.

41. Notice to return defaulters

Statutory Provision

Where a registered taxable person fails to furnish a return under section 34, section 39 or section 40, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.

41.1 Introduction

This provision relates to issuing of a notice to defaulters in filing returns.

41.2 Analysis

Notice to defaulter

Notice shall be issued in prescribed manner, requiring to file the periodic returns (Ref: Section 34), Annual Return (Section 39) or Final Return (Section 40) within 15 days in such form and manner as may be prescribed.). Reference may kindly be made to the discussion under section 60 which requires the issuance of notice under this section to commence proceedings in case of non-filers being persons who do not respond to notice issued under this section.

42. Levy of late fee

(1) Any registered taxable person who fails to furnish the details of outward or inward supplies required under section 32 or section 33, as the case may be, or returns required under section 34 or section 40 by the due date shall be liable to a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of five thousand rupees.

(2) Any registered taxable person who fails to furnish the return required under section 39 by the due date shall be liable to 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 percent of his turnover in the state.

42.1 Introduction

This provision relates to levy of late fees on filing belated return.

42.2 Analysis

For late filing of return, the following late fee shall be levied:

Defaulted Return	***Late fee***
Details of Outward Supplies (Ref: Sec 32)	₹ 100 per day of delay Maximum ₹ 5,000
Details of Inward Supplies (Ref: Sec 33)	same as above
Return (Ref: Sec 34)	same as above
Final Return for prescribed three months (Sec 40)	same as above
Annual Return (Sec 39)	₹ 100 per day of delay Maximum = 0.25% on Turnover in the state*

* 2(107) "**turnover in a State**" means the aggregate value of all taxable supplies, exempt supplies, exports of goods and / or services made within a State by a taxable person and inter-state supplies of goods and / or services made from the State by the said taxable person excluding taxes, if any charged under the CGST Act, SGST Act and the IGST Act, as the case may be;

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 8 and the value of inward supplies.

43. Tax Return Preparers

Statutory Provision

(1) The appropriate Government may, by rules, prescribe the manner of approval of Tax Return Preparers, their eligibility conditions, duties and obligations, manner of removal and such other conditions as may be relevant for their functioning as a Tax Return Preparer.

(2) A registered taxable person may, in the manner prescribed, authorise an approved Tax Return Preparer to furnish the details of outward supplies under section 32, the details of inward supplies under section 33 and the return under section 34, 39 or section 40, as the case may be, and such other tasks as may be prescribed.

(3) Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any furnished in the return and/or other details filed by the Tax Return Preparer shall continue to rest with the registered taxable person on whose behalf such return and details are filed.

43.1 Introduction

This provision relates to filing of returns by a tax return preparer.

43.2 Analysis

Following Procedure has to be followed:

(1) An application in **FORM GST TRP-1** may be made to the officer authorised in this behalf for enrolment as Tax Return Preparer 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 TRP-2** or reject his application where it is found that the applicant is not qualified to be enrolled as a Tax Return Preparer.

(3) The enrolment made under sub-rule (2) shall be valid until it is cancelled.

(4) If any Tax Return Preparer is found guilty of misconduct in connection with any proceeding under the Act, the authorised officer may, by order, in **FORM GST TRP-4** direct that he shall henceforth be disqualified under section 34, after giving him a notice to show cause in **FORM GST TRP-3** 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 Tax Return Preparers enrolled under sub-rule (1) shall be maintained on the Common Portal in **FORM GST TRP-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 Tax Return Preparer.

(7) Any taxable person may, at his option, authorise a Tax Return Preparer on the Common Portal in **FORM GST TRP-6** or, at any time, withdraw such authorisation in **FORM GST TRP-7** and the Tax Return Preparer so authorised shall be allowed to undertake such tasks as indicated in **FORM GST TRP-6** during the period of authorisation.

(8) Where a statement required to be furnished by a taxable person has been furnished by the Tax Return Preparer authorised by him, a confirmation shall be sought from the taxable person over email or SMS and the statement furnished by the tax return preparer shall be made available to the taxable 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 Tax Return Preparer.

(9) A Tax Return Preparer can undertake any or all of the following activities on behalf of a taxable person, if so authorised by the taxable person to:

(a) furnish details of outward and inward supplies;

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

(c) make payments 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 taxable person opting to furnish his return through a Tax Return Preparer shall-

(a) give his consent in **FORM GST TRP-6** to any Tax Return Preparer to prepare and furnish his return; and

(b) before confirming submission of any statement prepared by the Tax Return Preparer, ensure that the facts mentioned in the return are true and correct.

(11) The Tax Return Preparer 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 Taxable Person continues to be liable for the correctness of the return filed through Tax Return Preparer.

Tax Return Preparer: means any person who has been approved to act as a Tax Return Preparer under the scheme framed under section 43; [Section 2(102)].

Appropriate Government: means the Central Government in case of the IGST and the CGST, and the State Government in case of the SGST; [Section 2(11)].

43.3 FAQ

Q1. Whether recipient of supply is entitled for a credit denied earlier on the ground that the supplier's return does not read the data duly, once the same is rectified subsequently? What are the conditions?

Ans. At the outset, the details in a return of recipient on inward supplies should ensure perfect matching with those in outward supplies furnished by other party (supplier).

If initially the credit is denied and subsequently the same is available to recipient in the light of revised return by the original supplier, the recipient shall be entitled for such credit. However, he cannot get refund of interest more than the amount of interest paid by the supplier to the Government.

Q2. Whether final return has to be filed by ongoing concern or by a registered tax payer who wants to cancel his GST registration?

Ans. No, only a Tax Payer whose GST Registration is to get cancelled is required to file such return.

Q3. If a Registered Tax payer files his return through a Tax Return Preparer, for the correctness of the return who shall be liable – Tax Payer or Return Preparer?

Ans. As per Section 43, certainly the Taxable Person is the person who is responsible for the correctness of the return filed through Tax Return Preparer.

Q4. Explain a simple transaction flow relating to GST Return Processing from GST Tax administration's perspective.

Ans. A brief presentation thereof could be as follows –

- Acknowledge the receipt of the return filed by the taxpayer after conducting required validations.
- Once a return is acknowledged, forward that GST Return to tax authorities of Central and appropriate State Govt. through the established IT interface.
- The ITC claim will be confirmed to purchasing taxpayer in case of matched invoices after 20th of the month succeeding the tax period provided the supplier has submitted the valid return (and paid self-assessed tax as per return).
- Communicate to the taxpayers through SMS/e-Mail, about the macro-results of the matching. The details will be in the taxpayers' dashboard/ledger which can be viewed after log-in at the Portal.
- Auto-populate the ITC reversals due to mismatching of invoices in the taxpayer's account in the return for the 2nd month after filing of return for a particular month.
- Aggregation of cross-credit utilization of IGST and SGST for each State and generation of settlement instructions based on IGST model and as finalized by the Payments Committee. This has to be with dealer-wise details as the concerned tax administrations follow on activities will be dependent on that detailing.

Chapter – IX
Payment of Tax

44 Payment of Tax, Interest, Penalty and other Amounts

Statutory provision

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a taxable person by internet banking or by using credit/debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by any other mode, subject to such conditions and restrictions as may be prescribed in this behalf, shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed.

Explanation. - The date of credit to the account of the appropriate Government in the authorized bank shall be deemed to be the date of deposit in the electronic cash ledger

(2) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger, in accordance with section 36, to be maintained in the 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 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.

(5)(a) The amount of input tax credit on account of IGST available in the electronic credit ledger shall first be utilized towards payment of IGST and the amount remaining, if any, may be utilized towards the payment of CGST and SGST, in that order.

(b) The amount of input tax credit on account of CGST available in the electronic credit ledger shall first be utilized towards payment of CGST and the amount remaining, if any, may be utilized towards the payment of IGST.

(c) The input tax credit on account of CGST shall not be utilized towards payment of SGST.

{CGST Act}

(b) The amount of input tax credit on account of SGST available in the electronic credit ledger shall first be utilized towards payment of SGST and the amount remaining, if any, may be utilized towards the payment of IGST.

(c) The input tax credit on account of SGST shall not be utilized towards payment of CGST.

{SGST Act}

(6) The balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount payable under the Act or the rules made thereunder may be refunded in accordance with the provisions of section 48 and the amount collected as CGST/ SGST shall stand reduced to that extent.

(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:

(a) self –assessed tax, and other dues related to returns of previous tax periods;

(b) self-assessed tax, and other dues related to return of current tax period;

(c) any other amount payable under the Act or the rules made thereunder including the demand determined under Section 66 or 67.

(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 and /or services.

Explanation.1- For the purposes of this section, the expression "tax dues" means the tax payable under this Act and does not include interest, fee and penalty.

Explanation. 2- For the purposes of this section, the expression "other dues" means interest, penalty, fee or any other amount payable under the Act or the rules made thereunder.

44.1 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 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.

44.2 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 44 of the Revised Model GST Law.

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
   - Real Time Gross Settlement
   - 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 the manner to be prescribed.
3. Date of credit into the treasury of the State Government/ Central Government is deemed to be the **date of deposit** (not the actual date of debit to the account of the taxable person).
4. 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.

B. ELECTRONIC CREDIT LEDGER

Sub Section (2) of Section 44 of the Revised Model GST Law provides that the self-assessed Input Tax Credit as per return filed by a taxable person shall be credited to its **Electronic Credit Ledger**. This ledger shall be maintained in the manner to be prescribed.

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 change basis

The above list is illustrative and not exhaustive.

MANNER OF UTILISATION OF ITC AND CROSS UTILIZATION

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.

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

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 and vice versa.

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 48 (dealing with refunds). The amount collected as CGST/SGST shall stand reduced to that extent.

C. TAX LIABILITY LEDGER:

Tax Liability Ledger is required to be maintained electronically for all liabilities of a taxable person. This ledger may include the following amounts (illustrative and not exhaustive)

1. The amount of liability based on self-assessment of returns.
2. Liability arising out of any demand notice or adjudication proceedings requiring payment of tax or penalty or reversal of ITC or interest.
3. Liability arising out of compounding proceedings.
4. The available credit utilized as against the available amounts in the cash register or the credit register.

Order of discharge of tax

Sub-Section (8) prescribes the chronological order in which the liability of a taxable person has to be discharged:

1. Self-assessed tax and other dues arising out of returns for **previous tax periods** have to 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) 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.

44.3 Comparative Review

The Electronic Cash Ledger, Electronic Credit Ledger and Tax Liability Register are unique features of the Revised Model GST law. The availment and utilization of credit under the central excise, service tax and VAT laws is prescribed under a detailed set of Rules.

44.4 Related Provisions

Section 11 of the IGST Act is a verbatim reproduction of Revised GST Model Law except sub-section (c). Sub-Section (c) is exclusive to CGST and SGST enactments. Further Explanation 2 defining "Other dues" is not present in IGST Act, which appears to be a left out provision.

44.5 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. The amount available in the electronic cash ledger can be used for making payment of tax, interest, penalty or any other amount.

Q.3 What are the major and minor heads of Credit in the Electronic Cash Ledger?

Sl no.	Major heads	Minor Heads
1.	IGST	Tax
2.	CGST	Interest
3.	SGST	Penalty
4.	-	Any other amount

Q4. What is meant by Cross-utilization of credit and how is it done in the Electronic Cash Ledger?

Ans. The amount available in the electronic credit ledger may be used for making payment towards output tax payable under the Act or Rules. The manner of utilization, conditions and time lines would be prescribed.

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 and vice versa.

Q6. Is cross-utilization permissible among minor heads falling under one major head in the Electronic Cash Ledger?

Ans. No, cross-utilization is not permissible among minor heads falling under one major head in the Electronic Cash Ledger

Q7. What are the amounts to be reflected in the Electronic Credit Ledger?

Ans. The input tax credit as self-assessed in the return of a taxable person shall be reflected in the electronic credit ledger.

Q8. 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.

Q9. Is there any possibility of refund under the GST law or is adjustment alone permissible?

Ans. There is a possibility of refund under GST law.

Q10. What is the order in which tax liability has to be discharged?

Ans. The order in which the liability of a taxable person has to be discharged is as under:

1. Self-assessed tax and other dues arising out of returns for previous tax periods have to 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).

44.6 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

(b) SGST then CGST

(c) CGST and SGST simultaneously

(d) None of the Above

Ans. CGST then SGST

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

(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

45 Interest on delayed payment of tax

Statutory provision

(1) Every person liable to pay tax in accordance with the provisions of the Act or rules made thereunder, who fails to pay the tax or any part thereof to the account of the Central or a State Government within the period prescribed, shall, on his own, for the period for which the tax or any part thereof remains unpaid, pay interest at such rate as may be notified, on the recommendation of the Council, by the Central or a State Government.

(2) The interest under sub-section (1) shall be calculated from the first day such tax was due to be paid.

(3) In case a taxable person makes an undue or excess claim of input tax credit under sub-section (10) of section 37 or undue or excess reduction in output tax liability under sub-section (10) of section 38, he shall be liable to pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be at the prescribed rate for the period computed in the manner prescribed.

45.1 Introduction

This section lays down the following:

1. Liability to pay interest for belated payment of tax.
2. It also deals with payment of interest in case the taxable person makes an undue or excess claim of input tax credit or undue or excess reduction in output tax liability.

45.2 Analysis

Sub-Section (1) of Section 45 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.

The phrase 'on his own' used in the section indicates that the payment of interest is automatic and should be made voluntarily, even without a demand.

Interest shall be calculated from the first day when the tax is due to be paid, till the date of payment of tax. The term 'tax' has been defined to mean goods and services tax levied on the supply of goods and/or services under this Act and includes amount payable under the composition scheme. There are no specific provisions for payment of interest on the interest amount due. Interest is also leviable where there is: -

(i) undue or excess claim of ITC under section 37 (10) i.e. where the amount reduced from the output tax liability is not as declared by the supplier in his valid return filed within the time prescribed.

(ii) undue or excess reduction in output tax liability under sub-section (10) of section 38,

i.e. where the amount of reduced output tax liability is increased in output tax liability on account of undue or excess reduction in output tax liability.

The rate of penal interest and the period of computation of penal interest will be notified only in the Rules or by way of notification issued the by the Central or State Government of recommendation of the Council.

COMPUTATION PERIOD FOR PAYMENT OF INTEREST UNDER SECTION 45 OF REVISED MODEL GST ACT:

1. 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.

   Section 34 (2) lays down the last date for remittance as the last date on which taxable person is required to furnish such return.

2. Section 66(4) provides that if the tax along with interest has been paid, the adjudicating authority shall not serve any show cause notice.

3. Section 66 (6) provides that where a person has been served with show cause notice but has made the payment of tax and penal interest under Section 45(1) 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.

4. Thus from a conjoint reading of Section 45(1) 66(4) and 66 (6) of the Model GST 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.

5. The ratio 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 Revised Model GST Act.

45.3 Comparative Review

Section 45 (1) r/w. Section 66(4) & 66(6) of the revised model GST Act specifically states that where the belated payment of tax along with interest is done voluntarily, the proceedings come to an end and penalty is longer leviable. 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.

Payment of interest voluntarily and without demand is specifically provided for in the revised model GST law.

The rate of interest varies between State VAT laws and the Central excise/service tax laws. The rate of interest is yet to be prescribed under the revised model GST law.

45.4 Related Provisions

Act	Section
CGST	Section 34 (1) & 2 Section 66 (4) & 66(6)

45.5 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 Central or a State 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 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 penal interest as per show cause notice?

Ans. Where the person has made payment of tax and penal interest under Section 45~~(1)~~ 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 37 (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 38(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.

45.6 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 first day such tax was 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 first day such tax was due to be paid

46. Tax deduction at source

Statutory provision

(1) Notwithstanding anything contained to the contrary in this Act, the Central or a State Government may mandate,-

(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,[hereinafter referred to in this section as "the deduct or"], to deduct tax at the rate of one percent from the payment made or credited to the supplier [hereinafter referred to in this section as "the deductee"] of taxable goods and/or services, notified by the Central or a State Government on the recommendations of the Council, where the total value of such supply, under a contract, exceeds rupees five lakh.

Explanation. -For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the tax indicated in the invoice.

(2) The amount deducted as tax under this section shall be paid to the account of the appropriate Government by the deduct or within ten days after the end of the month in which such deduction is made, in the manner prescribed.

(3) The deduct or shall, in the manner prescribed, furnish to the deductee a certificate 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.

(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 appropriate Government, the deduct or shall be liable to pay, by way of a late fee, a sum of rupees one hundred per day from the day after the expiry of the five day period until the failure is rectified:

Provided that the amount of fee payable under this sub-section shall not exceed 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 deduct or filed under Sub-section (3) of Section 34~~,~~ in the manner prescribed.

(6) If any deduct or fails to pay to the account of the appropriate Government the amount deducted as tax under sub-section (1), he shall be liable to pay interest in accordance with the provisions of sub- section (1) section 45, in addition to the amount of tax deducted.

(7) Determination of the amount in default under this section shall be made in the manner specified in Section 66 or 67, as the case may be.

(8) Refund to the Deductor or the Deductee, as the case may be, arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 48:

Provided that no refund to deductor shall be granted if the amount deducted has been credited to the electronic cash ledger of the deductee.

46.1 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 or the State 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.

46.2 Analysis

The TDS provision is common for CGST and SGST Act. Both enactments empower the Central Government /State Government, as the case may be, to make it mandatory for the following persons to deduct tax at source from payments made or credited to the suppliers of taxable goods and / or services.

CGST	SGST
Central Government department or Establishment.	State Government department or Establishment.
Local Authority.	Local Authority.
Central Government Agencies.	State Government Agencies.
Persons or category of persons notified by the Central Government on recommendation of the Council.	Persons or category of persons notified by the State 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 5 lakhs Value of supply and it shall exclude the tax indicated in the invoice.
3. The amount deducted shall be paid to the credit of the Central Government or the State Government treasury as the case may be, within ten days after the end of the month in which such deduction is made. Manner of such payment may be prescribed.

   For instance, if the tax deduction is made between the first and 15 of May, the remittance into the treasury has to be made on or before June 10th i.e. within ten days after the end of the month.

If the deduction is made between May 15 and May 31st the remittance has to be made on or before June 10th i.e. within ten days after the end of the month.

4. The Deductor has to furnish a TDS certificate 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 into the State or Central Treasury as the case may be.
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 45 in addition to the amount of tax deducted.
8. The amount of tax deducted reflected in Electronic Cash Ledger of Deductee in the return 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.
9. Refund on excess collection: The Deductor or the Deductee can claim refund of excess deduction or erroneous deduction. The provisions of section 48 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).

   The circumstances in which, and the mechanism by which, the Deductor can claim refund of excess deduction or erroneous deduction is not very clear at this point of time. We will get clarity once the Rules are framed.

46.3 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' tax.

Comparative table between State VAT Law and Revised Model GST Act:

TDS Provisions under

S.No.	State VAT Law	Model GST
1.	Applicable only to works contractors.	Applicable to suppliers notified by State Government or 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. TDS on interstate supplies is not clear

46.4 Related provisions

Section 44 and 48 of the Revised Model GST Law.

46.5 FAQ

Q1. Who are the 'persons' who can deduct tax at source under Section 46 of Revised Model GST Law?

Ans. The following persons are to deduct tax as per the provisions of Section 46 of the model GST 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 46 deduct tax at source?

Ans. The Deductors u/s 46 are required to deduct tax from the payment made or credited to the supplier of taxable goods and/ or services, notified by the Central or a State Government on the recommendations of the Council, where the total value of such supply, under a contract, exceeds rupees five 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 standard 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 Central or State Government treasury?

Ans. The amount deducted shall be paid to the credit of the Central Government or the State Government treasury, as the case may be, 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 the prescribed manner 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.

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 34, 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 48. 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.

46.6 MCQ

Q1. The deduction of tax by the Deductor under Section 46 of Revised Model GST Law is at the rate of:

(a) 2%

(b) 3%

(c) 1%

(d) None of the above.

Ans. (d) None of the above (1% in case of CGST / SGST and 2% in case of IGST)

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 (Seems to be drafting anomaly in the MGL)

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 the Rules to be notified yet)

Chapter – X
Transfer of Input Tax Credit

47. Transfer of Input tax credit

Statutory Provision

On utilization of input tax credit availed under the CGST Act for payment of tax dues under the IGST Act as per sub-section (5) of section 44, the amount collected as CGST 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 CGST account to the IGST account in the manner and time as may be prescribed.

Note*: This provision is to be incorporated in the CGST Act.*

On utilization of input tax credit availed under the SGST Act for payment of tax dues under the IGST Act as per sub-section (5) of section 44, the amount collected as SGST shall stand reduced by an amount equal to the credit so utilized and the State Government shall transfer an amount equal to the amount so reduced from the SGST account to the IGST account in the manner and time as may be prescribed.

Note. This provision is to be incorporated in the SGST Act.

47.1 Introduction

This section deals with transfer of input tax credit (ITC) from CGST to IGST account and SGST to IGST account.

47.2 Analysis

(i) This provision deals with transfer of the ITC from CGST account to IGST account by Central Government.

(ii) It also deals with transfer of ITC from SGST account to IGST account by State Governments.

(iii) In case of utilization of ITC availed under the CGST Act for payment of tax dues under the IGST Act, the amount collected as CGST should be reduced equal to the credit so utilized.

(iv) The Central Government/State Government should transfer the ITC after adjusting IGST balance standing in the credit of Central Government account.

(v) The above provisions should be incorporated in the IGST Act and SGST Act respectively.

(vi) For transferring the credits to the respective states there should be separate mechanism, which Government should notify by rules/regulation/notification.

(vii) State Government also after adjusting the ITC which has to be received by it from

central government has to transfer the balance to the central government on a periodical basis.

(viii) The mechanism should be accepted by both State Government and Central Government which is mentioned in the 101st Constitutional Amendment Act, 2016.

(ix) Transfer of the available credit will be possible only when the assessee has properly paid the dues to the government account and filed the return properly.

(x) Central Government/State Government will have equal powers in this case and State Government should wait till they receive their part of taxes from the Central Government.

(xi) The Government may fix the timeframe within which Central Government has to transfer the ITC collected to the State Government.

47.3 Comparative review

There are no specific provisions in any of the earlier laws such as Central Sales Tax Act 1956, Central Excise Act 1944 or Finance Act 1994.

The power is given in Articles 268, 268A and 269 of the Constitution of India, wherein it is mentioned that the taxes or duties or fees collected by Central Government should be appropriated to the States or the Central Government may assign to the States to collect the taxes and transfer the amount collected to the Central Government.

47.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 44(5)	Utilization of input tax credit	Methodology of utilisation of ITC available in the electronic credit ledger.

47.5 FAQs

Q1. Whether there will be any time limit for transfer of ITC?

Government will prescribe the time limit separately so that there should not be any difficulty for States to plan for their budgets.

Q2. Whether there will be any mechanism prescribed?

There is no specific mechanism prescribed in the section, but the same is discussed in the 101stConstitution Amendment Act and further the Central Government will come up with separate mechanism for transfer of unutilized credit.

Q3. Whether there be separate team for allocation of taxes to the states/centre?

The Goods and service Tax Network (GSTN) will have the full mechanism to set-off the CGST, IGST and SGST and balance will be distributed to States.

47.6 MCQ

Q1. On utilisation of ITC availed under CGST Act for paying IGST the …….. Will be transferred to IGST Account.

(a) IGST

(b) CGST

(c) SGST

(d) CENVAT

Ans. (b) CGST

Q2. On utilisation of ITC availed under SGST Act for paying IGST the …….. Will be transferred to IGST Account.

(a) IGST

(b) CGST

(c) SGST

(d) CENVAT

Ans. (c) SGST

Chapter – XI
Refunds

48. Refund of tax

Statutory Provision

(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 in that regard to the proper officer of IGST/CGST/SGST before the expiry of two years from the relevant date in such form and in such manner as may be prescribed:

PROVIDED that a registered taxable person, claiming refund of any balance in the electronic cash ledger as per sub-section (6) of section 44 may claim such refund in return furnished under section 34 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 (46 of 1947), Consulate or Embassy of foreign countries or any other person or class of persons as notified under section 49, entitled to a refund of IGST/CGST/SGST paid by it/him on inward supplies of goods and/or services, may make an application for such refund to the proper officer, in the form and manner prescribed, before the expiry of sixth months from the last day of the month in which such supply was received

(3) Subject to the provisions of sub-section (10), a taxable 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 exports including zero rated supplies 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:

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 claims refund of output tax paid under the IGST Act, 2016.

(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 section30) 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 five lac rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences and instead, he may file a declaration, based on the documentary or other evidences 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.

(6) Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of export of goods and/or services made by registered taxable person, other than such category of registered taxable persons as may be notified in this behalf, refund on a provisional basis ninety percent of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in the manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for the 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

Explanation- The "application" for the purpose of this sub-section shall mean complete application containing all information as may be prescribed.

(8) Notwithstanding anything contained in sub-section (5) or sub-section (6), 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 on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported out of India;

(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;

(d) refund of tax in pursuance of section 70;

(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 Central or a State 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 as provided in sub-section (8).

(10) Notwithstanding anything contained in sub-section (3), where any refund is due under the said sub-section 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 any earlier law.

Explanation- For the purposes of this sub-section the expression "specified date" shall mean—

(a) the last date for filing an appeal under this Act, in a case where no appeal has been filed

(b) thirty days from the date of filing an appeal under this Act, in a case where an appeal has been filed.

(11) Notwithstanding anything contained in sub-section (5) or sub-section (6), 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 be entitled to interest as provided under section 50, if as a result of the appeal or further proceeding 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 24 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 34.

(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 rupees one thousand rupees.

Explanation. — For the purposes of this section -

1. "refund" includes refund of tax on goods and/or services exported out of India or on inputs or input services used in the goods and/or services which are exported

out of India, 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 filed;

(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 by such person; and

(h) in any other case, the date of payment of tax.

48.1 Introduction

This section deals with the legal and procedural aspects of claiming refund by any person. The refund can be claimed for -

— 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 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 and
  - input tax rate being higher than output tax rate.

This Section provides for conditions and procedures for claiming refund without specifying all the circumstances in which the refund will be eligible for.

48.2 Analysis

(i) This provision specifies that the application for refund shall be made;
- to the proper officer of IGST/CGST/SGST;
- within two years from the relevant date;
- In the prescribed manner;

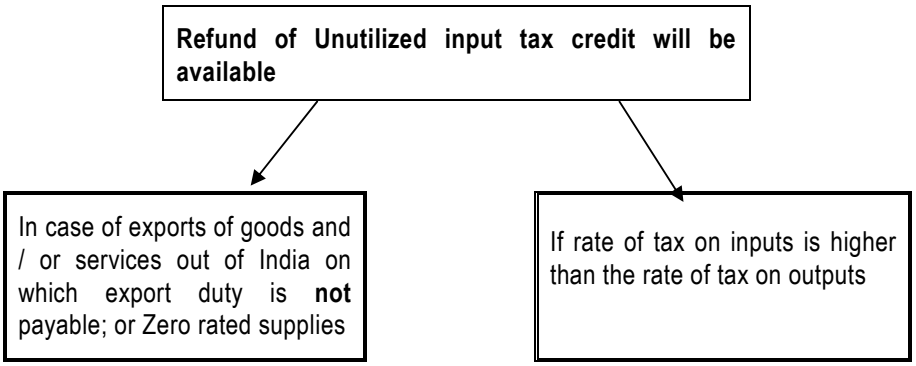
(ii) The time limit of two years will not apply where tax / interest / or any other amount has been paid under protest.

(iii) In case of taxable person claiming refund of any balance in the electronic cash ledger, it can be claimed in return furnished under section 34.

(iv) Following persons are entitled to a refund of IGST/CGST/SGST paid by it/him on inward supplies of goods and/or services –
- (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 (46 of 1947),
- (c) Consulate or Embassy of foreign countries or
- (d) any other person or class of persons as notified under section 49

(v) Those agencies may make an application for such refund to the proper officer, in specified form and manner within six months from the end of the month in which such supply was received.

(i) 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 as well:

(a) If the goods exported out of India are subjected to export duty; or

(b) If the goods exported out of India are exempted or nil rated;

(c) If supplier claims refund of output tax paid under IGST Act.

In a business scenario, such a situation will not arise. This is because once a rebate of tax paid on output supply there will not be any balance left relating to such transaction in respect of which refund is possible. However, there is a possibility that revenue officer construing it as output tax rebate and refund of accumulated credit are mutually exclusive options and once one of the options is opted other option is closed. Therefore, clarity in this regard has to be provided.

(ii) The refund application has to be supported by prescribed documents evidencing facts that the refund is due to the applicant.

(iii) The applicant must submit documentary evidences including invoice or similar document which are issued by him to indicate that the tax payable on the supplies, to establish the fact that incidence of tax/interest/amount paid was not passed on by the claimant to any other person.

— If the amount of refund claim is less than ₹ 5 lakhs, there is no need of filing such documentary evidence. Instead, a self-declaration based on the documentary and other evidences by the claimant, certifying that he has not passed on the incidence of such tax and interest is sufficient to claim refund.

(iv) The refund relating to an application if found in order, will be sanctioned within sixty days from the date of receipt of application containing all the prescribed information.

(v) The refund will be **sanctioned to the claimant**, in the following cases –

— refund of tax on goods and/or services exported out of India;

— refund of tax on inputs or input services used in the goods and/or services which are exported out of India;

- 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 to any other person; or
- the tax or interest borne by notified (by Central/State Government on the recommendation of the council) class of applicants;
- refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued;
- refund of tax in pursuance of section 70;

(vi) In other cases where the application is found to be in order, the refund amount, shall be **credited to Consumer Welfare Fund**.

(vii) It is also provided that in case of refund claim by persons other than notified registered taxable 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 prescribed conditions, limitations and safeguards. Remaining ten percent may be refunded after due verification of documents furnished by the applicant.

(viii) 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
  - 30 days from the date of filing the appeal under this Act, where an appeal is filed; and
  - in case where appeal is not filed, on the last date of the due date for filing appeal.

(ix) The deduction from refund due may be tax, interest, penalty, fee or any other amount which remains unpaid under GST Act or any other earlier 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

the Commissioner is of the opinion that granting of refund would affect the revenue adversely in the said appeal or proceeding on account of malfeasance or fraud committed, the commissioner may withhold the refund till such time as it may determine. This can be done only after affording the taxpayer an opportunity of being heard

(x) 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 34 are furnished.

(xi) No refund shall be paid to an applicant, if the amount is less than rupees one thousand.

Relevant date: The relevant date is critical to determine 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
  - exported by sea or air ->date when the ship or the aircraft leaves India; or
  - exported by land ->date when such goods pass the frontier; or
  - 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 filed.
- Refund of tax paid on **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 by such person; and
- In any other case, the date of payment of tax

Situation of Refund	**2 years from below Relevant Date**
On account of excess payment	Date of payment of GST
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
On account of refund of accumulated ITC due to inverted duty structure	On account of refund of accumulated ITC due to inverted duty structure

48.3 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.

48.4 Related provisions

Section / Rule / Form	Description	Remarks
Section 2(37)	Deemed Exports	Maybe from Foreign Trade Policy
Section30	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.
Section51	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.

48.5 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.

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

49. Refund in certain cases

Statutory Provision:

The Central/ State 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 (46 of 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 received by them.

49.1 Introduction

This section deals with refund of taxes paid on notified supplies of goods or services received by certain specified agencies notified by the Central / State Government on the recommendation of the Council.

49.2 Analysis

This section provides that –

(i) The Central / State Government, is empowered to notify certain agencies on the recommendation of the council, to be entitled to claim refund under this section.

(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 (46 of 1947),

  (c) any other person or class of persons as may be specified in this behalf.

(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 received by them. The refund is subject to such conditions and restrictions as may be prescribed,

49.3 Related provision

Section	Description
Section 48	Refunds

49.4 FAQs

1. Which all are the agencies that can be notified to be eligible to claim refund of taxes under Section 49 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 (46 of 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 received by them.

49.5 MCQs

Q1. Who is empowered to notify the agencies that are entitled to claim refund under this section?

(a) Central / State Government

(b) Board

(c) GST Council

(d) None of the above

Ans. (a) Central / State Government

50. Interest on delayed refunds

Statutory Provision:

If any tax ordered to be refunded under section 48 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate as may be specified in the notification issued by the Central or a State Government on the recommendation 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.

Explanation.- 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 48, 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) for the purposes of this section.

50.1 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.

50.2 Analysis

(i) The section provides that interest is payable if –

- Tax paid becomes refundable under section 48 to the applicant; and
- It is not refunded within 60 days from the date of receipt of application for refund of tax under Section 48(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 will be notified by the Central Government or the State Government on the recommendation of the Council.

Illustration:

A Ltd has filed a refund claim of excess tax paid with all the documents and records on 19.06.2017. The department sanctioned the refund on 30.09.2017. In such a case, interest has to be paid for the period from 18.08.2017 to 30.09.2017.

(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 19.06.2017. 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 30.07.2018. In such case interest has to be paid for the period from 18.08.2017 to 30.07.2018.

50.3 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.

Related provisions

Statute	Section/Rule/Form	Description	Remarks
GST	Section 48	Refunds	Provision providing for refund of tax.

50.4 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 will be notified by Central/State 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 Section48(3). Therefore, there is no provision for payment of interest on delayed refund of unutilized input tax credit.

50.5 MCQ

Q1. Interest U/s 50 is applicable on delayed payment of refunds issued under?

(a) Section48

(b) Section 39

(c) Section 36

(d) Section 40

Ans. (b) Section 48

Q2. Interest U/s50 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

51. Consumer Welfare Fund

Statutory Provision:

(1) There shall be established by the Central or a State Government a fund, to be called the Consumer Welfare Fund.

(2) There shall be credited to the Fund, in such manner as may be prescribed, -

(a) the amount of tax referred to in sub-section (5) or sub-section (6) of section 48; and

(b) any income earned from investment of the amount credited to the Fund and any other monies received by the Central or a State Government for the purposes of this Fund.

51.1 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.

51.2 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 48; and
- any income earned from investment of the amount credited to the Fund and
- any other monies received by the Central or a State Government for the purposes of this Fund.

51.3 Comparative Analysis with the present law

These provisions are broadly similar to the provisions contained in existing Central Indirect Tax laws.

51.4 Related provisions

Section / Rule / Form	Description
Section 48	Provision for claiming refund of tax
Section 52	Provisions relating to the manner of utilization of the fund.

51.5 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 48; and
- any income earned from investment of the amount credited to the Fund and
- any other monies received by the Central or a State Government for the purposes of this Fund.

51.6. MCQ

Q1. In cases where the application 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

52. Utilization of the Fund

Statutory Provision:

(1) Any money credited to the Fund shall be utilised by the Central/State Government for the welfare of the consumers in accordance with such rules as that Government may make in this behalf.

(2) The Central/State Government shall maintain or, if it thinks fit, specify the authority which shall maintain, proper and separate account and other relevant records in relation to the Fund in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.

52.1 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.

52.2 Analysis

(i) It should be ensured that the monies credited to the fund shall be utilized to provide assistance to protect the welfare of the consumers, as per the Rules made by the Government

(ii) The Central or the State Government shall maintain proper and separate records in relation to the Fund in consultation with the Comptroller and Auditor-General of India.

52.3 Comparative review

These provisions are broadly similar to the existing provisions contained in Section 12D of the Central Excise Act, 1944.

52.4 Related provisions

Section/ Rule / Form	Description
Section 48	Provision for claiming refund of tax
Section 51	Provisions relating to the amounts to be credited to Consumer Welfare Fund.

52.5 FAQ

Q1. How can it be traced whether the amount in the fund is utilised for the welfare of the consumers?

Ans. The Central/State Government shall maintain proper and separate account and other relevant records in relation to the Fund 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 amounts in the fund were utilised for the welfare of the consumers.

52.6 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 Central/State Government

(b) the authority specified by the CG/SG

(c) the assessee who is claiming refund

(d) (a) or (b)

Ans. (d) (a) or (b)

Chapter– XII
Accounts and Records

53. Accounts and other records

Statutory provision

(1) Every registered taxable person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of production or manufacture of goods, of inward or outward supply of goods and/or services, of stock of goods, of input tax credit availed, of output tax payable and paid, and such other particulars as may be prescribed in this behalf:

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 concerned:

PROVIDED FURTHER that the registered taxable person may keep and maintain such accounts and other particulars in the electronic form in the manner as may be prescribed.

(2) The [Commissioner/Chief Commissioner] may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified.

(3) Where the [Commissioner/ Chief Commissioner] considers that any class of taxable persons 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.

(4) Every registered taxable 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 annual accounts, the reconciliation statement under sub-section (2) of section 39 and such other documents in the form and manner as may be prescribed in this behalf.

(5) Subject to the provisions of clause (g) of sub-section (4) of section 17, where the registered taxable person fails to account for the goods and/or services in accordance with sub-section (1), the proper officer shall determine the amount of tax payable on the goods and/or services that are not accounted for, as if such goods and/or services had been supplied by such person and in this regard, the provisions of section 66 or 67, as the case may be, shall apply, mutatis mutandis, for determination of such tax.

(6) Every owner or operator of warehouse or godown or any other place used for storage of goods irrespective of whether he is a registered taxable person or not shall maintain records of consigner, consignee and other relevant details of the goods as may be prescribed.

53.1 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/Chief Commissioner for relaxation and 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.
5. Every owner or operator, of a place of storage, whether such owner or operator is registered or not, shall maintain records and other relevant details as may be prescribed.

53.2 Analysis

Place of business - Section 2 (74) of the Revised Model GST law 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 and/or services; 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;

Section 2(77) of the Revised Model GST law defines **'Principal place of business"** to mean the place of business specified as the principal place of business in the certificate of registration.

(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 and/or services;
- Outward supply of goods and/or services
- Stock of goods;
- Input tax credit availed;
- Output tax payable and paid; and
- Such other particulars as may be prescribed in this behalf.

Post 2000, the normal records of the assessee which enable the above are being accepted. Therefore, when nothing specific prescribed own record sufficient.

(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 assesses may keep and maintain such accounts and other particulars in the **electronic form** in the manner as may be prescribed.

(iv) The Commissioner/Chief Commissioner has been empowered to notify a class of taxable persons to maintain **additional accounts** or documents for such purpose as may be specified.

(v) In case the Commissioner/ Chief Commissioner considers that any class of taxable persons are 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.

(vi) Every registered taxable 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, the electronic reconciliation statement u/s 39(2) as prescribed. The relevant form is awaited.

(vii) Specific provisions in case of requirement to reverse input tax credit availed, as provided for under Section 17(4)(g) – 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 does not account for such transactions, the amount payable would be determined based on the demand provisions (Section 66/ 67 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 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 taxable 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 and/or services that are not accounted for, as if such goods and/or services had been supplied by such person. Further the provisions of section 66 or 67, as the case may be, shall apply, mutatis mutandis, for determination of such tax

(x) The provisions of Section 66 & 67 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.

53.3 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 actually 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 others

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.

53.4 Related provisions

Statute	Section or Rule	Description	Remarks
CGST	Section 10	Taxable Person	
CGST	Section 2(74)	Place of business	
CGST	Section 2(77)	Principal place of business	
CGST	Section 39(2)	Annual return	

53.5 Frequently Asked Questions

Q1. Where should the books and other records u/s 53 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 are 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 53?

Ans. The following records are to be maintained u/s 53:-

- Production or manufacture of goods.;
- Inward or outward supply of goods and/or services;
- Stock of goods;
- Input tax credit availed;
- Output tax payable and paid; and
- Such other particulars as may be prescribed in this behalf.

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 electronical form?

Ans. These records need to be maintained physically. In case they are maintained in electronic form, then they have to conform to such procedures as may be prescribed later.

Q5. Apart from the above is there any additional document that are to be submitted?

Ans. Section 53(4) 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 that are to be prescribed.

53.6 Multiple Choice Questions

Q1. The books and other records u/s 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)

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 ___

(a) Each place of business pertaining to such place alone.

(b) At the principal place of business covered mentioned in the Registration Certificate for all places of business in each State.

(c) Place where the books of account are maintained for all places situates within a State.

(d) Any place of business in a State pertaining to all places situated within that State.

Ans. (a)

Q3. Which of the following is true?

(a) The assessee can maintain lesser records with prior permission of the Commissioner / Chief Commissioner.

(b) The assessee is obligated to maintain such additional records as the Commissioner / Chief Commissioner may notify.

(c) The assessee can maintain lesser records if notified thereto by the Commissioner / Chief Commissioner.

(d) The specified class of assessees are obligated to maintain such additional or lesser records as the Commissioner / Chief Commissioner may notify.

Ans. (d)

54. Period of retention of accounts

Statutory provision

Every registered taxable person required to keep and maintain books of account or other records under sub-section (1) of section 53 shall retain them until the expiry of sixty months from the due date of filing of Annual Return for the year pertaining to such accounts and records:

PROVIDED that a taxable person, who is a party to an appeal or revision or any other proceeding before any Appellate Authority or Revisional Authority or Tribunal or Court, whether filed by him or by the department, 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 proceeding or investigation for a period of one year after final disposal of such appeal or revision or proceeding or investigation, or for the period specified above, whichever is later.

54.1. Introduction

This section provides for the period upto which records have to be retained by the assessee.

54.2. Analysis

1. Every assessee shall retain the prescribed books of accounts and other records until the expiry of sixty months (5 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 31.12.2023.

   This time period is in conformity with the time limit prescribed for issuance of order of assessment [5 years from the due date for filing of annual return or date of erroneous refund (as applicable) in cases of fraud, willful 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 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 53(1), whichever is later.

54.3. 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 pertains.
- 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 time 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.

54.4. Related provisions

Statute	Section or Rule	Description	Remarks
CGST	Section 10	Taxable Person	
CGST	Section 53	Books of account	
CGST	Section 39(2)	Annual return	

54.5. FAQ

Q1. Is there any time limit for the retentionof the books of account or other records u/s 53?

Ans. Yes, such records shall be normally retained until the expiry of sixty 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 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 53(1), whichever is later.

54.6. MCQ

Q1. The time limit for up keep and maintenance of the books of account or other records u/s 53 is___

(a) Sixty 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) Sixty months from the due date of filing of Annual Return.

(d) None of the above.

Ans. (c)

Q2. In case, the assessee is a party to an appeal or revision or any other proceeding before any Appellate Authority or 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 53(1), whichever is earlier.

(c) Six months after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 42(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 53(1), whichever is later.

Ans. (d)

Chapter– XIII
Job Work

55 Special procedure for removal of goods for certain purposes

Statutory Provisions

(1) A registered taxable person (hereinafter referred to in this section as the "principal") may, under intimation and subject to such conditions as may be prescribed, send any inputs and/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, and/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, and/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 terms of clause (b) 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 23; or

(ii) where the "principal" is engaged in the supply of such goods as may be notified by the Commissioner in this behalf.

(2) The responsibility for accountability of the inputs and/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 clause(a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with 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 clause(a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with 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.

55.1 Introduction

This section provides for a special procedure to exempt supplies from 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(61) 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".

55.2 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) Supplied 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 -

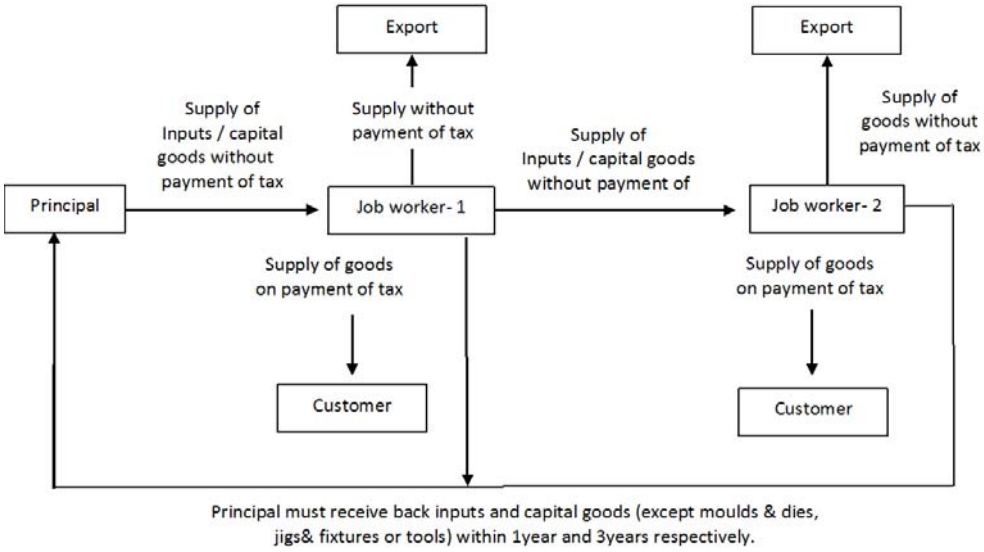
(c) If job worker is registered under Section 23;

(d) 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 within one year

As per section 55(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 within three years

As per section 55(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 pay interest from the date capital goods were sent out.

Note: Generally, moulds and dies, jigs and fixtures or tools are consumed during the processing and this being the nature of goods, no date for the receipt of the same has been specified.

Waste and Scrap generated at Job worker

As per section 55(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.

Inputs supplied on payment of GST

The principal (manufacturer, service provider, trader) can also send inputs on payment of GST. The job worker would avail the credit and sent back the processed goods on payment of GST.

Application of certain provisions of CGST Act, 2016 under IGST Act

As per section 17 of the IGST Act, the provisions relating to job work provided under CGST would be applicable in case of IGST Act also.

55.3 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.

55.4 Related provisions

In section 55 there is no specific reference to any other sections but there are other provisions where section 55 has been referred to:

Statute	Section / Rule / Form	Description	Remarks
GST	Sub-section (61) of Section 2	Job work definition	The job work has been defined to mean undertaking any treatment or process.
GST	Section 20	Taking ITC in respect of inputs sent for Job work	The condition and procedure has been prescribed.
GST	Schedule V	Liability to be registered	The turnover of job work for principal should not be included in aggregate turnover of job worker

55.5 FAQ

Q1. Who shall undertake responsibility under this provision and in case of contraventions?

Ans. The principal would undertake the primary responsibility foraccounting 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.

55.6 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 taxable person

Ans. (c) Registered taxable 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 worker

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) 3 years

Chapter – XIV
Electronic Commerce

E-commerce

As per section 2(41), **'electronic commerce'** means supply of **goods and/or services** including digital products over digital or electronic network.

'Electronic commerce

As per section 2(42), **'electronic commerce operator'** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

56 Collection of tax at source - E Commerce

Statutory Provision [section 56]

(1) Notwithstanding anything to the contrary contained in the Act, every electronic commerce operator (hereinafter referred to in this section as the "operator"), not being an agent, shall collect an amount calculated at the rate of one percent of the net value of taxable supplies made through it 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, other than services notified under sub-section (4) of section 8, made during any month by all registered taxable 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.

The amount collected under sub-section (1) shall be paid to the account of the appropriate Government by the operator within ten days after the end of the month in which such collection is made in the manner as may be prescribed.

(3) 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 effected through it, including the supplies of goods or services 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.

(4) The supplier who has supplied the goods or services 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 the manner prescribed.

(5) The details of supplies furnished by every operator under sub-section (4), shall, in the manner and within the period prescribed, be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under the Act.

(6) 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 32, the discrepancy shall be communicated to both persons in the manner and within the time as may be prescribed.

(7) The amount in respect of which any discrepancy is communicated under sub-section (7) 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 the manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

(8) The concerned supplier shall, in whose output tax liability any amount has been added under sub-section (8), be liable to pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 45 on the amount so added from the date such tax was due till the date of its payment.

(9) Any authority not below the rank of Joint Commissioner may serve a notice, either before or during the course of any proceeding under this Act, requiring the operator to furnish such details relating to—

(a) supplies of goods or services 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 operators and declared as additional places of business by such suppliers -

as may be specified in the notice.

(10) Every operator on whom a notice has been served under sub-section (10) shall furnish the required information within fifteen working days of the date of service of such notice.

(11) Any person who fails to furnish the information required by the notice served under sub-section (10) shall, without prejudice to any action that is or may be taken under section 85, 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 and/or services making supplies through the operator.

56.1 Introduction

As a start, it is important to note that all supplies of goods and / or services, whether through e-commerce route or otherwise, will be liable to CGST & SGST if the supplies are treated as intra-state supplies or payment of IGST if the supplies are treated as inter-state supplies in terms of section 4 and 3 of the IGST Act respectively. This provisions only provides for a collection of tax at source by the e-commerce operator in respect of specific supplies.

56.2 Analysis

The section starts as a non-obstante (notwithstanding) clause. Irrespective of the understanding between the supplier of goods and / or services and the e-commerce operator in their agreements, an e-commerce operator shall collect an amount at a rate of 1% of net value of taxable supplies made through it, where the consideration with respect to supplies is to be collected by operator.

All situations of supply of goods and services involving an e-commerce operator together with the applicability of TCS is tabulated hereunder:

Type of supply	Nature of charge
Supply of goods by a supplier through an e-commerce operator	Will be liable to GST in the hands of the supplier of goods. Additionally, the e-commerce operator will be liable to affect a TCS on the payments to be made to the supplier of goods.
Supply of goods by an e-commerce operator as an agent of the principal	Will be two distinct and separate supplies, one by the principal to the e-commerce operator (agent) and another by the e-commerce operator to the customer. TCS provisions will not apply.
Supply of notified services through an e-commerce operator (notified under Section 8(4))	e-commerce operator will be liable to pay GST on the supplies as if the e-commerce operator itself is the person liable to pay tax. TCS provisions will not apply.
Supply of other services through an e-commerce operator	Will be liable to GST in the hands of the supplier of services. Additionally, the e-commerce operator will be liable to effect a TCS on the payments to be made to the supplier of services.

Applicability of TCS:

TCS will be applicable in the above mentioned cases on the supplies effected through an e-commerce operator for which the consideration is receivable by the e-commerce operator from the end customer.

To explain further, if the supply is made through an e-commerce operator and if the consideration is not received by the e-commerce operator but is received, say, directly by the supplier of goods, the TCS provisions would not be applicable.

Rate of TCS:

The rate of tax to be collected at source by the e-commerce operator would be at 1% of the net value of supplies.

Payment of TCS:

In respect of the above mentioned supplies (as applicable), the e-commerce operator will be liable to affect a TCS and remit the same into the account of the Government. However, where the 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.

Further, where an electronic commerce operator neither has a physical presence in the taxable territory nor has a representative in the said territory, such electronic commerce operator shall be required to appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Meaning of 'net Value of taxable supplies' for the purpose of TCS:

"net value of taxable supplies" shall mean the

- aggregate value of taxable supplies of goods or services, other than services notified under section 8(4),
- made during any month by all registered taxable persons through the operator
- reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.
- As per proviso to section 17 of the IGST Act, in case of tax collection at source, the operator shall collect tax at the rate of 2% of the value of net supplies.

Compliances for the e-commerce operator

Upon collection of the amount (TCS) indicated supra, the following compliances are required to be adhered to, by the e-commerce operator;

(i) Should be paid to the credit of the appropriate Government within 10 days from the end of the month in which the collection is made;

(ii) Shall furnish a statement of such outward supplies of goods and / or services, electronically, giving the details of the amounts collected during the calendar month. Such statement should be filed within 10 days from the end of the month in which the collection was made;

(iii) Statement should contain details of amounts collected, supplier-wise in respect of all supplies effected through the website / url of the e-commerce operator during the calendar month.

Tax credit for the concerned supplier

The amount so remitted by the e-commerce operator would be treated as if it is tax paid by the concerned supplier. The concerned supplier would be eligible to claim credit of the same in the electronic cash ledger [as defined in Section 2(40)].

Verification of the statement filed by the e-commerce operator:

As a process, the details of the supplies furnished by the e-commerce operator would be compared with the corresponding outward supplies reflected by the concerned supplier in his valid monthly return, for the month or any of the preceding months.

If the details of the outward supplies filed by the concerned supplier does not match with the details filed by the e-commerce operator, the discrepancy shall be communicated to both, the e-commerce operator and the concerned supplier within a prescribed period.

After the communication, if the discrepancy is not rectified by the supplier, the same shall be added to the output liability of the concerned supplier in the month succeeding the month in which the discrepancy was communicated. This concerned supplier will be liable to pay this amount and interest, as applicable would also be payable for any delays from the date the tax becomes due.

Additional powers to the tax office

Any officer not below the rank of a Joint Commissioner may issue a notice to the e-commerce operator for furnishing such details as may be specified in the notice relating to:

(a) Supplies of goods and / or services effected through such operator;

(b) Stock of goods held by the suppliers making supplies at the godowns or warehouses managed by such operators and which are declared as additional places of business of the concerned supplier

Every such operator to whom the notice is issued should comply with the same and furnish the details within 15 working days from the date of service of such notice.

Extension of time for furnishing details: There is no provision for extension of time in furnishing the required details.

Any operator who does not comply with the notice shall be levied with penalty of upto ₹ 25,000.

Application of certain provisions of CGST Act, 2016 under IGST Act

As per section 17 of the IGST Act, the provisions relating to tax collection at source would be applicable in case of IGST Act also.

56.3 Comparative review

There are no provisions relating to collection of tax at source under the current tax regime. Some states have insisted on details of all e-commerce transactions to be provided.

56.4 Related provisions

Statute	Section/Rule/Form	Description	Remarks
CGST / SGST	2(41)	electronic commerce	
CGST / SGST	2(42)	electronic commerce operator'	
CGST / SGST	8(4)	Levy and collection of CGST / SGST	Payment of tax by e-commerce operator in respect of specified categories of services

Statute	Section/Rule/Form	Description	Remarks
IGST Act	5(3)	Levy and collection of IGST	Payment of tax by e-commerce operator in respect of specified categories of services
IGST Act	17	Application of certain provisions of CGST Act, 2016 under IGST Act	

Chapter – XV
Assessment

57. Self-assessment

Statutory Provision

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 34.

57.1 Introduction

In terms of Section 2(12) 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 57)
- Provisional Assessment (Section 58)
- Summary Assessment in certain special cases (Section 62)

Additionally, the CGST Act also provides for determination of the tax liability by:

- Scrutiny of tax returns filed by registered taxable persons (Section 59)
- Assessment of registered taxable person who have failed to file the tax returns (Section 60)
- Assessment of unregistered persons (Section 61)

Section 57 refers to the assessment made by the taxable person himself while all other assessments are undertaken by tax authorities.

Provisional assessment under Section 58 is an Assessment undertaken at the instance of the assessee. It is later followed by a final assessment. Section 59 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 66 of the Act. Assessments under Sections 60 and 61 are assessments undertaken by tax authorities on the principles governing best judgment assessment. Assessment under Section 62 refers to a protective assessment based on information gathered from intelligence wing of the tax authorities in a particular case.

57.2 Analysis

Self-assessment means an assessment by the tax payer himself and not an assessment by the Proper Officer. This is in line with the policy of trusting the assessee to voluntarily comply with the law. The GST regime continues to promote the scheme of self-assessment with appropriate checks and balances. 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.

.All though 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 may be a drafting anomaly that would be corrected. Power to reassess cannot be inherent in the power to assess (of any kind) permitted in the Act.

57.3 Comparative Review

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]

57.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 34	Returns	None

57.5 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 34.

58. Provisional Assessment

Statutory Provision

(1) Where the taxable person is unable to determine the value of goods and/or services 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 may pass an order 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 in this behalf, 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 as he may deem fit.

(4) The taxable person shall be liable to pay interest on any tax payable on the supply under provisional assessment but not paid on the due date specified under subsection (7) of section 34 or the rules made thereunder at the rate specified under sub-Section (1) of Section 45, from the first day after the due date of payment of tax in respect of the said 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 taxable person is entitled to a refund consequent to the order for final assessment under sub-Section (3), subject to sub-Section (8) of Section 48, interest shall be paid on such refund as provided in Section 50.

58.1 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 difficulty about:

- Transaction value to be adopted for determination of tax payable;
- Inclusion or exclusion of any receipts 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 about:

- Classification of the goods and / or services under the relevant Schedule;
- Eligibility to any exemption notification or compliance with conditions associated with such exemption.

All though it is very broad in itself but, except for the above instances – value or rate of tax – 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 want of which self-assessment cannot be done by him) to be permitted to pay tax on provisional basis;
- Proper Officer pass an order allowing payment of taxes on provisional basis subject to execution of bond by the taxable 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 taxable person and the same cannot be resorted to by the Proper Officer on *suo-motu* basis.

Under Provisional Assessment, a taxable person shall be required to pay taxes provisionally at such rate and at such value as the Proper Officer may specify in his order. A Proper Officer may also require the taxable person to execute a bond or may require a surety or security, securing 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.

Under the GST Act, a Proper Officer shall be required to finalise the assessment and pass the final assessment order, within a period not exceeding 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	No time limit fixed

It may be noted that, in the statement of outward supply to be furnished by a taxable person under section 32(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 34, the taxable personal shall be liable to pay interest on the shortfall, at the rates specified in Section 45(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 final assessment. Likewise, when the taxable 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 50. As such, the taxable 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 48 and except for authorizing refund, this Section does not itself permit grant of refund.

58.2 Comparative Review:

Section 58 of the GST 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 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.

58.3 Related Provisions:

Statute	Section / Rule / Form	Description
CGST	Section 45	Interest
CGST	Section 50	Refunds

58.4 FAQ

Q1. When is a taxable person permitted to pay tax on a provisional basis?

Ans. Tax payments can be permitted on a provisional basis only when a proper officer pass an order to permitting the same. For this purpose, the taxable 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 taxable person is unable to determine the value of goods and/ or services or determine the applicable tax rate,

etc. Further, the taxable 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 as he may deem fit.

58.5 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 34 the taxable 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 taxable 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

(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 months

(c) 6 months

(d) No time limit.

Ans. (c) No time limit

59. Scrutiny of Returns

Statutory Provision

(1) The proper officer may scrutinize the return and related particulars furnished by the taxable person to verify the correctness of the return in such manner as may be prescribed.

(2) The proper officer shall inform the taxable person of the discrepancies noticed, if any, after such scrutiny in such manner as may be prescribed and seek his explanation thereto.

(3) In case the explanation is found acceptable, the taxable person shall be informed accordingly and no further action shall be taken in this regard.

(4) 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 63, 64 or Section 79, or proceed to determine the tax and other dues under sub-Section (7) of Section 66 A or under subsection (7) of Section 67.

59.1 Analysis

Section 59 deals with a discretionary facility for a Proper Officer to scrutinize returns filed by taxable person to verify the correctness of the return. The manner of such verification is yet to be prescribed. It is a pre-adjudication process. Process of adjudication is provided in Sections 66 to 68 of the Act. During such scrutiny, discrepancies noticed may be informed to the taxable person seeking explanations on the same. This Section also authorizes taxable person to receive and respond dutifully to the explanations called for by the proper officer.

Where the explanations offered are satisfactory, this fact shall be informed to the tax payer and no further action is to be taken in this regard.

In case, satisfactory explanation is not obtained or after accepting discrepancies, taxable person fails to take corrective measures, in his return for the month in which the discrepancy is accepted by him, Proper Officer, may, take recourse after issuance of Notice under section 51 of the Act to any of the following provisions:

- Conduct audit at the place of business of taxable person in a manner provided in Section 63 of the Act; or
- Direct such taxable 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 64 of the Act; or
- Undertake procedures of inspection, search and seizure under Section 79 of the Act
- And proceed to determine dues under sections 66 & 67 of the Act.

Reference may kindly be had to the discussions under Section 63, 64, 79 and 66 to 68 in this regard.

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 66 to 68.

In doing so, the Proper Officer, is also entitled to exercise his power under section 79 of the Act, which deals with power of inspection, search and seizure.

From language used in section 79, 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 59(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 taxable person shall be informed accordingly and no further action shall be taken in this regard.

59.2 Comparative Review

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.

59.3 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 63	Audit by tax authorities	None
CGST	Section 66 & 67	Determination of tax not paid, short paid, erroneously refunded	None
CGST	Section 79	Power of inspection, search and seizure	None

59.4 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, taxable 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 taxable person in a manner provided in Section 63 of the Actor;

(b) Direct such taxable person by notice in writing to provide his records including audited books of account, etc. or ;

(c) Undertake procedures of inspection, search and seizure under Section 79 of the Act; and

(d) Issue notice under Sections 66 to 68 of the Act.

Q2. What does Section 59 deal with?

Ans. Section 59 deals with scrutiny of returns filed by registered taxable person to verify the correctness of such returns.

Q3. What is the proper officer required to do, if the information obtained from assessee u/s 59 is found satisfactory?

Ans. In case the explanation is found acceptable, the taxable person shall be informed accordingly and no further action shall be taken in this regard .

59.5 MCQ

Q1. Where the tax authorities notice a discrepancy in the details during the scrutiny of returns, the taxable 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 59 raising demand of disputed tax demand.

(a) True

(b) False

Ans. (b) False

Q3. What is the time limit after which action under section 59 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 67 or 68 of the Act.

Ans. (c) Time limit mentioned in Section 67 or 68 of the Act.

Q.4 What's the time limit, within which the taxable 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.

60. Assessment of non-filers of returns

Statutory Provision

(1) Where a registered taxable person fails to furnish the return required under Section 34 or Section 40, even after the service of a notice under Section 41, 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 time limit specified in sub-Section (7) of Section 51A or sub-Section (8) of Section 67, as the case may be.

(2) Where the taxable 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.

Explanation. Nothing in this Section shall preclude the payment of interest under Section. 45 or payment of late fee under Section 42

60.1 Introduction

Section 60 of the Act can be invoked only in case of registered taxable persons who have failed to file returns, as required, under Section 34 or as the case may be, under Section 40 of the Act. Issuing notice under Section 41 appears to be a pre-condition for initiating proceedings under Section 60 of the Act.

60.2 Analysis of Provisions

Non-compliance with the notice under Section 41 paves the way for the proceedings under this Section. If the assessee fails to furnish the return, the Proper Officer may after serving him notice under section 41 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 34 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 39, whichever is earlier. .

Therefore, issuance of notice under Section 41 is a necessity for commencing proceedings under Section 60. And non-issuance of notice under Section 41 closes the door on invoking Section 60 although other provisions are available to recover the tax dues.

If, however, a taxable 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 Section 2(109) to mean a return filed under Section 34(1) of the Act on which self-assessed tax has been paid in full.. Hence, 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 Section67), is also applicable for issuing order under section 60..

Explanation to Section 60 clarifies that, interest under section 45 on delayed payment of tax or payment of late filing fees u/s 42 for failure to furnish returns by due date, shall continue to apply to returns filed after receipt of such order.

Consequence of late fee under Section 42 and interest under Section 45 will both be application of the best judgement assessment made under this Section.

60.3 Comparative Review

It appears that Section 60 of the GST 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.

60.4. Related Provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 2(109)	Valid return	None
CGST	Section 34	Returns	None
CGST	Section 40	Final return	None
CGST	Section 41	Notice to return defaulters	None
CGST	Section 42	Late fee	None
CGST	Section 45	Interest	None

60.5 FAQ's

Q1. Whether Proper Officer is required to give any notice to taxable person before completing assessment u/s 60?

Ans. The assessment u/s 60 can be initiated only after the service of notice under section 41 i.e. Notice to return defaulters..

Q2. If a taxable person files a return after receipt of notice u/s 41 but fails to make the payment disclosed by him in the return, can assessment order u/s 60 be passed in this case?

Ans. An assessment order u/s 60 is deemed to have been withdrawn if the taxable person furnishes a valid return (including payment of taxes).

60.6 MCQ's

Q1. What is the time limit for issuing order under section 60?

(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. (c) None of the above.

Q2. The proper officer can complete assessment under section 60 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 60?

(a) 9 months from the end of financial year.

(b) 3 years for cases covered U/s 66 or 5 years for cases covered under 67

(c) 5 years for cases covered U/s 66 or 3 years for cases covered under 67

(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 60 shall be deemed to be cancelled if:

(a) Where the taxable person furnishes a valid return within 30 days of the service of the assessment order.

(b) Where the taxable person within 90 days of the service of the assessment order.

(c) Assessment order under section 60 cannot be cancelled.

(d) Where assessee intimates to the Proper Officer that he has filed the valid return.

Ans. (a) Where the taxable person furnishes a valid return within 30 days of the service of the assessment order.

Q5. After serving of notice u/s 41,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.

61. Assessment of unregistered persons

Statutory Provision

Notwithstanding anything to the contrary contained in section 66 or section 67, where a taxable person fails to obtain registration even though liable to do so, 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 due date for filing of the annual return for the year to which the tax not paid relates.

Provided that no such assessment order shall be passed without giving a notice to show cause and without giving the person a reasonable opportunity of being heard

61.1 Introduction

Section 61 is applicable to unregistered taxable persons. That is, persons who are liable to obtain registration under Section 23 and have failed to obtain registration will come within the operation of this Section.

61.2 Analysis

Section 61 is applicable to unregistered taxable persons. In such cases, officer is required to give a show cause notice and reasonable opportunity of being heard to such persons. The section begins with the phrase "Notwithstanding anything to the contrary contained in section 66 or section 67". It therefore appears that, assessment under section 61 can be completed independent of section 66 and Section 67, however, procedures contained in section 66/ 67 to the extent they are not inconsistent with section 61 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.

61.3 Comparative Review: Section 23(4) of the MVAT Act contains similar provision as that in section 61 of the GST Act.

61.4 Related Provisions

Statute	Section / Rule / Form	Description
CGST	Section 23	Registration
CGST	Section 66 & 67	Determination of tax not paid, short paid, erroneously refunded

61.5 FAQs

Q1. What is the time limit for passing order u/s 61?

Ans. The proper officer has to pass an assessment order u/s 61 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 a notice to show cause in writing and without giving him an opportunity of being heard.

61.6 MCQs

Q1. What is the time limit for passing order u/s 61?

(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 61.

(a) True

(b) False

Ans. (b) False

Q3. Section 61 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

62. Summary assessment

Statutory Provision

(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 amount due under this Section.

(2) On any application made within thirty days from the date of receipt of order passed under sub-Section (1) by the taxable person 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 66 or 67.

62.1 Analysis of Statutory Provision

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.

The summary assessment can be completed 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 taken 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.
- Based on such permission, the Proper Officer may proceed to make a determination of tax liability – summary assessment – of the person.

Summary assessment under this Section of the GST Act can therefore be construed in some sense as a 'protective assessment' carried out in circumstances, where there are 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 ground 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 Section allows the person who is assessed and is served the order so passed to come forward and make an application to the Additional / Joint Commissioner, which will then be examined and if the Additional/ Joint Commissioner is satisfied, the summary assessment order will be set aside. As regards the contents of this application, it may be understood that the applicant may attempt to challenge the reasons for the belief about risk of revenue loss and further accept to be available to respond, if proceedings under Section 66/67 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 66 or as the case may be Section 67 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 66 or as the case may be 67.

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.

62.2 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 66 & 67	Determination of tax not paid, short paid, erroneously refunded	

62.3 FAQ

Q1. When can Summary Assessment be initiated?

Ans. Summary Assessments can be initiated by a proper officer on any evidence showing a tax liability of a person coming to his notice, seeking permission from the Additional Commissioner / Joint Commissioner and proving that the taxable person is liable to pay tax

62.4 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 – XVI
Audit

63. Audit by tax authorities

Statutory provision

(1) The [Commissioner of CGST/Commissioner of SGST] or any officer authorised by him, by way of a general or a specific order, may undertake audit of any taxable person for such period, at such frequency and in such manner as may be prescribed.

(2) The tax authorities referred to in sub-Section (1) may conduct audit at the place of business of the taxable person and/or in their office.

(3) The taxable person shall be informed, by way of a notice, sufficiently in advance, not less than fifteen working days, prior to the conduct of audit in the manner 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 taxable person cannot be completed within three months from the date of commencement of audit, 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 taxable 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 taxable person,

(i) to afford him the necessary facility to verify the books of account or other documents as he may require and which may be available at such place,

(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 taxable person, whose records are audited, of the findings, the taxable person's 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 short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under Section 66 or 67.

63.1 Introduction

(a) Audit of records of tax payers is important for the proper functioning of a self-

assessment based tax system. This provision provides for audit of the business transaction of any taxable person. It is an important tool in the tax administration to ensure the compliance of law and prevent revenue leakage.

(b) Presently, EA-2000 manual is being followed by the department. The department may specify the criteria for selecting the audit cases or specifically select some cases for audit based on the risk evaluation. The understanding of global business trends for particular industry and the challenges faced need to be understood. A similar exercise of understanding the trend in Indian scenario and specific challenges faced is important. Further, understanding the auditee by way of tour of premises/ facilities and past reports needs to be undertaken before the audit. In the conduct of audit, proper sampling and in-depth verification of such sample would be important. An audit checklist of common error would help in identifying area of weaknesses.

Normally audit should not be converted into investigation. Where serious issues observed, matter may be referred to the Jurisdictional GST Officer.

63.2 Analysis

(a) Section 63 authorizes conduct of audit by the tax department of the transactions of the taxable person. The Commissioner may issue a general order or even a special order, as needed, to authorize officers to conduct such audit. The frequency, period 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 taxable person and / or office of tax authorities. Intimation of audit is to be issued to the taxable person at least 15 days in advance and the audit is to be completed within 3 months which may be extended by the Commissioner, where required, by a further period of 6 months.

(c) During the course of audit, the authorized officer may require the taxable person to afford him the necessary facility which may be available at such place to verify the books of account and also to furnish the required information and render assistance for timely completion of the audit. It is not specified, whether the records maintained in the normal course of operations, returns filed for the audit period and other contemporaneously available records alone are to be provided or whether the taxable person may be instructed to prepare new reports and analysis for purposes of this audit. Further, it appears that where detailed examination and detailed analysis is required to be carried out, provisions of Section 64 may be invoked to conduct such extensive audit. Hence, under Section 63, contemporaneous records may only be required to be submitted by taxable person for this audit.

(d) On audit completion, information is required to be provided to the taxable person including the findings during the audit within thirty days. And in case any possible tax liability is identified during the audit, procedure under Section 66 or 67 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.

63.3 Comparative Review

(a) 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 taxable person. In EA 2000, the Director General of Audit supervises the audit functions. Separate Audit Commissionerates 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.

(b) 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.

(c) 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.

(d) Some best practice for GST audit could be:

  (i) The evaluation of the internal control *viz a viz* GST would indicate the area to be focussed. This could be done by seeing:

    (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 purchased/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.

63.4 Related Provisions

Section	Description
Section 66	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 any reason of fraud or any wilful misstatement or suppression of facts

63.5 FAQ

Q1. Whether audit is mandatory in case of every taxable 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.

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.

Q4. What is meant by commencement of audit?

Ans. It means the date on which the records and documents are made available by the tax payer at the place of business 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.

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 taxable person about his findings, reasons for findings and the taxable person's rights and obligations in respect of such findings.

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 25.05.2020, viz., 24.08.2020 or within an extended period of 6 months. The extended period would be 24.02.2021.

64. Special Audit

Statutory provision

(1) If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of [Deputy/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] in this behalf.

(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 [Deputy/Assistant Commissioner] mentioning therein such other particulars as may be specified:

Provided that the proper officer may, on an application made to him in this behalf by the taxable person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by another ninety days.

(3) The provision of sub-Section (1) shall have effect notwithstanding that the accounts of the taxable person have been audited under any other provision of this Act or any other law for the time being in force or otherwise.

(4) The taxable 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, and incidental to, 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 that 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 66 or 67 as the case may be.

64.1 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 64 where the proper officer, 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 taxable person.

64.2 Analysis

(a) Availing the services of the expert be it – Chartered Accountant or Cost Accountant is permitted by this Section only when the officer has doubt in the following aspects:

- Value has not been correctly declared; or
- Credit availed in not within the normal limits.

It would be interesting to know how these 'subjective' conclusions will be drawn. Necessary instructions would be issued to ensure to balance reliance on tax payer and audit of his records.

(b) Now a Deputy / Assistant Commissioner who has an adverse opinion or suspicion 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 taxable person to get his books of accounts audited by an expert.

(c) The Deputy / Assistant Commissioner needs to obtain prior permission from Commissioner to issue such direction to the taxable person

(d) Identifying the expert is not left to the taxable person who is to be audited but the expert is to be nominated by the Commissioner.

(e) The Chartered Accountant or the Cost Accountant shall submit the audit report, mentioning the specified particulars therein, within a period of 90 days, to the Deputy/Assistant Commissioner.

(f) In the event of such Chartered Accountant or the Cost Accountant or taxable person making an application to the proper officer 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 from conducting audit under this section.

(h) While the report in respect of the special audit under this Section is to be submitted directly to the Deputy / Assistant Commissioner, the taxable person is to be given 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 taxable 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 including expenses is to be paid by the Commissioner whose decision will be final. If this audit is to be effective fees scale based on turnover could be examined.

(j) As in the case of audit under section 63, no demand of tax, even *ad interim*, is permitted on completion of the special audit under this section. And in case any possible tax

liability is identified during the audit, procedure under section 66 or 67 as the case may be also is to followed.

64.3 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. The availing or utilization of cenvat credit by reason of fraud, collusion or any wilfulmis-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 by reason of fraud, collusion or any wilfulmis-statement or suppression of facts is sufficient to issue notice for special audit.

(b) The permission shall be given by the Principal Chief Commissioner or the Chief Commissioner of Central Excise. Under GST law, the said permission shall be given by the Commissioner.

(c) 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 GST law, the audit report shall 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 wilfulmis-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. The fixing of remuneration based on market rates would make this provision useful which today is very limited. Payment could also be done promptly.

64.4 Related Provisions

Statute	Section	Description	Remarks
CGST	Section 63	Audit by tax authorities	The audit under Section 64 is a special audit whereas the audit under Section 63 is a routine audit by the tax office.

64.5 FAQ

Q1. Who can serve the notice for special audit?

Ans. The Assistant / Deputy Commissioner with prior approval of the Commissioner may serve notice for special audit, having regard to the nature and complexity of the case.

Q2. Under what circumstances notice for special audit shall be issued?

Ans. If the proper office is of the opinion that the value has not been declared or credit availed is not within the normal limits, a special audit may be ordered.

Q3. Who will do 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 within the further extended period of 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 66 or 67 as the case maybe of the CGST Act.

65. Special Power of CAG to call for information

Statutory provision

The proper officer shall, upon request made in this behalf, make available to the Comptroller and Auditor General of India or an officer authorized by him, information and returns furnished under the Act, required for conduct of audit as required under the Comptroller and Auditor General's (Duties, Powers and Conditions of Service) Act (56 of 1971).

65.1 Introduction

Chapter-III of The comptroller and auditor general's (Duties, Powers and Conditions of Service) Amendment Act, 1971 specifies duty and power of CAG with respect to audit under this Act. Section 18 specifies power of CAG to call for information in as complete a form as possible and with all reasonable expedition. In order to facilitate this section 65 empowers CAG to call for information and returns filed under GST Act.

65.2 Analysis

The Comptroller and Auditor General of India or the officer authorised by him is having powers to call for information or records to call for information and returns furnished under the GST Act. On such calling, the proper officer has to provide information and return furnished which have been furnished by the assesses or any other person under GST Act. Furnishing of information and subsequent interaction with the CAG is by the Proper Officer and not the taxable person whose returns are the subject of audit.

65.3 Comparative Review

Under the present law there is no equivalent provision.

65.4 FAQs

Q1. Who has to provide information called for by CAG u/s 65?

Ans. The taxable person is to provide this information.

Chapter – XVII

Demands and Recovery

66. 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 willful misstatement or suppression of facts

Statutory Provision

(1) Where any tax has not been paid or short paid or erroneously refunded, or where 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, the proper officer 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 utilized input tax credit, requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 45 and 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 (8) 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 utilized for such periods other than those covered under subsection (1), on the person chargeable with tax. The service of such statement shall be deemed to be service of notice on such person under the aforesaid 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.

(4) 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 45 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. 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 leviable under the provisions of this Act or the rules made there under.

(5) Where the proper officer is of the opinion that the amount paid under sub-section (4) 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.

(6) Where any person chargeable with tax under sub-section (1) or under sub-section (3) pays the said tax along with interest payable under section 45 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said tax shall be deemed to be concluded.

(7) 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 percent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.

(8) The proper officer shall issue the order under sub-section (7) within three years from the due date for filing of annual return for the year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates or within three years from the date of erroneous refund.

66.1 Introduction

Section 66 deals with determination of tax

- not paid or
- short paid or
- tax erroneously refunded.
- input tax credit wrongly availed or utilised.

This section covers determination under circumstances, cases not involving fraud, wilful misstatement or suppression of facts;

This section also covers the time limit within which the order can be issued for the determination/ recovery of tax payment defaulted by the assessee. As per the table below, all the proceedings up to the issue of an order requires to be:

Particulars	Time limit for issuing order.
Cases involving other than above	3 years from the due date/ actual date of filing annual returns

Section 66 also applies for recovery of interest payable which is not paid or partly not paid or interest erroneously refunded.

66.2 Analysis

Sec 66covers only those cases where there is no fraud, or any kind of 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 has to 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 45 and penalty as specified.

(d) The notice has to be issued at least three months prior to the time limit of three years

2. **Where no notice is required to be issued for demand:** This section also provides that a statement may be issued instead of a detailed notice for a subsequent period on similar issue. It states that the statement would be deemed to be a notice as per Sec 66(1) on the condition that the grounds relied upon are same as the notice for previous period.

3. **Voluntary payment of tax before issue of notice:** Voluntary payment of tax and interest as per Sec 45 before issue of notice can be done either

- As per the ascertainment of the noticee or;
- As per the ascertainment of the proper officer;

and the same has to be intimated to the department and there can be no further proceedings with regard to tax so paid as well as penalty. In such cases, it provides that no notice shall be issued.

4. When the amount paid as per the ascertainment of the assessee falls short, the department can issue a notice for the tax still payable.

5. Even after the notice is issued, if the assessee, within 30days of such issue, pays the tax along with interest, penalty cannot be imposed in such cases.

6. The proper officer shall issue an order after considering the representation made by the person chargeable with tax and the amount determined shall be tax+ interest + (penalty of 10% of tax or ₹ 10,000/-, whichever higher).

7. The order to be passed by the proper officer has to be passed within 3 years from the due date for filing of Annual return for the year to which the short payment or non-payment occurs or erroneous refund is made.

[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;

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:

Situation	Penalty amount
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 ₹ 10,000 whichever is higher.

67. 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 willful misstatement or suppression of facts

(1) Where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilized by reason of fraud, or any wilful misstatement or suppression of facts to evade tax, the proper officer 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 utilized input tax credit requiring him to show cause why he should not pay the amount specified in the notice along with interest payable thereon under section 45 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 (8) 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 utilized for such periods other than those covered under sub-section (1), on the person chargeable with tax. The service of such statement shall be deemed to be service of notice on such person under the aforesaid sub-section (1), subject to the condition that the grounds relied upon for such periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice

(4) 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 under section 45 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. The proper officer, on receipt of such information, shall not serve any notice under subsection (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty leviable under the provisions of this Act or the rules made there under.

(5) Where the proper officer is of the opinion that the amount paid under sub-section (4) 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.

(6) Where any person chargeable with tax under sub-section (1) or under sub-section (3) pays the said tax along with interest payable under section 45 and a penalty equivalent to twenty five per cent of such tax within thirty days of communication of the notice, all proceedings in respect of the said tax shall be deemed to be concluded.

(7) 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.

(8) The proper officer shall issue the order under sub-section (7) within a period of five years from the due date of filing of annual return for the year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates or, as the case may be, within five years from the date of erroneous refund.

(9) Where any person served with an order issued under sub-section (7) pays the tax along with interest payable thereon under section 45 and a penalty equivalent to fifty percent of such tax within thirty days of the communication of order, all proceedings in respect of the said tax shall be deemed to be concluded.

Explanation. - The expression "suppression" shall 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.

Section 67

67 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;
   - Wilful misstatement;
   - Suppression of facts;

   the proper officer must issue a notice for such amount along with interest as per Section 45.
2. The notice has to be issued at least six months prior to the time limit of 5 years explained below.
3. This section also covers the time limit within which the order can be issued for the determination/ recovery of tax payment defaulted by the assessee. As per the table below, all the proceedings up to the issue of an order requires to be:

Particulars	Time limit for issuing order.
Cases involving fraud, wilful mis-statement or suppression of facts to evade tax	5 years from the due date/ actual date of filing annual returns

4. **Where no notice is required to be issued:** Similar to the provisions under 66 explained above, this section also provides that a statement of demand may be instead of a detailed notice for the period other than the ones covered in the notice issued as per Sec 67(1) on similar issue and shall be deemed to be a notice as per Section 67(1) on the condition that the grounds relied upon are same as the notice for previous period.

5. Voluntary payment of tax along with interest as per Sec 45 and 15% of tax as penalty, can be made before issue of notice either

   - As per the ascertainment of the noticee or;
   - As per the ascertainment of the proper officer;

   and the same has to be intimated to the department and there can be no further proceedings with regard to tax so paid as well as penalty. However, the conditions mentioned above should be fulfilled.

6. When the amount paid as per the ascertainment of the assessee falls short, the Proper Office must issue a notice for the tax the remains unpaid .

7. Even after the notice has been issued, if the assessee, within 30 days of communication of notice, pays tax along with interest and 25% of tax as penalty, then the proceedings shall be concluded.

8. 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.

9. When the default with regard to the tax is for reasons of fraud, wilful misstatement or suppression of facts to evade tax, the time limit for issue of order is five years from the due date or actual date of filing of the annual returns (whichever earlier) for the year in which the tax is not paid, or short paid, or input tax credit wrongly availed or utilized or erroneously refunded.

10. However, even after issue of the order, if the assessee pays the tax along with interest and 50% of taxes as penalty, within 30 days of communication of the order, all the proceedings are deemed to be concluded.

11. 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.

Situation	Penalty amount
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 issuance of order	50% of the tax amount
In any other case	100% of the tax amount (equivalent to tax)

68 General provisions relating to determination of tax

Statutory Provision

(1) Where the service of notice or issuance of order is stayed by an order of a Court, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (8) of section 66 or subsections (2) and (8) of section 67, as the case may be.

(2) Where any Appellate Authority or Tribunal or Court concludes that the notice issued under sub-section (1) or (3) of section 67 is not sustainable for the reason that the charges of fraud or any wilful mis-statement 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 for the period of three years, deeming as if the notice were issued under sub-section (1) or (3) of section 66.

(3) Where any order is required to be issued in pursuance of the direction of the 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 personal 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, from time to time, to the said person and adjourn the hearing for reasons to be recorded in writing:

Provided that no such adjournment shall be granted more than three times to a person during the proceeding.

(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 grounds other than the grounds specified in the notice.

(8) Where the Appellate Authority or 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) 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 (8) of section 66 or within five years as provided for in sub-section (8) of section 67.

(11) An issue on which the First 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 First Appellate Authority or the Appellate Tribunal or as the case may be, the High Court is pending, the period spent between the date of the decision of the First Appellate Authority and the date of decision of the Appellate Tribunal or the date of decision of the Appellate Tribunal and the date of the decision of the High Court or as the case may be, the date of the decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period referred to in sub-section (8) of section 66 or sub-section (8) of section 67, as the case may be, where proceedings are initiated by way of issue of a show cause notice under this section.

(12) Notwithstanding anything contained in section 66 or 67, where any amount of self-assessed tax in accordance with a return furnished under section 34 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 72.

Explanation 1. The expression "all proceedings in respect of the said notice" shall include proceedings under chapter XX.

Explanation 2. Where proceedings against the main noticee liable to pay tax has

been concluded under section 66 or 67, the proceedings against all co-noticees liable to pay penalty under sections 85, 86, 89, 90 or 91 in the same proceedings shall be deemed to be concluded.

(13) Where any penalty is imposed under section 66 or 67, no penalty for the same act and/or omission shall be imposed on the same person under any other provision of the Act.

68.1 Analysis

These provisions are applicable irrespective of whether the notice has invoked the extended period or not while issuing the notice and are in the nature of general provisions for demand of tax.

1. Where the service of a notice or an issue of the order has been stayed by an order of a Court , such period of stay shall be excluded from the period of 5 or 3 years or period set out to issue notice accordingly.
2. When a notice has been issued under clause (1) or (3) of sub-section 67, whereas the charges of fraud, suppression and misstatement of facts to evade tax were not sustainable or not established, the tax is to be determined only for the normal period of 3 years.
3. Where any order is required to be issued in pursuance of the direction of the Tribunal or a Court, such order 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 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.
7. The amount of tax along with interest and penalty shall not be more than what is mentioned in the order and the grounds shall not go beyond what is mentioned in the notice.
8. When the Tribunal/ Court/ Appellate authority modifies the amount of tax, correspondingly interest and penalty shall also be modified.
9. Interest shall be payable in all cases if specifically mentioned or not.
10. If the order is not issued within the time limits as prescribed in sub-section (8) of section 66 or (8) of section 67, 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 has given its decision which is prejudicial to the interest of the revenue and an appeal to the Appellate Tribunal 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.
    - The Appellate Tribunal has given its decision which is prejudicial to the interest of the revenue and an appeal to the High 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.
    - The High Court has given its decision which is prejudicial to the interest of the revenue and an appeal to the 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. It is specifically stated that where any amount of self-assessed tax in accordance with a return furnished under section 34 remains unpaid, either wholly or partly, or any amount of interest where interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 72.
13. Further it is stated that when the proceedings is concluded, it shall even include prosecution and compounding as well. In other words there will not be any prosecution proceedings in such cases.
14. Similarly it is also clarified that where the proceedings is concluded under section 66 & 67 the penalty proceedings against all the co-noticees who were liable to penalty as well.
15. It is also provided that when the penalty is imposed under Section 66 & 67 no penalties can be imposed under any other provisions of the Act for the same act or omission.

68.2 Comparative Review

These provisions of section 66, 67 and 68 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.

68.3 Related Provisions

Section	Description
Section 45	Interest
Section 22	Manner of recovery of credit distributed in excess
Section 59	Scrutiny of records
Section 60	Assessment of non-filers of returns
Section 77	Provisional attachment to protect revenue in certain cases

68.4 FAQ's

Q1. Who has the power to issue a notice/ order?

Ans. "Proper officer" as defined under Sec 2(79) of the Act.

Q2. When can proceedings be initiated under Section 66/67/68?

Ans. The proceedings can be initiated when there is

- Short payment of tax
- Non payment 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 not sustained?

Ans. No, when the allegations of fraud, suppression or misstatement are not established, the

notice issued under section 67 would get covered under section 66 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 within 3 months/ 6 months (in case of extended period) from 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 irrespective of specific mention of it.

Q7. What are the requisites of a notice and the reply to be filed for such notice?

Ans. The notice is supposed to clearly State the facts of the case along with the reasons for such demand notice. Further, the tax proposed along with interest and penalty wherever applicable is to be mentioned clearly.

Q8. Can the assessee pay duty 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 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 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+ interest + 25% of tax as penalty
When the assessee pays the amount payable after the issue of notice but within 30 days from the issue of order	Tax+ interest + 50% of tax as penalty

68.5 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 66 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

69. Tax collected but not deposited with the Central or State Government

Statutory provision:

(1) Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Tribunal or Court or in any other provision of this Act or the rules made thereunder or any other law, 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 Central or a State Government, shall forthwith deposit the said amount to the credit of the Central or a State Government, regardless 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 credit of the Central or a State 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 why the said amount as specified in the notice, should not be paid by him to the credit of the Central or a State 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 (3), as the case may be, also be liable to pay interest thereon at the rate specified under section 45 from the date such amount was collected by him to the date such amount is paid by him to the credit of the Central or a State Government.

(5) An opportunity for personal 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 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 credit of the Central Government or a State 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, as the case may be, refunded to the person who has borne the incidence of such amount.

(11) The person who has borne the incidence of the amount referred to in sub-section (10), may apply for the refund of the same in accordance with the provisions of section 48within six months of date of issue of public notice.

69.1 Introduction

This provision deals with payment of any amount collected as tax but not remitted to the Central/State Government. This section requires him to make the payment forthwith regardless of whether the related supplies are taxable or not.

69.2 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 is given an opportunity of being heard where a request is made by the Noticee 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 order of the Proper Officer should set out the relevant facts and the basis of his decision.

(vi) Upon such determination, the Person has to pay such amount determined.

(vii) Interest at the rate specified under section 45 has to be paid on the amount collected as representing tax (either paid voluntarily or on determination by the Proper Officer).

(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 48 of GST Act within 6 months of issue of public notice.

(xi) There appears to be no time limit to commence proceedings under this section.

69.3 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.

69.4 Related provisions

Section	Description	Remarks
Section 45	Interest on delayed payment of tax.	Prescribes the provisions relating to the payment of interest in case of delay in payment of tax
Section 48	Refund of tax.	Provision for claiming refund of tax
Section 69	Tax collected but not deposited with the Central or a State Government	If a person collects any tax and does not pay the same to the Government, this section requires him to make the payment forthwith regardless of whether the related supplies are taxable or not.

69.5 FAQ

Q1. What is the interest rate applicable on delayed payment of amount collected representing it as tax?

Ans. The interest rate notified under Section 45 of the Act.

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.

[2] Section 11D of Central Excise Act, 1944
[3] Section 28B of Customs Act, 1962

69.6 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.

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

70. Tax wrongfully collected and deposited with the Central or a State Government

Statutory Provision

(1) A taxable person who has paid CGST/SGST (in SGST Act) 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 granted refund of the amount of CGST /SGST (in SGST Act) so paid in such manner and subject to such conditions as may be prescribed.

(2) A taxable person who has paid IGST 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 CGST/SGST payable

70.1 Introduction

This provision deals with a situation when CGST/SGST 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.

70.2 Analysis

(i) As per this provision, if a taxable person wrongly pays CGST/SGST 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 is required to be refunded in such manner and subject to prescribed conditions.

(ii) The refund of such CGST/SGST would be subject to provisions of unjust enrichment, limitation and other conditions contained in section 48 of GST Act and subject to further conditions as may be prescribed in this regard.

(iii) If a taxable person wrongly pays IGST by treating as inter-state supply, which is subsequently held to be intra-state supply, interest is not required to be paid on the CGST/SGST payable.

70.3 Related provisions

Section	Description	Remarks
Section 48	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.

70.4 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 on payment of IGST subject to provisions of section 48 and also subject to such other conditions as may be prescribed.

Q2. Is interest payable on CGST/SGST, 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 CGST/SGST payable.

70.5 MCQ

Q1. Which section deals with tax wrongly collected and deposited with Central or State Government?

(a) Section 51

(b) Section 52

(c) Section 70

(d) Section 54

Ans. (c) Section 70

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

71. Initiation of recovery proceedings

Statutory provision:

Any amount payable by a taxable person in pursuance of an order passed under the Act shall be paid by such person within a period of ninety days from the date of service of such order:

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 shorter period as may be specified by him.

71.1. Introduction

This provision enables the officer to collect amount payable by taxable person pursuant to order passed under the Act, within a shorter period than 90 days from date of service of such order.

71.2 Analysis

(a) This section enables initiation of proceedings for recovery of amount from taxable person.

(b) The period for initiation of recovery on completion of 90 days from the service of the order.

(c) However it also empowers the proper officer in the interest of revenue after recording the reasons to initiate recovery proceedings even before the said completion of 90 days.

71.3 Comparative review

There is no similar provision under present Central Indirect Tax laws.

71.4 Related provisions

Section	Description	Remarks
Section 72	Recovery of tax	Provision for recovering the tax dues from a person
Section 73	Bar on recovery proceedings	Proper officer may not enforce payment of demand until appeal is resolved
Section 78	Continuation and validation of certain recovery proceedings	Provisions for continuing the recovery proceedings on a taxable person

71.5 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 90 days 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.

71.6 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) 180 days

(b) 90 days

(c) 365 days

(d) 2 years

Ans. (b) 90 days.

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 ₹ 10 Lakhs

(c) Both of the above

(d) None of the above

Ans. (a) It is necessary in interest of revenue

72. Recovery of Tax

Statutory Provision

(1) Where any amount payable by a person to the credit of the Central or a State Government under any of the provisions of this Act or of the rules made there under is not paid, the proper officer shall proceed to recover the amount by one or more of the modes mentioned below: -

(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 credit of the Central or a State Government either 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, 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 this section 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 passbook, 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 this section has been issued, fails to make the payment in pursuance thereof to the Central or a State 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 there under shall follow;

(iv) the officer issuing a notice under sub-clause (i) may, at any time or from time to 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 appropriate 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 Central or a State 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 credit of the appropriate Government any such money or part thereof, as the case may be.

(d) the proper officer may, on an authorization by the competent authority and in accordance with the rules 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 and the said Collector, on receipt of such certificate, shall proceed to recover from such person the amount specified there under as if it were an arrear of land revenue;

(f) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act 2 of 1974) the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified there under as if it were arrears of land revenue.

(2) Where the terms of any bond or other instrument executed under this Act or any rules or regulations made there under 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 credit of the Central Government under any of the provisions of this Act or the rules made there under and which remains unpaid, the proper officer of SGST, during the course of recovery of SGST arrears, may recover the amount from the said person as if it were an arrear of SGST and credit the amount so recovered to the account of the Central Government. **(CGST ACT)**

(3) Where any amount of tax, interest or penalty is payable by a person to the credit of the State Government under any of the provisions of this Act or the rules made there under and which remains unpaid, the proper officer of CGST, during the course of recovery of CGST arrears, may recover the amount from the said person as if it were an arrear of CGST and credit the amount so recovered to the account of the State Government. **(SGST ACT)**

(4) Where the amount recovered under sub-section (3) is less than the amount due to the Central 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.

72.1 Introduction

The departmental officers are empowered to collect/recover any amount payable under GST Act but not paid in a certain manner. Section 72 provides for the manner in which the recovery proceedings can be carried out.

72.2 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 72 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;

— Such other person who makes payment in accordance with the notice issued, is considered to have the authority to make payment on behalf of the defaulter. In case of such payment, to that extent, the obligation/liability of such other person to the defaulter is also considered to have been

discharged. Consequently no civil suit or other proceedings could be filed or initiated by the defaulter on the noticee, who has complied with this provision.

- If such other person discharges his liability to the defaulter after issue of the notice by the proper officer, then such other person is 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 is not personally liable as above, 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 72(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 while recovering SGST arrears may also recover any amount due from the defaulter the amount due by him under CGST law as if it is SGST and later pass it on to the Central Government.

(iv) Similar provision also exists in SGST law for recovery of any amount due under SGST law 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.

(v) It is also provided that in case where the SGST officer also collects CGST in the course of collection of SGST or viceversa, where the amount recovered is not fully covering both the liabilities, the amount collected has to be apportioned between Centre and State in the same proportion of the amounts due.

72.3 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.

[5]Section 11D of Central Excise Act, 1944
[6]Section 28B of Customs Act, 1962

Also, similar provision also exists in all most all the State VAT laws as well.

72.4 FAQ

Q1. What are the methods of recovery as prescribed in Section 72?

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 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, to which account, the amount recovered would be allocated?

Ans. 2 Crores recovered will be allocated between Centre and State in the proportion of 2:3.

72.5 MCQ

Q1. Recovery of amount payable by a defaulter can be made from _____

(a) customer

(b) bank

(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 66 or 67

(b) even before issue of notice under section 66 or 67

(c) any time

(d) at the discretion of the proper officer.

Ans. (a) after determination of liability under section 66 or 67

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

73. Bar on recovery proceedings

Statutory Provision

(1) Where a person has filed an appeal under section 98 or section 101 against the order of demand, the proper officer may not enforce the payment of demand until the appeal is resolved.

(2) Nothing in this section shall stay any proceedings by the proper officer for the recovery of any amount due under this Act which is not under appeal before First Appellate Authority or Tribunal.

73.1 Introduction

This section sets out that when person has appealed against order of demand, proper officer cannot enforce payment of demand, unless appeal is resolved. Filing of an appeal suspends the power to enforce recovery proceedings. As no stay provisions are provided due to mandatory pre-deposit, such pre-deposit therefore effectively stays the recovery proceedings. However, the bar on recovery does not stay the operation of the order appealed against.

73.2 Analysis

Appeal	Bar on recovery
Filed an appeal under section 98 or section 101	Proper officer may not enforce the payment of demand until the appeal is resolved.
Amount is not under appeal before First Appellate Authority or Tribunal.	This provision does not give any stay against the recovery of any amount due,

73.3 Comparative review

Similarly, under current Central Excise and Service tax law, recovery action can be initiated only after disposal of case by Commissioner(Appeals) or Tribunal in favour of department.

73.4 Related provisions

Section	Description
Section 71	Initiation of recovery proceedings
Section 98	Appeals to First Appellate Authority
Section 101	Appeals to the Appellate Tribunal

73.5 FAQs

Q1. How should the recovery proceedings be in case there is no appeal filed?

Ans. Where the taxable person has not filed the appeal, the recovery shall be made as per the provisions of section 71 i.e initiation of recovery proceedings.

Q2. Under what circumstances the proceedings of recovery shall stop?

Ans. Where the appeal under section 98 or 101 is filed, then the proper officer cannot enforce the payment of demand.

73.6 MCQ

Q1. Till when is there a bar on recovery proceedings?

(a) 360 days

(b) 180 days

(c) 90 days

(d) Till appeal is resolved

Ans. (c) Till appeal is resolved

Q2. In what circumstances there shall be no bar on recovery of proceedings:

(a) Demand amount is less than ₹ 10000.

(b) Demand amount is less than ₹ 1 Lakh

(c) Already proceedings of recovery is initiated

(d) The taxable person has not appealed against demand order

Ans. (d) The taxable person has not appealed against demand order

74. Payment of tax and other amount in installments

Statutory Provision

On an application filed by a taxable person, the [Commissioner/Chief Commissioner] may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under the Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly installments not exceeding twenty four, subject to payment of interest under section 45 with such restrictions and conditions as may be prescribed:

Provided that where there is default in payment of any one installments 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.

74.1 Introduction

This section permits a taxable person to make payment of an amount due on instalment 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.

74.2 Analysis

(i) This section gives the power to Commissioner or Chief Commissioner to grant permission to the taxable person to make payment of any amount due on instalment basis.

(ii) Such option is provided to a taxable person only on an application to be made in writing.

(iii) The Commissioner or the Chief Commissioner would either extend the time or allow payment of any amount due under the Acton instalment basis for reasons to be recorded.

(iv) This section applies to amounts due other than the self-assessed liability shown in any return.

(v) The provisions also specify that the instalment period shall not exceed 24 months.

(vi) 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.

(vii) Even 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.

74.3 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.

74.4 Related provisions

Section	Description
45	Interest on delayed payment of tax

74.5 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 in writing 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, which would obviously include even an unregistered person.

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 Chief Commissioner to provide the benefit to pay ₹ 5,00,000/- under installments. Chief 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 Chief 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/-

Q4. 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.

74.6 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) both (a) and (b)

75. Transfer of property to be void in certain cases

Statutory Provision

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 and without notice of the pendency of such proceeding under this Act or, as the case may be, without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

75.1 Introduction

The said 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.

75.2 Analysis

(i) The said provision would be applicable only when any tax has become due.

(ii) The following acts done by a person, in favor 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 ₹ 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 worth ₹ 35 Lakhs under his name to the name of his wife for a consideration of ₹ 10,000/-. Is this act of Mr. Defrauder valid?

As per section 75, the said transfer would be void and the property worth ₹ 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 ₹ 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 ₹ 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.

75.3 Comparative review

This provision is new to Indirect Tax law. It is a concept borrowed from the Income-Tax law to safeguard the revenue.

75.4 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
60	Assessment of non-filers of returns
61	Assessment of unregistered persons
62	Summary assessment in certain special cases
66	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
67	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

75.5 FAQs

Q1. When the transaction in property is void as per section 75?

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.

75.6 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 75

(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

76. Tax to be first charge on property

Statutory Provision

Notwithstanding anything to the contrary contained in any law for the time being in force, 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 Central or a State Government shall be a first charge on the property of such taxable person, or as the case may be, such person.

76.1 Introduction

This provision shall have an overriding effect over the other provisions, as the said section begins with the words *notwithstanding anything to the contrary*. This provision provides that if any dues are payable by a taxable person or any other person, then it would have first charge on the property of such taxable or other person.

76.2 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 Central or State Government.

(ii) Any liability to be paid to the Central or State 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 CGST 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.

76.3 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

76.4 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.

76.5 FAQ

Q1. When can the charge on property of taxable person be created?

The charge can be created only when taxable person or any other person is liable to pay tax or interest or penalty to Central or State Government.

Q2. Are unregistered persons covered under the said provision?

The section refers to both taxable person or 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.

76.6 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 neighbor, Mrs. Y's Jewelry

(d) None of the above

Ans. (a) Richie Nilaya, a mansion in the name of Mr. Richie

77. Provisional attachment to protect revenue in certain cases

Statutory Provision

(1) Where during the pendency of any proceedings under section 60, 61, 62, 66, 67 or 79, 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).

77.1 Introduction

This section confers power to provisionally attach the property of the taxable person in certain situations to protect the interest of the Government.

77.2 Analysis

(i) This section applies only during the pendency of any proceedings under

- (a) Section 60 – Assessment of non-filers of returns.
- (b) Section 61 – Assessment of unregistered persons.
- (c) Section 62 – Summary assessment in certain special cases.
- (d) Section 66 – 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 67- 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 willful misstatement or suppression of facts.
- (f) Section 79- Power of inspection, search and seizure

(ii) The provisional attachment of property of taxable person can be undertaken 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.

(iv) Such provisional attachment would be valid for one year from the date of the order made by the Commissioner.

77.3 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)

77.4 Related provisions

Section	Description
60	Assessment of non-filers of returns.
61	Assessment of unregistered persons.
62	Summary assessment in certain special cases.
66	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.
67	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.
79	Power of inspection, search and seizure.

77.5 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.

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.

77.6 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 77:

(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.

78. Continuation and validation of certain recovery proceedings

Statutory Provision

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereinafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal, revision application is filed or other proceedings is initiated in respect of such Government dues, then –

(a) Where such Government dues are enhanced in such appeal, revision or other proceeding, the Commissioner shall serve upon the taxable person or any other person another notice of demand only in respect of the amount by which such Government dues are enhanced and any recovery proceeding in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision application or proceeding 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 proceeding –

  (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 proceeding in pending;

  (iii) Any recovery proceedings initiated on the basis of the demand served upon him 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.

78.1 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.

78.2 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.

78.3 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.

78.4 Related provisions

Statute	Section	Description
GST	Section 72	Recovery of tax

78.5 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 under section 59?

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.

78.6 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– XVIII

Inspection, Search, Seizure and Arrest

79. Power of inspection, search and seizure

Statutory Provision

(1) Where the CGST/SGST 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 CGST/SGST 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 CGST/SGST 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 CGST/SGST officer 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 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 authorised under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any *almirah*, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, 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 officer of CGST/SGST at such place and time as the authorised 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 aforesaid 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 Central or a State 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 the Central or a State Government may prescribe.

(9) Where any goods, being goods specified under sub-section (8), have been seized by a proper officer under sub-section (2), he shall prepare an inventory of such goods in the manner as may be prescribed in this behalf.

(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 words [Principal Commissioner/Commissioner of CGST/Commissioner of SGST] 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 such accounts, registers or documents of such person produced before the said officer 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 for a prosecution.

(12) The [Commissioner] of CGST/SGST or an officer authorized by him may cause purchase of any goods and/or services by any person authorized by him from the business premises of any taxable person, to check 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.

79.1. Introduction

This provision confers power of inspection, search and seizure to the Officers.

79.2. Analysis

(a) Initiation of action under this section is when the CGST/SGST 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 information relating to stock in hand or claimed excess input tax credit or has contravened any of the statutory provisions.

(b) 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.

(c) Under such circumstances, he can authorize another officer to:

- 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.
- Search and seize the goods or any documents or books or things which are liable for confiscation and which will be useful or relevant in the proceedings under this Act.
- Seal or break open the door of any premises, storage, box 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 officer so authorized shall return the documents, books or things seized or produced by a taxable or any other person on which the officer has not relied 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 may be retained as deemed fit by the authorized officer.

(f) 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'."*

(g) The person from whose custody documents are seized is entitled to take photocopy or extract of such documents in the presence of GST officers at the place and time as indicated by the officer. However, the officer may permit the photocopying or extract, if he is of the opinion that such an act will not prejudicially affect the investigation.

(h) The goods so seized can be released on a provisional basis. The officer, in order to release the goods, will either require a bond and security as may be prescribed or upon payment of applicable tax, interest and penalty.

(i) The officer shall return the seized goods if no notice in respect thereof has been issued within 6 months from such seizure. This period can be extended by further 6 months on sufficient cause.

(j) 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 etc.

(k) The officer who seizes the goods is liable to maintain the inventory of the said goods.

(l) The provisions of Code of Criminal Procedure, 1973 relating to search and seizure shall be applicable to the GST Act and in section 165(2) thereof, the word 'Magistrate' should be read as 'Principal Commissioner or Commissioner of CGST or Commissioner of SGST'.

(m) The officer can even seize accounts, registers or documents of any person, [taxable or otherwise], 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.

(n) 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 then 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. The "return" provisions only talk about goods and not about services purchased for checking.

The analysis of above provision in a pictorial form is summarised as follows:

Power of Inspection, Search & Seizure : Sec 79

For initiating the proceedings Joint Commissioner or any superior officer should have a 'reason to believe' that the assessee has done any of the following:

suppressed any transaction of supply of goods or services or	supply information relating to stock in hand or	claimed excess input tax credit or	has contravened any of the statutory provisions of this act or rules made thereunder

Then the Proper Officer can:

Inspect: any place of business of the assesse who has evaded the tax or of the transporter who transported such tax evading goods or godown/warehouse operator in which such tax evading goods or accounts relating thereto has been stored.

Search & Seize: the goods or any documents or books or things which are liable for confiscation and which will be instrumental in the proceedings under this act during the enquiry period

Seal or Break: open the door of any premises, storage, box or receptacle where goods, books of accounts etc. are concealed and when access to the same is denied to the said officer

79.3. 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 ₹ 2,000/- on an officer who conducts vexatious search, inspection etc. This provision is conspicuously absent in the CGST Act.

79.4. FAQs

Q1. Under what circumstances there can be inspection, search or seizure operations?

Ans. Initiation of action under this section is when the CGST/SGST 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 information relating to stock in hand or claimed excess input tax credit or has contravened any of the statutory provisions.
- 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.

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.

79.5. MCQs

Q1. Initiation of action under this section is by a CGST/SGST 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) One year

Ans. (b) 30 days

80. Inspection of goods in movement

Statutory provision:

(1) The Central or a State Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding a specified amount to carry with him such documents as may be prescribed and also to carry with him such devices in such manner as may be prescribed in this behalf.

(2) The details in documents required to be carried under sub-section (1) shall be validated in the manner as may be prescribed.

(3) 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 aforesaid documents and devices for verification**,** and the said person shall be liable to produce the documents and devices and also allow inspection of goods.

80.1. Introduction

This provision enables prescription of documents and devices to be carried by the transporter and production for verification.

80.2. 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 may be prescribed .

(b) The details in the documents so carried shall be validated, as prescribed.

(c) 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.

80.3. 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.

80.4. 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 may be prescribed.

Q2. Does the officer have powers to inspect the documents carried in a conveyance?

Ans. In terms of section 80(2), the officer is conferred powers to inspect and validate such documents.

80.5. MCQs

Q1. The person in charge of the conveyance carrying any consignment of goods exceeding the value of _____, shall carry prescribed documents.

(a) ₹ 50,000

(b) ₹ 1,00,000

(c) ₹ 10,000

(d) as may be prescribed.

Ans. (a) As may be prescribed.

81. Power to arrest

Statutory provision

(1) If the [Commissioner of CGST or the Commissioner of SGST] has reason to believe that any person has committed an offence specified in clause (a), (b), (c), (d) or clause (e) of sub-section (1) of section 92 and punishable under clause (i) and (ii) of sub-section (1) or under sub-section (2) of that section, he may, by order, authorise any CGST/SGST officer to arrest such person.

(2) Where a person is arrested for any cognizable offence, every officer authorized to arrest a person shall inform such person of the grounds of arrest and produce him before a magistrate within twenty four hours.

(3) In the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner of CGST/SGST, as the case may be, 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 has, and is subject to, under section 436 of the Code of Criminal Procedure, 1973 (2 of 1974).

(4) All arrests made under this section shall be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to arrest.

81.1. Introduction

This section deals with power of arrest.

81.2. Analysis

(a) The Commissioner of CGST or SGST is vested with the power to authorise (by an order) any CGST or SGST Officer to arrest a person, where there is a reason to believe that such person has committed the specified alleged offences.

(b) The person committing an offence u/s 92(1) clauses (a),(b),(c),(d),(e) and punishable under Section 92(1)(i) and 92 (1)(ii) can be arrested by a CGST/SGST officer upon authorization by the Commissioner of CGST/SGST.

(c) 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 in terms of section 436 of the CRPC.

(d) All arrests should be made as per the provisions of CRPC.

81.3. 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 ₹ 200 lacs. Similar provision is not there under the Model GST Law.

81.4. Related provisions of Section 92 for ready reference for which person can be arrested

Section	Description
92(1)(a)	Supplies any goods / services without invoice or grossly mis-declares the description of the supply on invoice to evade tax;
92(1)(b)	issues invoice / bill without supply of goods / services leading to wrongful availment of credit or refund of duty;
92(1)(c)	Collects tax but fails to pay the same to the appropriate Government beyond a period of three months from due date of payment
92(1)(d)	Collects unauthorised tax but fails to pay the same to the appropriate Government beyond a period of three months from due date of payment
92(1)(e)	Takes / utilizes ITC without receipt of goods / services.
92(1)(i)	Prosecution where tax evaded exceeds ₹ 250 lakhs. Imprisonment upto 5 years with fine
92(1)(ii)	Prosecution where tax evaded exceeds ₹ 50 lakhs but upto ₹ 250 lakhs. Imprisonment upto 3 years with fine
92(2)	Second or subsequent offence. Imprisonment upto 5 years with fine

81.5. FAQs

Q1. Power of arrest could be exercised by whom?

Ans. The Commissioner of CGST or SGST can authorise (by an order) any CGST or SGST Officer to arrest a person, who has committed specified offences. The Commissioner should have reason to believe that such person has committed the alleged offences.

Q2. Who can be arrested?

Ans. The person committing an offence (tax evasion) as specified in –

- Section 92(1) clause (i) tax evasion above ₹ 250 Lakhs attracting imprisonment for a term upto 5 years and fine, or clause (ii) tax evasion above ₹ 50 Lakhs upto ₹ 250 Lakhs attracting imprisonment upto 3 years and fine or offence or
- Section 92(2) [repeated offence – second and subsequent offence attracting imprisonment upto 5 years with fine]

can be arrested by a CGST/SGST officer on authorization from the Commissioner of CGST/SGST.

3. 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 in terms of section 436 of the CRPC.

(iii) All arrests should be made as per the provisions of CRPC.

81.6. MCQs

Q1. All arrests should be made as per the provisions of _____

(a) CRPC

(b) CPC

(c) FEMA

(d) IPC

Ans. (a) CRPC

Legend

CRPC – Code of Criminal Procedure, 1973

CPC – Civil Procedure Code

IPC – Indian Penal Code

FEMA – Foreign Exchange Management Act

82. Power to summon persons to give evidence and produce documents

Statutory provision

(1) Any [CGST/SGST officer], duly authorized by the competent authority in this behalf, 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 which such officer is making for any of the purposes of this Act.

(2) A summons to produce documents or other things may be for the production of certain specified documents or things or for the production of all documents or things of a certain description in the possession or under the control of the person summoned.

(3) All persons so summoned shall be bound to attend, either in person or by an authorized representative, as such officer may direct; and all persons so summoned shall be bound to State the truth upon any subject respecting which they are examined or make statements and produce such documents and other things as may be required:

Provided that the exemptions under sections 132 and 133 of the Code of Civil Procedure,1908 (5 of 1908) shall be applicable to requisitions for attendance under this section.

(4) Every such inquiry as aforesaid shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code, 1860 (45 of1860).

82.1. Introduction

This provision deals with exercise of powers to issue summons for giving evidence and production of documents

82.2. Analysis

(a) CGST/SGST officer duly authorized by the competent authority, 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
- **In any inquiry** which such officer is making for any of the purposes of this Act.

(b) All persons so summoned shall be bound to

- Attend, in-person or through an authorised representative,
- State the truth upon the subject which they are examined,
- Make Statement and produce such documents and other things as may be required

(c) Scope of word "Summon" under Sec 82 is for "Any Enquiry". Authorised Officer is not empowered under Sec 82 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.

(d) Exemptions under sections 132[8] and 133[9] of the CPC shall be applicable to requisitions for attendance under this section.

(e) Every such inquiry is deemed to be a "judicial proceeding" within the meaning of section 193[10] and section 228[11] of the IPC.

82.3. 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.

82.4. FAQs

Q1. Who can issue summons and for what purpose?

Ans. Any CGST/SGST officer duly authorized by the competent authority 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 CGST Act.

Legend:

CPC – Civil Procedure Code

IPC – Indian Penal Code

[9] In terms of section 2(79) of CGST Act "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 Boa
rd/Commissioner of SGST;

[10] Section 11D of

83. Access to business premises

Statutory provision

(1) Any CGST/SGST officer authorized by the [Additional/Joint Commissioner of CGST or SGST] shall have access to any place of business of a registered taxable 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 authorized under sub-section (1) or the audit party deputed by the Additional/Joint Commissioner of CGST or SGST or a cost accountant or chartered accountant nominated under section 64, as the case may be, -

(i) the records as prepared or maintained by the registered taxable person and declared to the CGST/SGST officer 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, as the case may be.

83.1. Introduction

This provision empowers the officer to gain access to place of business of a registered taxable person to conduct audit, scrutiny, verification and checks of books of accounts, software and other records, to safeguard the revenue.

83.2. Analysis

(a) For this purpose, the CGST/SGST officer should be authorized by the Additional or Joint Commissioner.

(b) Such an authorized officer shall have access to any place of business of registered taxable 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.

(c) The object is to carry out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

(d) The person in charge of the premises should make available the following documents:

- GST records;
- Trial balance;
- Audited financial statements;
- Cost audit report;
- Income Tax audit report;
- Other records.

(e) The documents/records should be made available within 15 days or such extended period allowed.

(f) The documents/records can be called for by the audit officer or Comptroller and Auditor General of India or Chartered Accountant or Cost Accountant nominated by the department for conducting the audit.

83.3. Comparative review

In the current indirect tax laws, a similar power has been entrusted under Rule 5A of Service Tax Rules, 1994. However, recently the Hon'ble Delhi High Court in the case of Mega Cabs vs. Union of India 2016-TIOL-1061-HC-DEL-ST has held that the departmental officers do not have power to conduct the audit of the assessee and the same should be done by qualified Chartered Accountants / Cost Accountants only. To avoid such a situation in GST regime, the Act itself contains a provision.

Further similar provisions exist in various State VAT laws.

83.4. Related provisions

Section	Description	Remarks
Section 63	Audit by tax authorities	For such purpose access to business premises is given under section 83
Section 64	Special Audit	-do-

83.5. FAQs

Q1. What are the documents or records, which a Chartered Accountant deputed by the department could ask for?

Ans. The person in charge of the premises should make available GST records, Trial balance, Audited financial statements, Cost audit report, Income Tax audit report, other records.

Q2. Who are the persons empowered to call for documents/records for audit, verification, check, scrutiny?

Ans. Audit officer or CAG or Chartered Accountant or Cost Accountant nominated by the department for conducting the audit.

83.6. MCQs

Q1. The documents called for should be provided within _____

(a) 20 days

(b) 15 days

(c) 5 days

(d) 45 days

Ans. (b) 15 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 Check

(d) All of the above

Ans. (d) All of the Above

Legend

CAG – Comptroller and Auditor General of India

84. Officers required to assist CGST/SGST officers

Statutory provision:

(1) All officers of Police, Railway, Customs and those of State/Central Government engaged in collection of goods and services tax and all officers of State/Central Government engaged in the collection of land revenue, and all village officers are hereby empowered and required to assist the CGST/SGST officers in the execution of this Act.

(2) The Central/State Government may, by notification, empower and require any other class of officers to assist the CGST/SGST officers in the execution of this Act when called upon to do so by the Commissioner of CGST/SGST.

84.1. Introduction

The provision requires other officers of State or Central Government including Police and Customs Departments, village officers to assist the CGST/SGST officers in execution of the Act.

84.2. Analysis

(a) Below officers are empowered and required when called upon, to assist the CGST/SGST officer in execution of this act:

- All officers of Police,
- Railway Officer,
- Customs Officer
- State/Central Government officer engaged in collection of GST.
- State/Central Government engaged in the collection of land revenue.

(b) Even the Government may issue notification empowering and requiring any other class of officer to assist the CGST/SGST officers, if required by the Commissioner.

84.3. 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

84.4. FAQs

Q1. Which are the officers empowered under an obligation to assist the CGST officers in execution 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 CGST/SGST 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 84(2) of the Act, the Government may issue notification empowering or requiring any other class of officer to assist the CGST/SGST officers, if required by the Commissioner.

84.5. MCQs

Q1. The _____ officer is empowered to assist the CGST/SGST officer.

(a) Registrar of Companies

(b) Health

(c) CBI

(d) Railway

Ans. (d) Railway

Q2. _____ Officer is not empowered to assist the CGST/SGST officer.

(a) Police

(b) Custom

(c) State Excise

(d) Railway

Ans. (c) State Excise

Chapter– XIX

Offences and Penalties

85. Offences and penalties

Statutory Provision

(1) Where a taxable person who -

(i) supplies any goods and/or services 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 and/or services 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 credit of the appropriate 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 credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;

(v) fails to deduct the tax in terms of sub-section (1) of section 46, or deducts an amount which is less than the amount required to be deducted under the said subsection, or where he fails to pay to the credit of the appropriate Government under subsection (2) thereof, the amount deducted as tax;

(vi) fails to collect tax in terms of sub-section (1) of section 56 , 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 credit of the appropriate Government under sub-section ---- thereof, the amount collected as tax;

(vii) takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially, in violation of the provisions of this Act, or the rules made thereunder;

(viii) fraudulently obtains refund of any CGST/SGST under this Act;

(ix) takes or distributes input tax credit in violation of section 21, or the rules made thereunder;

(x) falsifies or substitutes financial records or produces fake accounts and/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 particulars specified as mandatory, 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 and/or documents called for by a CGST/SGST officer in accordance with the provisions of this Act or rules made thereunder or furnishes false information and/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 identification number of another taxable person;

(xx) tampers with, or destroys any material evidence;

(xxi) disposes off or tampers with any goods that have been detained, seized, or attached under this Act;

shall be liable to a penalty of rupees ten thousand or an amount equivalent to the tax evaded or the tax not deducted or short deducted or deducted but not paid to the Government or tax not collected under Section 56 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, as the case may be, whichever is higher.

(2) Any registered taxable person who supplies any goods or services 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 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.

(3) Any person who

(a) aids or abets any of the offences specified in clauses (i) to (xx) of sub-section (1) above;

(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 reason 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 CGST/SGST officer, 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 rules made thereunder, or fails to account for an invoice in his books of account;

(f) shall be liable to a penalty which may extend to rupees twenty-five thousand.

85.1 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 penal provisions of GST law

85.2 Analysis

At the outset, the section declares the offences that attract penalty as a consequence apart from requirement to have paid the tax and applicable interest. Some of the offences listed under this section may also attract prosecution under section 92 but that depend on the gravity of the offence defined in that section.

The Section is divided in three main parts:

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.

The second sub-section deals with situations 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 minimum of ten thousand rupees.

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 only under section 66 in which there is no express reference for this section. Person 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 appropriate Government beyond a period of three months from due date
4. Collects any tax in contravention of the law but fails to deposit the same with appropriate Government beyond a period of three months from due date
5. Fails to
   (a) Deduct tax/deduct appropriate tax, as per Section 46 (Section 46 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 rupees five lakh) or
   (b) deposit the tax deducted with the appropriate Government
6. Fails to
   (a) collect tax/collect appropriate tax as per provisions of Section 56 (Section 56 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 violation of provisions of Act/ Rules
8. fraudulently obtains refund of any CGST/SGST
9. takes or distributes input tax credit in violation of section 21 , or the rules made thereunder (Section 21 prescribes manner of distribution of credit by input service distributor)
10. When with an intention to evade payment of tax
    (a) falsifies or substitutes financial records, or
    (b) produces fake accounts and/or documents, or
    (c) furnishes any false information or return
11. fails to obtain registration
12. furnishes any false information with regard to particulars specified as mandatory, 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 and/or documents called for by a CGST/SGST officer or furnishes false information and/or documents during any proceedings

18. supplies, transports or stores any goods which he has reason to believe are liable for confiscation

19. issues any invoice or document by using the identification number of another taxable person

20. tampers with, or destroys any material evidence

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 ₹ 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.

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 CGST/SGST officer, 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

85.3 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
9	Central Excise Act, 1944	Offences and penalties.
Chapter XVI	Customs Act, 1962	Offences & Prosecutions
8(3A)	Central Excise Rules, 2002	Failure to pay duty declared in return
25 & 2*6	Central Excise Rules, 2002	— Confiscation & Penalty — Penalty for Certain Offences

76	Finance Act, 1994	Penalty for failure to pay Service tax
77	Finance Act, 1994	General penalty for residual offences
78	Finance Act, 1994	Penalty for failure to pay service tax for reasons of fraud
89	Finance Act, 1994	Offences and Penalties
15	Cenvat Credit Rules, 2004	Penalty for defaults in relation to CENVAT credit
15A	Cenvat Credit Rules, 2004	General penalty

85.4 Related provisions

Section or Rule	Description
Section 10	Definition of taxable person
Section 28	Tax Invoice
Section 178	Supplementary Invoice
Section 46	Tax to be deducted at source (TDS)
Section 56	Tax to be collected at source by the electronic commerce operator
Sections 16 to 22, 36 and 37	Input tax credit
Section 23 to 27	Registration
Section 48 to 52	Refund

85.5 FAQs

1. Whether penalty becomes automatically leviable without any adjudication?

Ans. Though not specifically mentioned in section 85 relating to penalties, in the light of section 87 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.

2. 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

85.6 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

86. General Penalty

Statutory provision

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.

86.1 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 66 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 67 is a general penalty provision under the GST law for cases where no separate penalty is prescribed under the Act or rules.

86.2 Analysis

Penalty upto rupees twenty five thousand is imposable where a taxable 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

86.3 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
27	Central Excise Rules, 2002	General Penalty
15A	Cenvat Credit Rules, 2004	General penalty
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.

86.4 Related provisions

Section	Description
Section 87	General disciplines related to penalty

86.5 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 general penalty will be attracted.

Q2. What is the amount of general penalty leviable under the Act?

Ans. An amount upto ₹ 25,000/-

86.6 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 with tax and interest

(i) Yes

(ii) No

Ans. (ii) No.

87. General disciplines related to penalty

Statutory provision

(1) No tax authority shall impose substantial penalties for minor breaches of tax regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

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 record.

(2) The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any taxable person without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(4) The tax authority shall ensure that when a penalty is imposed in an order for a breach of the laws, regulations or procedural requirements, an explanation is provided therein to the persons upon whom the penalty is imposed, specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

(5) When a person voluntarily discloses to a tax authority the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the tax authority, the tax authority may consider this fact as a potential mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section will not apply in such cases where the penalty prescribed under the Act is either a fixed sum or expressed as a fixed percentage.

87.1. 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.

87.2. Analysis

The following guiding disciplines in certain circumstances apply to substantial penalties:

(a) Instances where the tax involved is less than ₹ 5,000/- (minor breach) and documentation errors apparent on record do not require imposition of penalty.

(b) When penalty is still liable to be imposed, the next safety net laid down is to inquire into the degree and severity of the breach to proceed with imposition of penalty. And 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 issued a notice laying down the cause of action, breach and provisions invoked. Further a speaking order is passed for imposing such penalty.

(d) Voluntary disclosure by a person to a tax authority (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) Considering that this guidance is to be followed in cases involving substantive penalties, cases involving fixed sum or percentage of penalty are excluded.

87.3 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.

87.4 Related provisions

Statute	Section/Rule/Form	Description	Remarks
GST	Section 85	Offences	Specifies the gist of offences under the Act
GST	Section 86	General penalty	

87.5 FAQs

Q1. What are the discretionary powers of the officers to waive the penalties?

Ans. Section 87(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 record.

87.6 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. (a) Shall not impose substantial penalties.

88. Power to Impose penalty in certain cases

Statutory provision

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 59, 60, 61, 62, 66, 67, 89 or 90, he may issue an order levying such penalty after giving a notice and after giving a reasonable opportunity of being heard to such person.

88.1 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.

88.2 Analysis

Penalty proceedings can be initiated under this Section even if the same are not covered under the following sections:

Section 59: Scrutiny of returns

Section 60: Assessment of non-filers of returns

Section 61: Assessment of unregistered persons

Section 62: Summary assessment

Section 66 and 67: Determination of tax by proper officer

Section 89: Detention, seizure and release of goods and conveyances in transit

Section 90: Confiscation of goods and/or conveyances

In other words, penalties can be imposed by proper officer after giving due opportunity in even in cases where there are no proceedings open with regard to scrutiny, 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 85. Section 85(3) encompasses the following situations:

1. aids or abets any of the offences specified in section 85(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 CGST/SGST officer, 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.

89. Detention, seizure and release of goods and conveyance in transit

Statutory provision

(1) 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 conveyances 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, 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, where the owner of the goods does not come forward for payment of such tax and penalty.

(c) the proper officer detaining or seizing goods and/or conveyances shall issue a notice specifying the tax payable and thereafter, pass an order for payment of tax and penalty under clause (a) or (b), as the case may be.

(2) On payment of the amount referred to in sub-section (1), all liabilities under this section shall stand discharged in respect of such goods and such conveyance.

(3) Where the person transporting any goods or, as the case may be, 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, further proceedings shall be initiated in terms of section 90 and provisions of sub-section (6) of section 79, shall apply mutatis mutandis for provisional release of the detained goods or conveyances.

PROVIDED that where the detained 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.

89.1 Introduction

This section provides for the provision relating to detention of goods or conveyances or both in case of certain defaults under the law.

89.2 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.

(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 amount of tax (to be paid by any other person other than owner).

(d) The proper officer shall release the goods upon the payment of tax and amount of penalty in the above manner and all the liabilities under this particular section shall stand discharged. 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 79

89.3 Related provision

Statute	Section / Rule / Form	Description	Remarks
GST	Section 80	Inspection of goods in movement	Prescribed documents are requires to be carried along with the goods being transported.

89.4 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.

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
- In case, payment is to be made by the person other than the owner, penalty shall be 50% of the amount of tax.

89.5 MCQs

Q1. The detained goods shall be released only after payment of –

(a) Applicable tax and penalty;

(b) Only tax;

(c) Tax and Interest;

(d) Payment of only penalty.

Ans. (a) Applicable tax and penalty

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

90. Confiscation of goods and/or conveyances and levy of penalty

Statutory provision

(1) If any person –

(i) supplies or receives any goods in contravention of any of the provisions of this Act or 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 rules made thereunder with intent to evade payment of tax,

(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 and/ or conveyance shall be liable to confiscation and the person shall be liable to penalty under section 85.

(2) When ever confiscation of any goods is authorized by this Act, the CGST/SGST officer adjudging it shall give to the owner of the goods or, where such owner is not known, the person from whose possession or custody such goods have been seized, or the owner or the person in charge of the conveyance, 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 89:

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 the person referred to in sub-section (1), shall, in addition, be liable to any tax and charges payable in respect of such goods.

(4) No order of confiscation of goods and /or conveyance and/or imposition of penalty shall be issued without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

(5) Where any goods and/or conveyance are confiscated under this Act, the title of such goods and/or conveyance shall thereupon vest in the appropriate 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 and/or conveyances and deposit the sale proceeds thereof with the Government.

90.1 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.

90.2 Analysis

There are five precise causes for confiscation of goods specified in this section and they are:

Action	Consequence
Supply 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 applyingregistration
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 shall be liable for confiscation unless the owner of the goods or the person in whose custody the goods are found or the owner of the conveyance or person in-charge of the conveyance proves that it is without their connivance. Further, the person shall be liable to pay penalty under section 85 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 89. While section 89 is applicable on transporters, section 90 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 a show cause notice and appropriate opportunity of being heard.

— The title of the confiscated goods and/or conveyance shall be vested upon the appropriate government. The proper officer adjudging confiscation shall take and hold possession of the things confiscated on behalf of the appropriate 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 appropriate government

90.3 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.

90.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 85	Offences and Penalties	Specifies the gist of offences under the Act
GST	Section 87	General discipline related to penalty	The principles and disciplines related to impose of penalty

90.5 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?

Q5. 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. 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.

90.6 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

91. Confiscation or penalty not to interfere with other punishments

Statutory provision

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.

91.1 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.

91.2 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.

91.3 Comparative review

This provision is similar to Section 34A of the Central Excise Act, 1944.

Chapter – XX

Prosecution and Compounding of Offences

92. Prosecution

(1) Whoever commits any of the following offences, namely—

(a) supplies any goods and/or services without issue of any invoice or grossly misdeclares the description of the supply on invoice, in violation of the provisions of this Act, to intentionally evade tax;

(b) issues any invoice or bill without supply of goods and/or services in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment of credit or refund of duty;

(c) collects any amount as tax but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;

(d) collects any tax in contravention of the provisions of this Act but fails to pay the same to the credit of the appropriate Government beyond a period of three months from the date on which such payment becomes due;

(e) takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially, in violation of the provisions of this Act, or the rules made thereunder;

(f) evades tax, fraudulently avails input tax credit or obtains refund by an offence not covered under clause (a) to (e);

(g) falsifies or substitutes financial records or produces fake accounts and/or documents or furnishes any false information with an intention to evade payment of tax due under this Act;

(h) obstructs or prevents any officer in the discharge of his duties under this Act;

(i) 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 under this Act or the rules made thereunder;

(j) 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;

(k) tampers with or destroys any material evidence or documents;

(l) 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 (m) attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) to (l) 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 utilized or the amount of refund wrongly taken exceeds two hundred and fifty 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 utilized or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred and fifty 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 utilized or the amount of refund wrongly taken exceeds fifty lakh rupees but does not exceed one hundred lakh rupees, with imprisonment for a term which may extend to one year and with fine; (iv) in cases where he commits or abets in the commission of an offence specified in clause (h), (k) or (l), with imprisonment for a term which may extend to six months and/or with fine;

(2) If 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:

PROVIDED that in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, the imprisonment referred to in sub-sections (1) and (2) shall not be for a term of less than six months.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Act, except the offences referred to in subsection (4) shall be non-cognizable.

(4) The offences specified in clause (a), (b), (c), (d) or (e) of sub-section (1) relating to taxable goods and/or services where the amount of tax evaded or the amount of input tax credit wrongly availed or the amount of refund wrongly taken exceeds one hundred lakh rupees shall be cognizable and non-bailable.

Explanation: The Commissioner concerned shall be the competent authority to take cognizance of the offence. (5) A person shall not be prosecuted for any offence under this section except with the previous sanction of the designated authority.

92.1. Introduction

This provision deals with prosecution of offenders and the punishment inflicted on them.

92.2. Analysis

(a) The following offences shall be liable for prosecution:

- supplies any goods and/or services without issue of any invoice or grossly misdeclare the description of the supply on invoice, with intent to evade tax.
- issues any invoice or bill without supply of goods and/or services leading to wrongful availment of credit or refund of duty;
- collects any amount as tax but fails to pay beyond a period of three months from the due date;
- collects any tax in contravention of the Act but fails to pay beyond a period of three months from the due date;
- takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially;
- evades tax, fraudulently avails input tax credit or obtains refund
- falsifies or substitutes financial records;
- produces fake accounts and/or documents;
- furnishes any false information with an intention to evade payment of tax due;
- obstructs or prevents any officer in the discharge of his duties;
- 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 under this Act or the rules made there under;
- 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 there under;
- tampers with or destroys any material evidence or documents
- fails to supply any information which he is required to supply under this Act or the rules or supplies false information; or
- attempts to commit, or abets the commission of, any of the offences mentioned in above.

(b) This section enables initiation of prosecution proceedings against the offenders.

(c) The period of imprisonment prescribed for these offences is different and depends on amount of tax evaded, which is summarised in the table below:

Amount of Tax Evaded/Input Tax credit	Period of Maximum Imprisonment & Fine	In case of repetition of offence
Exceeding ₹ 250 Lakhs	5 Yrs and Fine	5 Yrs and Fine
Exceeding ₹ 100 Lakhs upto ₹ 250 Lakhs	3 Yrs and Fine	
Exceeding ₹ 50 Lakhs upto ₹ 100 Lakhs	1 Yr and Fine	

(d) In case of repetitive offence without any specific and special reason which is to be recorded in the order by the court the term of the imprisonment should not be less than 6 months.

(e) The offences mentioned from (a) to (e)are cognizable and non-bailable in the cases where tax evasion is more than ₹ 100 Lakhs and would be non-cognizable when the tax evasion is less than ₹ 100 Lakhs

(f) The Offences mentioned from (f) to (m) are non-cognizable.

(g) In case of offences mentioned in (h), (k) and (l) including abetment, the imprisonment would be upto six months with or without fine.

92.3. Comparative review

Even in the present central indirect tax laws, there are prosecution powers. However, the CGST Act seems to have widened the scope of prosecution.

92.4. Related provisions

Statute	Section or Rule	Description	Remarks
CGST Act	Section 81	Power of Arrest	Authorised CGST/SGST Officer can arrest a person who has committed an offence specified in section 92(1)(i) or (ii) and (2)

92.5. FAQs

Q1. What are offences liable for prosecution?

Ans. Supplies any goods and/or services without issue of any invoice or grossly misdeclares the description of the supply on invoice, with intent to evade tax.

- issues any invoice or bill without supply of goods and/or services leading to wrongful availment of credit or refund of duty;
- collects any amount as tax but fails to pay beyond a period of three months from the due date;
- collects any tax in contravention of the Act but fails to pay beyond a period of three months from the due date;
- takes and/or utilizes input tax credit without actual receipt of goods and/or services either fully or partially;

- evades tax, fraudulently avails input tax credit or obtains refund
- falsifies or substitutes financial records;
- produces fake accounts and/or documents;
- furnishes any false information with an intention to evade payment of tax due;
- obstructs or prevents any officer in the discharge of his duties;
- 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 under this Act or the rules made there under;
- 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 there under;
- tampers with or destroys any material evidence or documents
- fails to supply any information which he is required to supply under this Act or the rules or supplies false information; or
- attempts to commit, or abets the commission of, any of the offences mentioned in above.

Non-cognizable connotes arrest should be with warrant.

Q2. What is the punishment inflicted on the offenders?

Ans. (i) If the amount of tax evaded exceeds ₹ 250 lakhs then the punishment is 5 years imprisonment and fine.

(ii) If the amount of tax evaded exceeds ₹ 100 lakhs but does not exceed ₹ 250 lakhs then the punishment is 3 years imprisonment and fine.

(iii) If the amount of tax evaded exceeds ₹ 50 lakhs but does not exceed ₹ 100 lakhs then the punishment is 1 year imprisonment and fine.

(iv) In case of repetitive offence then the punishment is 5 years imprisonment and fine.

92.6. MCQs

Q1. Cognizable offence means _____

(a) arrest without warrant

(b) arrest with warrant

(c) no arrest

(d) none of the above

Ans. (a) arrest without warrant

93. Cognizance of offences

Statutory provision

No Court shall take cognizance of any offence punishable except with the previous sanction of the designated authority, and no Court inferior to that of a Magistrate of the First Class, shall try any such offence.

93.1. Introduction

This provision sets out the manner of taking cognizance of offences.

93.2. Analysis

The offence can be tried only before the Court of Judicial Magistrate of the First Class or above and that too only with prior sanction of the designated authority.

93.3. Comparative review

Prosecution under some of the VAT legislations can be conducted only before the First Class Metropolitan Magistrate.

93.4. FAQs

Q1. The offence could be tried before which Court?

Ans. The offence can be tried only before the Court of Judicial Magistrate of the First Class or above

93.6. MCQs

Q1. Previous sanction of the _____ is required to try an offence before the Court

(a) CBI

(b) Tribunal

(c) High Court

(d) designated authority

Ans. (d) designated authority

94. Presumption of culpable mental state

Statutory provision

(1) 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.— In this section, "culpable mental state" includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact.

(2) For the purposes of this section, 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.

94.1. Introduction

This section deals with presumption by Court of culpable mental State of the accused in prosecution proceedings.

94.2. Analysis

(a) In any prosecution proceedings, which require culpable mental State of the accused, the Court would presume the existence of such mental state.

(b) However, as a defence the accused can prove that he had no such mental State in respect of a particular act for which is he is charged as an offender.

(c) The expression 'culpable mental state' has been defined in an inclusive manner to cover intention, motive, knowledge of a fact, and belief in, or reason to believe a fact.

(d) In such proceedings a fact should be proved beyond reasonable doubt and not on the basis of preponderance of probability.

94.3. Comparative review

In the present laws also the onus to prove non-existence of *culpable mental State* is cast on the assesses only. In CE Act, 1944, section 9C contains an identical provision.

94.4. FAQs

Q1. What is the meaning of 'culpable mental state'?

Ans. The Explanation to the section defines the expression 'culpable mental state' to include intention, motive, knowledge of a fact, and belief in, or reason to believe a fact.

Q2. Who has to prove existence of culpable mental State in prosecution proceedings?

Ans. In any prosecution proceedings, which require culpable mental State of the accused, the Court would presume the existence of such mental state. As a defence the accused can prove that he had no such mental state.

94.6. MCQs

Q1. In prosecution proceedings a fact should be proved _____

(a) beyond reasonable doubt

(b) on the basis of preponderance of probability

(c) to the extent possible

(d) completely.

Ans. (a) beyond reasonable doubt

95. Relevancy of statements under certain circumstances

Statutory provision

(1) A statement made and signed by a person before any gazetted officer of CGST/IGST/SGST during the course of any inquiry or proceeding 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 interests of justice.

(2) The provisions of sub-section (1) shall, so far as may be, apply in relation to any proceeding under this Act, other than a proceeding before a Court, as they apply in relation to a proceeding before a Court.

95.1. Introduction

This provision deals with relevancy of statements recorded/deposed during investigation.

95.2. Analysis

(a) A statement recorded during investigation or enquiry will be relevant to prove the truthfulness of the facts when

- the same is made by the person who is not available at the time of Court proceedings due to reasons viz., death or not found or prevented by adverse party or incapable or
- the Court admits that statement as evidence after examining the person who made the statement as a witness.

(b) The said provisions would apply in relation to any proceeding under this Act, other than Court proceedings, as they are applicable in the case of Court proceedings.

95.3. Comparative review

Similar provisions could be found in the existing indirect tax legislations also. To illustrate, refer section 9D of the CE Act, 1944.

95.4. FAQs

Q1. What is the relevancy of statements recorded during investigation or inquiry?

Ans. It would be relevant to prove the truthfulness of the facts when the same is made by the person who is not available at the time of Court proceedings or the Court admits that statement as evidence after examining the person who made the statement as a witness.

96. Offences by Companies and certain other persons

Statutory provision

(1) Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed oversaw, 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 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.

Explanation. - For the purposes of this section, -

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

(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 karat or managing trustee, as the case may be, 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 apply mutatis mutandis 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.

96.1. Introduction

This provision specifies the persons to be prosecuted in case the offence is committed by a company, firm, LLP, HUF or trust.

96.2. Analysis

(a) In case the offence is committed by the company then the person who was in charge of or responsible for the operations such as Director, Secretary, Manager etc., when such offence was committed will also be considered guilty along with company and will be liable for punishment.

(b) It is spelt out that that the term 'company' means a body corporate and also includes firm or other association of individuals such as AOP, BOI etc.

(c) Further, if the offence is committed by a Partnership Firm, LLP, HUF or Trust, then such Partner, Karta of Family and Managing Trustee of the Trust will be deemed to be guilty of offence.

(d) However, if the person proves that he had no knowledge of the offence and took all the precautions to prevent such offence then he is not punishable under this section.

96.3. Comparative review

This is comparable to section 9AA of the Central Excise Act, 1944. However, the provisions as regards LLP, HUF and Trust, are a new development. Similar provisions are also there in State VAT Legislations with few exceptions as to the persons who can be prosecuted.

96.4. FAQs

Q1. In the case of offences by LLP, HUF and Trust, who else can be punished?

Ans. If the offence is committed by a Partnership Firm, LLP, HUF or Trust, then such Partner, Karta of Family and Managing Trustee of the Trust will be deemed to be guilty of offence.

Q2. What is the meaning attributable to the word 'company'?

Ans. It means a body corporate and also includes firm or other association of individuals.

96.5. MCQs

Q1. The term 'company' would include _____

(a) firm

(b) HUF

(c) Trust

(d) none of the above

Ans. (a) firm

Legend:

LLP – Limited Liability Partnership

HUF – Hindu Undivided Family

97. Compounding of offences

Statutory provision

(1) Any offence under the Act may, either before or after the institution of prosecution, be compounded by the Competent Authority 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 described under clause (a) to (g) of sub-section (1) of section 92 and the offences described under clause (m) which are relatable to offences described under clause (a) to (g) of 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 the Act or under the provisions of any other SGST Act or IGST Act in relation to supplies of value exceeding one crore rupees;

(c) a person who has been accused of committing an offence under the Act which is also an offence under the Narcotic Drugs and Psychotropic Substance Act,1985 (61 of 1985), the Foreign Exchange Management Act, 1999 (42 of 1999) or any other Act other than the CGST/SGST Act;

(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 clauses (h),(k) or (l) of sub-section (1) of section 92; and

(f) any other class of persons or offences as may be prescribed:

PROVIDED FURTHER that any compounding allowed under the provision 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 as may be prescribed under the rules to be made under sub-section (1), subject to the minimum amount not being less than ten thousand rupees or fifty per cent of the tax involved, whichever is greater, and the maximum amount not being more than thirty thousand rupees or one hundred and fifty per cent of the tax, whichever is greater.

(3) On payment of such compounding amount as may be determined by the competent authority, no further proceedings shall be initiated under the 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.

97.1. Introduction

This provision deals with compounding of offence by paying prescribed compounding fees.

97.2. Analysis

(a) Compounding of offence means payment of monetary compensation instead of undergoing prosecution.

"Compounding an offence on the request of the defaulter party is neither an agreement nor a contract. It is a sort of compromise between the two parties viz. defaulter and the department."

(b) The competent authority can compound an offence either before or after institution of prosecution proceedings if the accused person pays the compounding amount.

(c) If the person committing offence under this act pays entire amount of tax, interest and penalty he can approach the competent authority for compounding of offence.

(d) The compounding provision is available only one time in respect of certain specified offences where value of supplies exceed Rupees One Core.

(e) The compounding amount should be minimum 10,000/- rupees or 50% of tax involved whichever is higher.

(f) However, the said compounding amount cannot exceed 30,000/- rupees or 150% of tax whichever is higher.

(g) Upon payment of the compounding amount the proceedings already initiated would abate and no criminal proceedings could be initiated.

(h) Any compounding allowed under this section shall not affect the proceedings under any law.

(i) Compounding would not apply to certain types of offences:

- person who has been allowed compounding in respect of offences described in section 73(1)(a) to (g) and (m).
- A person allowed to compound once in respect of any offence other than offences described in section 92(1)(a) to (g) and (m), under the CGST/SGST/IGST Acts w.r.t. supplies of value exceeding ₹ 1 Crore.
- The person is also an offender under Narcotics Act, FEMA or any other law.
- aa person who has been convicted for an offence under this Act by a court;
- a person who has been convicted for an offence under this Act by a court a person who has been accused of committing an offence specified in clauses (h),(k) or (l) of sub-section (1) of section 92.
- Any prescribed class of persons.

97.3. Comparative review

The provision for compounding of offence is available in all the present indirect tax legislations. In the Finance Act, 1994 (Service Tax) separate rules namely Service Tax (Compounding of Offences) Rules, 2012 and in excise - Central Excise (Compounding of Offences) Rules, 2005 govern the provisions relating to compounding.

97.4. Related provisions

Statute	Section or Rule	Description	Remarks
CGST Act	Sec.92(1)(a)	Supply of goods/services without invoice or grossly mis-declares the description of the supply	Compounding in respect of such offence cannot be twice – refer section 97(1) proviso
CGST Act	Sec.92(1)(b)	Issuance of bills/invoices without supply of goods/services	-do-
CGST Act	Sec.92(1)(c)	Failure to pay tax collected beyond 3 months from due date	-do-
CGST Act	Sec.92(1)(d)	Collection of tax and non-remittance beyond 3 months from due date	-do-
CGST Act	Sec.92(1)(e)	Taking and/or using credit without receipt of goods/services (fully or partially)	-do-
CGST Act	Sec.92(1)(f)	evades tax, fraudulently avails input tax credit or obtains refund	-do-
CGST Act	Sec.92(1)(g)	Falsification or substitution of financial records or production of fake accounts/documents or furnishing of false information with intent to evade tax	-do-
CGST Act	Sec.92(1)(m)	Attempt to commit or abetment of offences listed above	-do-

97.5. FAQs

Q1. What is the meaning of compounding?

Ans. Compounding of offence means payment of monetary compensation instead of undergoing prosecution.

Q2. When is compounding possible?

Ans. The competent authority can compound an offence either before or after institution of prosecution proceedings if the accused person pays the compounding amount.

Q3. Under what circumstances compounding is not possible?

Ans. Compounding would not apply to certain types of offences:

(i) A person who has been allowed compounding in respect of offences described in section 92(1)(a) to (g) and (m).

(ii) A person allowed to compound once in respect of any offence other than offences described in section 92(1)(a) to (g) and (m), under the CGST/SGST/IGST Acts w.r.t. supplies of value exceeding ₹ 1 Crore.

(iii) The person is also an offender under Narcotics Act, FEMA or any other law.

(iv) a person who has been convicted for an offence under this Act by a Court;

(v) a person who has been convicted for an offence under this Act by a Court a person who has been accused of committing an offence specified in clauses (h), (k) or (l) of sub-section (1) of section 92

(vi) Any prescribed class of persons.

97.6. MCQs

Q1. Compounding will be permitted _____

(a) only before institution of prosecution

(b) only after institution of prosecution

(c) both before or after institution of prosecution

(d) none of the above

Ans. (c) both before or after institution of prosecution

Legend:

FEMA – Foreign Exchange Management Act

Chapter – XXI
Appeals and Revision

98. Appeals to first appellate authority

Statutory Provisions

(1) Any person aggrieved by any decision or order passed against him under this Act or under the [SGST/CGST] Act as authorised under section 7 of the [SGST/CGST] Act by an adjudicating authority, may appeal to the prescribed First Appellate Authority within three months from the date on which the said decision or order is communicated to such person.

(2) The Commissioner may, of his own motion, or upon request from the commission of [SGST/CGST] 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 [SGST/CGST] Act as authorised under section 7 of [SGST/CGST] 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 GST Officer subordinate to him to apply to the First Appellate Authority within six months from the date on which the said decision or order is communicated to such person 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 First Appellate Authority, such application shall be dealt with by the First Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and the provisions of this Act relating to appeals shall, so far as may be, apply to such application.

(4) The First 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 allow it to be presented within a further period of one month.

(5) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

(6) No appeal shall be filed under sub-section (1) unless the appellant has deposited –

(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.

If nothing in this sub-section shall affect the right of the departmental authorities to apply to the First Appellate Authority for ordering a higher amount of pre-deposit, not

exceeding twenty five percent of the amount of tax in the dispute, in a case which is considered by the Commissioner of GST to be a "serious case".

Explanation. - For this proviso, the expression "serious case" shall mean a case in which an order has been passed under section 67 involving a disputed tax liability of not less than Rupees Twenty-Five Crores.

(7) The First Appellate Authority shall give an opportunity to the appellant of being heard, if he so desires.

(8) The First Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time, from time to time, to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:

If no such adjournment shall be granted more than three times to a party during hearing of the appeal.

(9) The First Appellate Authority may, at the time of hearing of an appeal, allow an appellant to go into any ground of appeal not specified in the grounds of appeal, if he is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.

(10) The First Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the 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 First 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 66 or 67.

(11) The order of the First Appellate Authority disposing of the appeal shall be in writing and shall State the points for determination, the decision thereon and the reasons for the decision.

(12) The First 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.

(13) On disposal of the appeal, the First Appellate Authority shall communicate the order passed by him to the appellant and to the adjudicating authority.

(14) A copy of the order passed by the First Appellate Authority shall also be sent to the jurisdictional Commissioner of CGST or the authority designated by him in this behalf and the jurisdictional Commissioner of SGST or the authority designated by him in this behalf.

(15) Every order passed under this section shall, subject to the provisions of section 99, 102, 106 or 107, be final.

98.1 Introduction

(a) This section pertains to appeals to first 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.

98.2 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.

(ii) The time limit to file the appeal by Revenue is6months from the date of communication of decision or order.

(iii) The first appellate authority is empowered to condone the delay upto a period of 1 month upon providing sufficient cause for delay in filing the appeal.

(iv) The appeal has to be filed in prescribed form duly verified in prescribed manner along with

— Deposit of amount of tax, interest, fine, fee and penalty, as is admitted, in full; and

— pre-deposit of sum equal to 10% of remaining amount of tax in dispute.

(v) If the Commissioner of GST considers a matter to be a "serious case", the departmental authority can apply to the first Appellate Authority for ordering a higher amount of pre-deposit not exceeding 25% of the amount of tax in dispute.

— The term "serious case" is defined to mean a case involving a disputed tax liability of not less than ₹ 25 Crores.

(vi) Maximum 3 adjournments shall be granted to a party on showing reasonable cause to be recorded in writing.

(vii) First appellate authority may allow any additional grounds not specified in the grounds of appeal on satisfying himself that the omission was not wilful or unreasonable.

(viii) First 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 has to be granted before ordering for enhancement of fees or penalty or fine in lieu of confiscation of goods or reduction of amount of refund/input tax credit.

(x) The first appellate authority has power to issue show cause notice within the time limit set out under sections 66 and 67 in case he 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) The first appellate authority has to hear and decide the appeal, wherever possible, within a period of 1 year (excluding the period of stay by Tribunal or Court if any) from the date of filing.

(xii) The first appellate authority has to communicate copy of his order to the appellant, the adjudicating authority, jurisdictional Commissioner of CGST and SGST or the authority designated by them.

98.3 Comparative review

(i) Similar provisions are contained in Sections 84 and 85 of the Finance Act, 1994 and 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, the 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 the Principal Commissioner of Central Excise or Commissioner of Central Excise

98.4 Related provisions

(i) Section 2(4) defines “adjudicating authority”

(ii) Section 2(23) defines “commissioner”

(iii) Section 2(45) defines “First Appellate Authority”

98.5 FAQs

Q1. Whether the first appellate authority has powers to condone the delay in filing appeal?

Yes, the first appellate authority is empowered to condone the delay upto a period of 1 month on providing sufficient cause for delay in filing the appeal.

Q2. Whether the first appellate authority has any powers to allow additional grounds not specified in the appeal memo?

Yes, additional grounds not specified in the grounds of appeal may be allowed on satisfying himself that the omission was not wilful or unreasonable.

Q3. Whether the first appellate authority has any powers to remand the matter back to adjudicating authority for fresh consideration?

No, the said authority does not have power to remand the matter back to the adjudicating authority for fresh consideration.

Q4. Whether Memorandum of Cross Objections can be filed by the respondent before the first appellate authority?

There is no specific provision for cross objections in this section.

Q5. Whether the first appellate authority has powers to issue show cause notice?

Yes, even the first appellate authority has powers to issue show cause notice within the time limit prescribed under Sections 66 or 67 as the case may be.

98.6 MCQs

Q1. Appeal by the assessee to the first appellate authority is to be filed within

(a) 3 months from the date of order

(b) 3 months from the date of communication of order

(c) 90 days from the date of order

(d) 90 days from the date of communication of order

Ans. (b) 3 months from date of communication of order

Q2. Appeal to the first appellate authority is to be accompanied along with pre-deposit of

(a) 10% remaining amount of tax in dispute

(b) 10% of amount payable as tax, fees & penalty

(c) Amount to be determined by GST Officer on application

(d) None of the above

Ans. 10% of remaining amount of tax in dispute

99. Revisional Powers of Commissioner

Statutory Provisions

(1) Subject to the provisions of section 112 and any rules made thereunder, the Chief Commissioner or Commissioner may on his own motion, or upon information received by him or on request from the commissioner of [SGST/CGST], 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 [SGST/CGST] Act as authorised under section 7 of the [SGST/CGST] 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 Chief Commissioner or Commissioner shall not exercise any power under sub-section (1), if.-

  (a) the order has been subject to an appeal under section 98 or under section 101 or under section 106 or under section 107; or

  (b) the period specified under sub-section (2) of section 98 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.

(3) Notwithstanding anything contained in sub-section (2), the Chief Commissioner or Commissioner 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.

(4) Every order passed in revision under sub-section (1) shall, subject to the provisions of sections 102, 106 or 107, be final.

(5) If the said decision or order involves an issue on which appellate tribunal or the high court has given it's decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the high court or the supreme court against such decision of the appellate tribunal or as the case may be, 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 as the case may be, the date of decision of high court and the date of decision of supreme court shall be excluded in computing the period 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.

(6) 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).

(7) For the purposes of this section, 'record' shall include all records relating to any proceedings under this Act available at the time of examination by the Chief Commissioner or Commissioner.

(8) For the purposes of this section, 'decision' shall include intimation given by any officer lower in rank than the Chief Commissioner or, as the case may be Commissioner.

99.1 Introduction

This section pertains to revisionary powers of Chief Commissioner or Commissioner as the case may be.

99.2 Analysis

(i) After the receival & examination of records relating to any proceeding, the Chief Commissioner or Commissioner as the case may be, 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 Chief Commissioner or Commissioner 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 Chief Commissioner or Commissioner shall not exercise such revisionary powers if

(a) the appeal is filed against the order to -

— first appellate authority U/s.98

— Appellate Tribunal U/s.101

— High Court U/s.106

Supreme Court U/s.107

(b) the period of 6 months as specified in section 98(2) has not expired or more than 3 years have expired after passing the decision or order sought to be revised

(c) the order has already been taken for revision earlier under this section

(iv) However, the Chief Commissioner or Commissioner may pass an order on any point

which has not been raised and 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 order of first appellate authority sought to be revised, whichever is later.

99.3 Comparative review

This is comparable to the Suo-motu revision powers envisaged in some of the VAT laws.

99.4 FAQs

Q1. Whether the Commissioner has any powers to remand the matter back to adjudicating authority for fresh consideration?

Ans. No such powers are brought out in the provision.

99.5 MCQs

Q1. The Commissioner can exercise his revisionary powers within how many years from passing of the order sought to be revised

(a) 1 Year

(b) 2 Years

(c) 3 Years

(d) None of the above

Ans. (c) 3 Years

100. Constitution of the National Appellate Tribunal (CGST Act)

Statutory Provisions

(1) The Central Government shall on the recommendation of the GST Council constitute a National Goods and Services Tax Appellate Tribunal (hereinafter referred to as the Appellate Tribunal).

(2) The Appellate Tribunal shall be headed by a National President.

(3) The Appellate Tribunal shall have one branch for each state, which shall be called as the State GST Tribunal.

(4) Every State GST Tribunal will be headed by a State President.

(5) Every State GST Tribunal shall consist of as many Members (Judicial), Members (Technical - CGST) and Members (Technical - SGST) as may be prescribed, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by this Act.

(6) The qualifications, eligibility conditions and the manner of selection and appointment of the National President, Members (Judicial) and the Member (Technical-CGST) shall be such as may be prescribed by the Central Government on the recommendations of the Council.

(7) The qualifications, eligibility conditions and the manner of selection and appointment of the State Presidents and the Members (Technical-SGST), shall be such as may be prescribed by the State Government, on the recommendations of the Council.

(8) The National President and the State Presidents shall exercise such powers and discharge such functions as may be prescribed on the recommendations of the Council.

(9) On ceasing to hold office, the National President, the State Presidents or other Members of the Appellate Tribunal shall not be entitled to appear, act or plead before the Appellate Tribunal.

100.1 Introduction

(a) This section pertains to constitution of National GST Appellate Tribunal

100.2 Analysis

(a) Upon recommendation of GST Council, Central Government to constitute National Goods & Service Tax Appellate Tribunal.

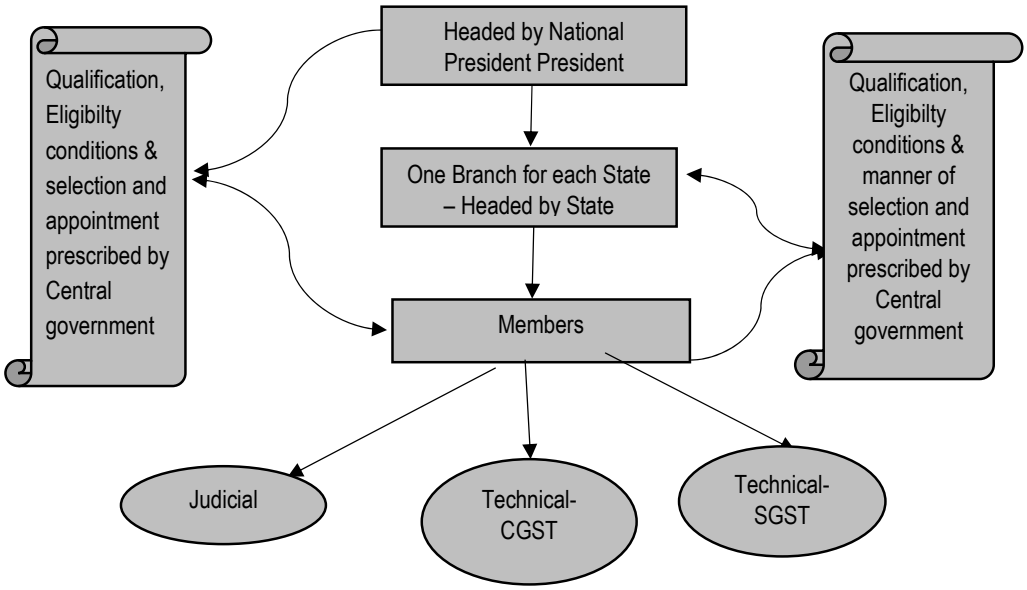
(b) The Appellate Tribunal shall have one branch in each State called as the State GST Tribunal headed by State President.

100.3 Related provisions

(i) Section 2(9) defines "Appellate Tribunal"

Section 2(34) defines “Council”

(ii)


Headed by National President President
Qualification, Eligibilty conditions & selection and appointment prescribed by Central government
One Branch for each State – Headed by State
Members
Qualification, Eligibilty conditions & manner of selection and appointment prescribed by Central government
Judicial
Technical-CGST
Technical-SGST

100. Constitution of the National Appellate Tribunal (SGST Act)

The Appellate Tribunal constituted under section 100 of the CGST Act, 2016 shall be the Appellate Tribunal for the purposes of this Act.

101 Appeals to Appellate Tribunal

Statutory Provisions

(1) Any person aggrieved by an order passed against him under section 98 or section 99 of this Act or of the [SGST/CGST] Act as per the provisions of section 7 of the [SGST/CGST] 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 one lakh rupees.

(3) The Commissioner may by order constitute such Committees consisting of two officers as may be necessary for the purposes of review of and filing appeals against the orders passed under sub-section (10) of section 98, or under sub-section (1) of section 99.

(4) The Committee may, if it is of the opinion that an order passed under sub-section (10) of section 98, or as the case may be, under sub-section (1) of section 99 of this Act or of the [SGST/CGST] Act as per the provisions of section 7 of the [SGST/CGST] Act,, is not legal or proper, direct any Officer authorized by it in this behalf to apply to the Appellate Tribunal within six months from the date on which the order sought to be appealed against is communicated to the Commissioner for the determination of such points arising out of the said order as may be specified by the committee:

Provided that where the Committee differs in its opinion, it shall be deemed that the Committee has formed the opinion that the order under review is not legal or proper.

(5) Where in pursuance of an order under sub-section (4) 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 (10) of section 98, or as the case may be, under sub-section (1) of section 99 and the provisions of this Act shall, so far as may be, apply to such application, as they apply in relation to appeals filed under sub-section (1).

(6) 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 (5).

(7) The Appellate Tribunal may admit an appeal or permit the filing of a memorandum of cross-objections after the expiry of the period referred to in sub-section (5) or sub-section (6) respectively, if it is satisfied that there was sufficient cause for not presenting it within that period.

(8) An appeal to the Appellate Tribunal shall be in the prescribed form and shall be verified in the prescribed manner and shall be accompanied by a prescribed fee:

Provided that no such fee shall be payable in the case of an appeal filed by the Commissioner or a memorandum of cross-objections referred to in sub-section (6).

(9) (a) No appeal shall be filed under sub-section (1) unless the appellant has deposited

(i) 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

(ii) a sum equal to ten percent of the remaining amount of tax in dispute, in addition to the amount deposited under sub-section (6) of the section 98, arising from the said order, in relation to which the appeal has been filed:

PROVIDED that nothing in this sub-section shall affect the right of the departmental authorities to apply to the Appellate Tribunal for ordering a higher amount of pre deposit, not exceeding twenty-five percent of the amount of tax in dispute after taking into account the amount deposited in the first appeal, in a case which is considered by the Commissioner of GST to be a "serious case".

Explanation. - For the purpose of this proviso, the expression "serious case" shall mean a case in which an order has been passed under section 67 involving a disputed tax liability of not less than Rupees Twenty Five Crores.

(b) The provisions of clause (a) shall also apply mutatis mutandis to cross objections filed under sub-section (6).

(10) Every application made before the Appellate Tribunal, —

(a) in an appeal for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by a prescribed fee :

Provided that no such fee shall be payable in the case of an application filed by or on behalf of the Commissioner of GST.

101.1 Introduction

(a) This section pertains to appeals to Appellate Tribunal by any person who is aggrieved against decision or order passed by 1st appellate authority or revisionary authority passed by Chief Commissioner / Commissioner.

(b) This section also provides for appeal by revenue against decision or order passed by 1stAppellate Authority.

101.2 Analysis

(a) Any person should file appeal within 3 months of communication of order. 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 ₹ 1,00,000/-.

(b) The Commissioner is required to constitute committee for the purpose of filing appeal before Appellate Tribunal against the order passed by 1st appellate authority and revisionary authority. Such committee shall consist of two designated officers of GST.

(c) The Committee may issue directions to GST officer to file an appeal to the Appellate Tribunal in order to check legality and proprietary of order. Unless the order passed by 1st appellate authority is unanimously accepted by the said committee, appeal shall be filed before the Appellate Tribunal.

(d) Every appeal by assessee to Appellate Tribunal is to be filed within 3 months from the date of communication of order or decision appealed against.

(e) The appeal to the Appellate Tribunal by Revenue can be filed within 6 months from the date of communication of order or decision appealed against.

(f) Memorandum of Cross objections has to be filed within 45 days from the receipt of notice of filing of such appeal.

(g) The Appellate Tribunal is empowered to condone the delay in filing appeal by Revenue or memorandum of cross objection.

(h) Interestingly, no powers are conferred on Appellate Tribunal to condone the delay in filing appeal by the assessee.

(i) The appeal to be filed in prescribed form duly verified in prescribed manner along with prescribed fees and

- Amount of tax, interest, fine, fee and penalty, as is admitted, in full; and
- pre-deposit of sum equal to 10% of remaining amount of tax in dispute in addition to amount deposited during filling appeal before the First Appellate Authority

Appellate Tribunal may order a higher amount of pre deposit, not exceeding twenty-five percent of the amount of tax in dispute after taking into account the amount deposited in the first appeal, in a "serious case" Where, the expression "serious case" shall mean a case in which an order has been passed under section 67 involving a disputed tax liability of not less than Rupees Twenty Five Crores.

(j) The provisions relating to pre-deposit are also applicable to cross objections.

(k) No fee is required to be paid for filing memorandum of cross objection.

(l) No fees and pre-deposit shall be payable in case of appeal filed by department.

(m) Every miscellaneous application regarding rectification of mistake or restoration of an appeal or application shall be filed along with the prescribed fees.

101.3 Comparative review

(a) Similar provisions are contained in Section 86 of the Finance Act, 1994 and Section 35B of the Central Excise Act, 1944

101.4 Related provisions

101.5 FAQs

Q1. Whether any filing fee is required to be paid while filing Memorandum of Cross Objection?

Ans. No such fees is required to be paid.

101.6 MCQs

Q1. The Appellate Tribunal has no discretion to admit any appeal in cases where disputed amount involved does not exceed ₹ 1 Lac.

(a) True

(b) False

Ans. True

Q2. Appeal by the assessee to the Appellate Tribunal is to be filed within

(a) months from date of communication of order

(b) months from date of communication of order

(c) months from date of communication of order

(d) 90 days from date of communication of order

Ans. (b) 3 months from date of communication of order.

Q3. Memorandum of Cross Objection is to be filed within a period of

(a) 30 Days of communication of filing appeal

(b) 45 Days of receipt of notice of filing appeal

(c) 60 Days of communication of filing appeal

(d) 1.5 Month of communication of filing appeal

Ans. (b) 45 days of receipt of notice of filing of appeal.

Q4. The Appellate Tribunal can condone the delay in filing appeal by assessee for a period upto

(a) 1 Month

(b) 2 Month

(c) Without any time limit

(d) No condonation powers

Ans. (d) No condonation powers.

102 Orders of Appellate Tribunal

Statutory Provisions

(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 First Appellate Authority, or the revisional authority, as the case may be, or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision, as the case may be, 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, from time to 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 mistake apparent from the record, if such mistake is noticed by it on its own accord, or is brought to its notice by the Commissioner of GST 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 Appellate Tribunal has given notice to him of its intention to do so and has allowed him a reasonable opportunity of being heard.

(4) The Appellate Tribunal 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.

(5) The Appellate Tribunal shall send a copy of every order passed under this section to the First Appellate Authority or revisional authority, or to the original adjudicating authority, as the case may be, the appellant, the jurisdictional Commissioner of CGST and the jurisdictional Commissioner of SGST.

(6) Save as provided in section 106 or section 107, orders passed the Appellate Tribunal on an appeal shall be final.

102.1 Introduction

(i) This section pertains to orders by Appellate Tribunal.

102.2 Analysis

(i) The Appellate Tribunal can pass orders confirming, modifying or annulling the decision or order appealed against.

(ii) The Appellate Tribunal also has powers to remand the case back to the first appellate authority or revisional authority or original adjudicating authority.

(iii) Maximum 3 adjournments shall be granted to a party on showing reasonable cause to be recorded in writing by the Tribunal.

(iv) The Appellate Tribunal is empowered to amend its order to rectify any mistake apparent from record, However the Tribunal may rectify it's order if the mistake is brought to it's notice by the Commissioner of GST or other party to appeal within a period of 3 months of date of such order . Opportunity of being heard should be granted in case such rectification results in 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, wherever possible, within a period of 1 year from the date of filing.

(vi) The Appellate Tribunal to communicate the copy of order to first appellate authority / revisional authority / original adjudicating authority, the appellant, the jurisdictional Commissioner of CGST and jurisdictional Commissioner of SGST.

102.3 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.

102.4 FAQs

Q1. Whether the Appellate Tribunal has powers to remand the case back to the adjudicating authority for fresh adjudication?

Ans. Yes. The Appellate Tribunal is empowered to remand the case back to the original adjudicating authority for fresh adjudication.

102.5 MCQs

Q1. Appellate Tribunal is empowered to grant adjournment for following no. of times

(a) 3 Times

(b) 4 Times

(c) No adjournment powers

(d) Unlimited times

Ans. (a) 3 Times

103 Procedure of Appellate Tribunal

Statutory Provisions

(1) The powers and functions of the Appellate Tribunal may be exercised and discharged by Benches constituted by the National President or the State Presidents from amongst the members thereof.

(2) Subject to the provisions contained in sub-section (3), a Bench shall consist of one Member (Judicial), one Member (Technical - CGST) and one Member (Technical - SGST).

(3) The National President or a State President, or any other member of the Appellate Tribunal authorized in this behalf by the National President or a State President, may, sitting singly, dispose of any case which has been allotted to the Bench of which he is a member, where in any disputed case, 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 involved, does not exceed ten lakh rupees.

(4) If the members of a Bench differ in opinion on any point, the point 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 make a reference to the National President or the State President who shall either hear the point or points himself or refer the case for hearing on such point or points by one or more of the other members of the Appellate Tribunal and such point or points shall be decided according to the opinion of the majority of these members of the Appellate Tribunal who have heard the case, including those who first heard it.

(5) Subject to the provisions of this Act, the Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters arising out of the exercise of its powers or of the discharge of its functions, including the places at which the Benches shall hold their sittings.

(6) The Appellate Tribunal shall, for the purposes of discharging its functions, have the same powers as are vested in a court under the Code of Civil Procedure, 1908 (5 of 1908), when trying a suit in respect of the following matters, namely :-

  (a) discovery and inspection;

  (b) enforcing the attendance of any person and examining him on oath;

  (c) compelling the production of books of account and other documents; and

  (d) issuing commissions.

(7) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code (45 of 1860), and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

103.1 Introduction

This section pertains to the powers & functioning of the Appellate Tribunal.

103.2 Analysis

(i) The National President or the State Presidents to constitute Benches which may exercise and discharge the powers and functions of the Appellate Tribunal.

(ii) A Bench, other than a single member bench, shall consist of one Judicial member, one CGST Technical member and one SGST Technical member.

(iii) A single member bench may dispose of any case where in, 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 involved, does not exceed ₹ 10 Lacs.

(iv) In case of difference in opinion among the members of the Bench on any point, such point shall be decided according to the opinion of majority.

(v) In case members are equally divided on any point, such point be referred to the National President or State President who shall either hear such point himself or refer the case for hearing by one or more other members of the Appellate Tribunal and such point shall be decided according to the opinion of majority of these members who have heard the case including those who first heard it.

(vi) The Appellate Tribunal shall have power to regulate its own procedure and the procedure of the Benches thereof in all matters including the places at which the Benches shall hold their sittings.

(vii) When trying a suit in respect of following matters, the Appellate Tribunal shall have same powers as are vested in a court under the Code of Civil Procedure, 1908:

- discovery and inspection;
- enforcing the attendance of any person and examining him on oath;
- compelling the production of books of account and other documents; and
- issuing commissions.

(viii) Any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purpose of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

103.3 Comparative review

Similar provisions are contained in Section 129 The Customs Act, 1962.

103.4 FAQs

Q1. A Bench, other than a single member bench, shall consist of how many members?

Ans. It shall consist of one Judicial member, one CGST Technical member and one SGST Technical member.

103.5 MCQs

Q1. A single member bench can dispose of any case involving tax / input credit or amount of fine, fee or penalty not exceeding ₹

(a) 5 Lacs

(b) 10 Lacs

(c) 25 Lacs

(d) 50 Lacs

Ans. (b) 10 Lacs

104 Interest on refund of pre-deposit

Statutory Provisions

Where an amount deposited by the appellant under sub-section (6) of section 98 or under sub-section (9) of section 101 is required to be refunded consequent to any order of the First Appellate Authority or of the Appellate Tribunal, as the case may be, interest at the rate specified under section 50 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

104.1 Introduction

(i) This section provides for interest on delayed refund of pre-deposit made while filing the appeal.

104.2 Analysis

(i) Interest at the rates specified in Section 50 shall be payable on refund of pre-deposit.

Such interest to be calculated from the date of payment of such pre-deposit till the date of refund.

104.3. Comparative review

In the present Central Indirect Tax laws the interest is permissible only after 3 months of passing of the appellate order.

104.3 MCQs

Q1. Interest on refund of pre-deposit is to be paid from

(a) The date of order of first appellate authority / tribunal

(b) The date of communication of order of first appellate authority / tribunal

(c) the date of payment of such pre-deposit

(d) 30 days from date of order of first appellate authority / tribunal

Ans. (c) the date of payment of such pre-deposit

105 Appearance by authorised representative

Statutory Provisions

(1) Any person who is entitled or required to appear before a GST Officer appointed under this Act, or the First Appellate Authority or the Appellate Tribunal in connection with any proceedings under the 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, "authorised representative" means 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 valid 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 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.

(e) any person who has been authorized to act as a Tax Return Preparer on behalf of the concerned registered taxable person.

(3) Notwithstanding anything contained in this section, no person who was serving in the indirect tax departments of the Government of India or of any State Government, and has retired or resigned from such service after having served for not less than two years as a Gazetted officer in that department shall be entitled to appear as an authorised representative in any proceedings before a GST Officer for a period of one year from the date of his retirement or resignation, as the case may be.

(4) 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 SGST Act, the IGST Act, the Customs Act, 1962 (52 of 1962), the Central Excise Act, 1944 (1 of 1944) or Chapter V of the Finance Act 1994 (25 of 2014) 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 and/or services, or

(c) who has become 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),

(ii) for such time as the Commissioner of GST or the competent authority under the Acts referred to in clause (b) may, by order, determine in the case of a person referred to in clause (b), and

(iii) for the period during which the insolvency continues in the case of a person referred to in clause (c).

(5) If any person is found guilty of misconduct by the prescribed authority in connection with any proceedings under this Act or under any of the Acts referred to in clause (b) of sub-section (4), the prescribed authority may direct that he shall henceforth be disqualified to represent any person under sub-section (1).

(6) Any order or direction under clause (b) of sub-section (4) or sub-section (5) shall be subject to the following conditions, namely: —

(a) no such order or direction shall be made in respect of any person unless he has been given a reasonable opportunity of being heard;

(b) any person against whom any such order or direction is made may, within one month of the making of the order or direction, appeal to the competent authority [Central/State Government] to have the order or direction cancelled; and

(c) no such order or direction shall take effect until the expiration of one month from the making thereof, or, where an appeal has been preferred, until the disposal of the appeal.

105.1 Introduction

This section provides for appearance by authorised representative in proceedings or appeals except in circumstances where personal appearance is required for examination on oath or affirmation.

105.2 Analysis

(i) "Authorised representative" means –

- relative or regular employee
- Practising Advocate
- Practising CA, CMA or CS
- A retired State Government officer or retired officer of CBEC, Department of Revenue OR, Government of India
  - who had worked for not less than 2 years in a post not lower in rank than Group-B gazetted officer
- Tax Return Preparer authorised to file the returns of the concerned registered taxable person.

(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, would be disqualified to be an authorised representative forever.

(iv) In cases where any person, who is convicted of an offence connected with any proceeding under CGST Act, SGST Act, IGST Act, the Customs Act, 1962, the Central Excise Act, 1944 or Chapter V of the Finance Act 1994 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 and/or services, the Commissioner of GST or the competent authority under the Acts, can disqualify such person to act as authorised representative for such time as may be determined by an order.

(v) Any person, who has become insolvent, shall not be qualified as authorised representative during the period of insolvency.

(vi) The prescribed authority may direct any person to be disqualified to represent if such person is found guilty of misconduct in connection with any proceedings under any of the Acts referred to in clause (iv) hereinabove.

(vii) Any such order or direction related to disqualification shall be subject to following conditions –

— Giving reasonable opportunity of being heard

— Such person may appeal to competent authority within one month of making such order or direction

— No such order or direction shall take effect until the disposal of appeal or expiry of one month from making, whichever is later.

105.3 Comparative review

(i) Section 35Q of the Central Excise Act,1944

105.4 Related provisions

(i) Section 2(23) defines “chartered accountant”

(ii) Section 2(26) defines "company secretary"

(iii) Section 2(33) defines “cost accountant”

105.5 MCQs

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

(b) 2 years from date of resignation / retirement

(c) 3 years from date of resignation / retirement

(d) Not entitled to appear at all

Ans. (a) 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

(a) 1 year from date of dismissal / removal

(b) 2 years from date of dismissal / removal

(c) 3 years from date of dismissal / removal

(d) Not entitled to appear at all

Ans. (d) Not entitled to appear at all

Q3. Any insolvent person shall not be entitled to appear as authorised representative

(a) Upto a period of 1 year of insolvency

(b) Upto a period of 2 years of insolvency

(c) During the period of insolvency

(d) Not entitled to appear at all

Ans. (d) During the period of insolvency

Q4. Any person who is disqualified to represent, being found guilty of misconduct, has no further remedy at all

(a) True

(b) False

Ans. (b) False

106 Appeals to High Court

Statutory Provisions

(1) The Commissioner of GST or the other party aggrieved by any order passed by the Appellate Tribunal under section 102 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) Notwithstanding the provisions of sub section (1), no appeal shall lie to High Court against an order passed by the Appellate Tribunal under section 102 if such order relates, among other things, to:-

(i) a matter where two or more States, or a State and Center, have a difference of views regarding the treatment of a transaction(s) being intra-State or inter-State; or

(ii) a matter where two or more States, or a State and Center, have a difference of views regarding place of supply.

(3) An appeal under sub-section (1) shall be -

(a) filed within one hundred and eighty days from the date on which the order appealed against is received by the Commissioner of GST or the other party;

(b) accompanied by a prescribed fee ;

(c) in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(4) The High Court may admit an appeal after the expiry of the period of one hundred and eighty days referred to in clause (a) of sub-section (3), if it is satisfied that there was sufficient cause for not filing the same within that period.

(5) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(6) 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.

(7) 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.

(8) The High Court may determine any issue which -

(a) has not been determined by the Appellate Tribunal; or

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as herein referred to above.

(9) 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.

(10) 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.

(11) 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.

(12) Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

106.1 Introduction

This section provides for appeal to High Court by any person aggrieved by an order passed by Appellate Tribunal.

106.2 Analysis

(i) High Court may admit an appeal if it is satisfied that the case involves a substantial question of law.

(ii) However, appeal would not lie before High Court if such order relates to –

— A matter where two or more States or a State and Center have a difference of views regarding the treatment of transaction as being intra-state or inter-state; or

— A matter where two or more States, or a State and Center, have a difference of views regarding place of supply.

(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 substantial questions 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 per 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.

106.3 Comparative review

Section 35G of the Central Excise Act,1944

106.4 FAQs

Q1. Any appeal filed before High Court shall be heard by a bench consisting how many judges of High Court?

Ans. It has to be heard by a Bench of not less than 2 Judges of High Court.

106.5 MCQs

Q1. The High Court may admit an appeal if the case involves a substantial question of fact

(a) True

(b) False

Ans. (a) True

Q2. An appeal involving a matter, where two or more States or a State and Center have a difference of views regarding place of supply, shall lie to High Court

(a) True

(b) False

Ans. (b) False

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. (c) 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) 2 Month

(c) Without any time limit

(d) No condonation powers

Ans. (c) Without any time limit

107. Appeals to Supreme Court

Statutory Provisions

(1) An appeal shall lie to the Supreme Court from any judgment or order passed by the High Court in an appeal made under section 106, 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) An appeal shall lie to the Supreme Court from any order passed by the Appellate Tribunal under section 102 where such order is of the nature referred to in sub section (2) of section 106.

107.1 Introduction

(i) This section provides for appeal to Supreme Court.

107.2 Analysis

(i) An appeal against any judgement or order passed by High Court shall lie to Supreme Court. Such appeal is permissible when the High Court either on its own motion or on an oral application made by or on behalf of the aggrieved party, the High court certifies (immediately after passing of the order) to be a fit one for appeal to Supreme Court.

(ii) An appeal against order in following matters passed by the Appellate Tribunal shall lie to Supreme Court –

- A matter where two or more states or a State and Center have a difference of views regarding the treatment of transaction as being intra-state or inter-state; or
- A matter where two or more States, or a State and Center, have a difference of views regarding place of supply.

107.3 Comparative review

(i) Section 35L of the Central Excise Act,1944

107.4 MCQs

Q1. An appeal against order passed by the Appellate Tribunal, in a matter where two or more states or a State and Center have a difference of views regarding the treatment of transaction as being intra-state or inter-state, shall lie to Supreme Court

(a) True

(b) False

Ans. (a) True

108. Hearing before Supreme Court

Statutory Provisions

(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under section 107 as they apply in the case of appeals from decrees of a High Court:

Provided that nothing in this sub-section shall be deemed to affect the provisions of section 109.

(2) The costs of the appeal shall be at the discretion of the Supreme 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 106 in the case of a judgment of the High Court.

108.1 Introduction

(i) This section provides for hearing in appeal before Supreme Court.

108.2 Analysis

(i) The provisions of Code of Civil Procedure relating to appeals to Supreme Court, as they apply to appeals from decrees of a High Court, shall apply to appeals under this section.

(ii) The Supreme Court, at its discretion, award costs of the appeal.

(iii) The effect of judgment of Supreme Court, varying or reversing the judgement of High Court, shall be given on the basis of a certified copy of the judgment.

108.3 Comparative review

(i) Section 35M of the Central Excise Act,1944

109. Sums due to be paid notwithstanding appeal etc.

Statutory Provisions

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 Appellate Tribunal under sub-section (1) of section 102 or an order passed by the High Court under section 106, as the case may be, shall be payable in accordance with the order so passed.

109.1 Introduction

(i) This section provides for payment of sums due pending appeal.

109.2 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.

109.3 Comparative review

(i) Section 35N of the Central Excise Act,1944

110. Exclusion of time taken for copy

Statutory Provisions

In computing the period of limitation prescribed for an appeal or application under this Chapter, the day on which the order complained of was served, and if the party preferring the appeal or making the application was not furnished with a copy of the order when the notice of the order was served upon him, the time required for obtaining a copy of such order, shall be excluded.

110.1 Introduction

(i) This section provides for exclusion of time taken for obtaining copy of order while computing the limitation for filing appeal.

110.2 Analysis

(i) If the party preferring the appeal / application is not furnished with a copy of order, the time required for obtaining copy of such order shall be excluded while computing the period of limitation for filing an appeal / application.

110.3 Comparative review

(i) Section 35O of the Central Excise Act,1944

111. Appeal not to be filed in certain cases

Statutory Provisions

(1) The Board or the State Government 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 GST officer under the provisions of this Chapter.

(2) Where, in pursuance of the orders or instructions or directions, issued under subsection (1), the GST officer has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such GST officer 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 GST Officer 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 GST officer 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 GST Officer in pursuance of the orders or instructions or directions issued under sub-section (1).

111.1 Introduction

(i) This section provides for non-filing of appeal by revenue in certain cases.

111.2 Analysis

(i) On recommendation of GST Council, the Board or State Government may issue order or instructions or directions fixing monetary limits for the purpose of regulating the filing of appeal or application by GST Officer.

(ii) In case the GST 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 GST 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 GST Officer in pursuance of such order / instructions / directions.

111.3 Comparative review

(i) Section 35R of the Central Excise Act,1944

111.4 MCQs

Q1. In case where the GST Officer has not filed an appeal / application against any decision / order in pursuance of the orders / instructions / directions issued by the Board or the State Government, he shall be precluded from filing appeal or application in any other case involving similar issue / question of law

(a) True

(b) False

Ans. (b) False

112. Non Appealable decision and orders

Statutory Provisions

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by a GST officer if such decision taken or order passed relates to any one or more of the following matters:-

(a) An order of the Commissioner or other competent authority for 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 the Act; or

(d) An order passed under section 74.

112.1 Introduction

(i) This section prescribes decisions or orders which are non-appealable.

112.2 Analysis

(i) No appeal shall lie against any decision / order taken / passed by GST Officer 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.74 related to payment of tax and other amount in installments.

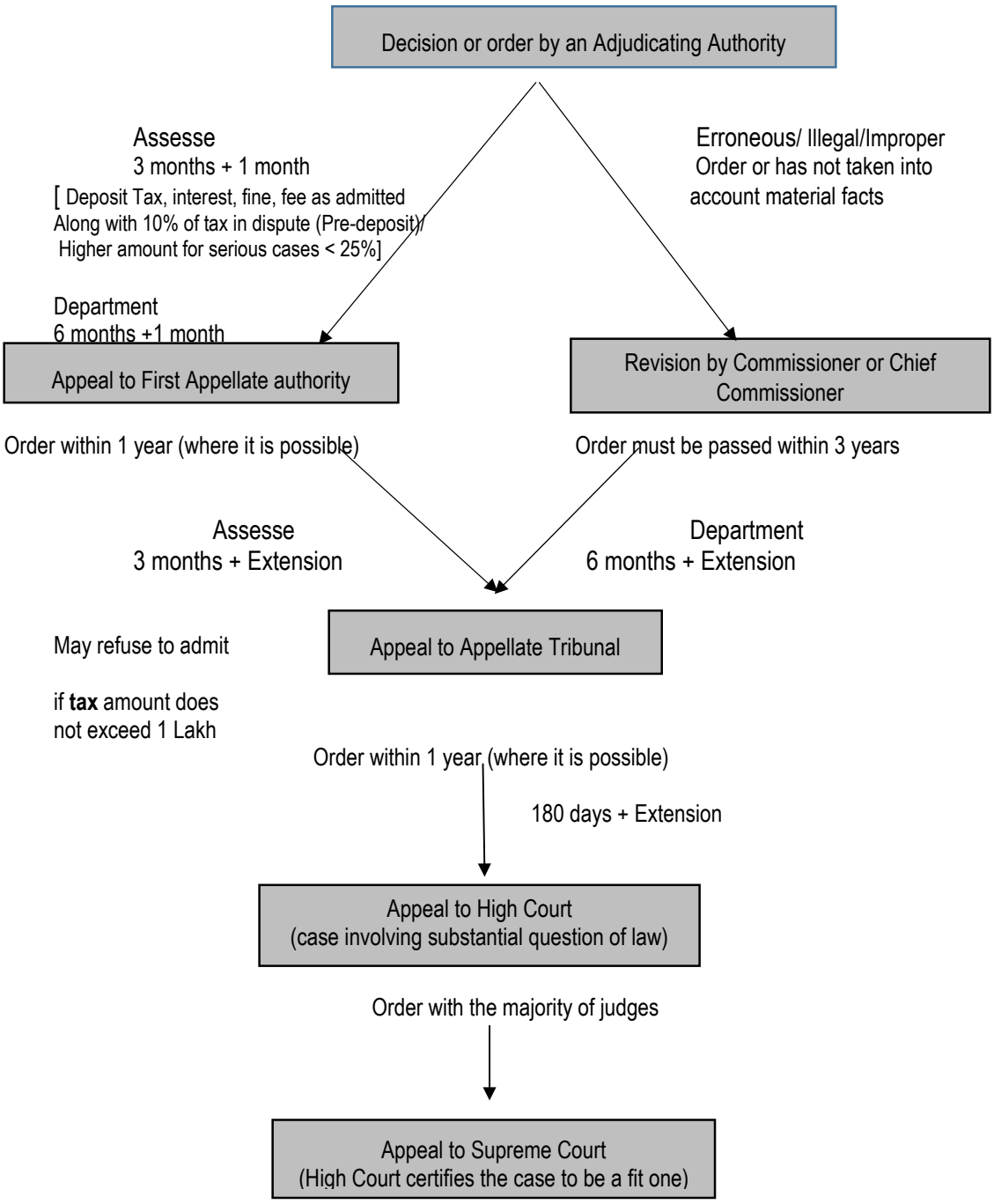
112.3 Related provisions

1. Section 74– Payment of tax and other amount in instalments.
2. Section 2(38) defines “document”.
3. Section 79– Power of inspection, search & seizure.
4. Section 92– Prosecution

112.4 FAQs

Q1. Whether an appeal can be filed against an order pertaining to seizure / retention of sales invoices?

Ans No.


Decision or order by an Adjudicating Authority
Assesse
3 months + 1 month
[Deposit Tax, interest, fine, fee as admitted
Along with 10% of tax in dispute (Pre-deposit)/
Higher amount for serious cases < 25%]
Department
6 months +1 month
Erroneous/ Illegal/Improper
Order or has not taken into
account material facts
Appeal to First Appellate authority
Revision by Commissioner or Chief
Commissioner
Order within 1 year (where it is possible)
Order must be passed within 3 years
Assesse
3 months + Extension
Department
6 months + Extension
Appeal to Appellate Tribunal
May refuse to admit
if **tax** amount does
not exceed 1 Lakh
Order within 1 year (where it is possible)
180 days + Extension
Appeal to High Court
(case involving substantial question of law)
Order with the majority of judges
Appeal to Supreme Court
(High Court certifies the case to be a fit one)

Chapter– XXII
Advance Ruling

113. Definition clause – interpretation

Statutory provision:

In this Chapter, unless the context otherwise requires, -

(a) "advance ruling" means a written decision provided by the Authority or, as the case may be, the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 116 or sub-section (1) of section 118, as the case may be, in relation to the supply of goods and/or services proposed to be undertaken or being undertaken by the applicant;

(b) "applicant" means any person registered or desirous of obtaining registration under the Act.

(c) "application" means an application made to the Authority under sub-section (1) of section 116;

(d) "Authority" means the Authority for Advance Ruling, constituted under section 114;

(e) "Appellate Authority" means the Appellate Authority for Advance Ruling constituted under section 115.

113.1. 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.

113.2. Analysis

(i) The expression 'advance ruling' would mean the decision taken in writing from the AAR (including appellate authority) on the questions raised by the Applicant relating 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 116(1).

(iv) The word "authority" refers to the AAR constituted under section 114 in each State.

(v) The expression "Appellate Authority" refers to the Appellate Authority for Advance Ruling constituted under section 115 in each State.

(vi) Advance ruling decision can only be in respect of matters or questions specified in section 116(2) or section 118(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 wants to obtain a registration. So, registration at the time of making the application is not necessary. He can make an application to the authority under section 116(1) stating the question on which he seeks advance ruling. The term 'Person' has been defined in section 2(73) 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 any question of law or fact, under the GST law, it can only be in respect of seven (7) questions specified in section 116(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.

113.3. 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.

113.4. Related Provisions:

Section / Rule/ Form	Description	Remarks
Section 113	Definitions	Contains definition of various terms like Advance Ruling, Applicant, Application, Authority and Appellate Authority.
Section 2(73)	Person	Contains an inclusive list of 14different types of persons.
Section 116(2)	Question on advance ruling	Provides a list of questions on which advance ruling can be sought by the applicant.
Section 118(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.

113.5. FAQs

Q1. Can advance ruling be given orally?

Ans. No, Advance ruling cannot be given orally as it is clearly specified that it is the written decision provided by the authority.

Q2. What is meant by the term 'Advance Ruling'?

Ans. The term "advance ruling" means a decision in writing provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in section 116(2) or section 118(1) of the Act in relation to the supply of goods and/ or services proposed to be undertaken or 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

114 Authority for advance ruling

Statutory provision:

(1) The Authority shall be located in each State.

(2) The Authority shall comprise one member CGST and one member SGST to be appointed respectively by the Central Government and the State Government.

(3) The qualifications, eligibility conditions, method and the process of appointment of the members shall be as may be prescribed.

114.1. Introduction

This Section introduces the AAR, its composition and qualification and eligibility criteria of members of AAR and their appointment process.

114.2. Analysis

(i) The AAR shall be located in each State.

(ii) Thus, it appears that a person registered or proposed to be registered in a State can approach the AAR for a ruling.

(iii) The AAR would comprise of two members viz., CGST member and SGST member, appointed by the respective Governments.

(iv) Rules would be prescribed regarding qualifications, eligibility conditions, method and process of appointment of such members.

(v) The jurisdiction of the Authority would be the State where the supply of goods and/or services are being undertaken or proposed to be undertaken.

114.3. 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 because the concept of advance ruling is being made applicable to SGST laws also.

Under current laws, AAR consists of three members and chaired by a retired judge of the Supreme Court. Under GST laws, AAR would consist of two members, one each to be appointed by the Central and State Government.

At present, VAT laws of some of the states in India like Haryana, Maharashtra, Karnataka, Delhi, Andhra Pradesh, Telangana, Odisha and Jharkhand contain provisions for advance ruling.

114.4. Related Provisions

Section / Rule / Form	Description	Remarks
Section 113 (d)	Authority	Defines the meaning of 'Authority'.
Section 113 (a)	Advance Ruling	Defines 'Advance Ruling' as a written decision on matters or questions specified in section 116(2) or section 118(1).

114.5. FAQs

Q1. AAR shall comprise of how many members?

Ans. AAR shall comprise of two members, one member from CGST and one member from SGST respectively.

Q2. What are the qualifications of member of AAR?

Ans. Qualifications of members of AAR and process of their appointment, shall be as may be prescribed.

Q3. Who will appoint the members of Authority on Advance Ruling (AAR)?

Ans. Central Government will appoint one member CGST and State Government will appoint one member SGST.

Q4. Where the office of AAR shall be situated?

Ans. The office of the AAR shall be situated in each state.

114.6. MCQs

Q1. AAR shall comprise of:

(a) One accountant member and one judicial member

(b) one CGST member and one SGST member

(c) Judicial member and Technical member

(d) None of the above

Ans. (b) One CGST member and one SGST member

Q2. Authority for Advance Ruling (AAR) shall consist of:

(a) four members

(b) three members

(c) two members

(d) five members

Ans. (c) two members

3. The office of AAR shall be situated in:
   (a) Delhi
   (b) Each Metro city
   (c) Each State
   (d) Each Region

Ans. (c) Each State.

115. Appellate Authority for Advance Ruling

Statutory provision:

(1) The Appellate Authority shall be located in each State.

(2) The Appellate Authority shall comprise the Chief Commissioner of CGST as designated by the Board and the Commissioner of SGST having jurisdiction over the applicant.

115.1 Introduction

This Section provides for an appellate authority for advance ruling, its location and constitution.

115.2 Analysis

(i) The appellate authority shall be appointed in each State.

(ii) The said authority would comprise of Chief Commissioner of CGST designated by the Board and Commissioner of SGST having jurisdiction over the applicant.

115.3 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, which isa new development under GST laws. The reason, appears to be that while under current tax laws, the authority for advance ruling consists of three members and hence a majority view is possible, under GST law, authority will consist of only two members and hence, in case of a difference of opinion, there is a need for an appellate authority to resolve the issue. It also provides an opportunity to the aggrieved party to the appeal.Even otherwise if the applicant feels aggrieved by advance ruling he may appeal to Appellate Authority.

115.4 Related Sections

Section / Rule / Form	Description	Remarks
Section 115	Appellate Authority for Advance Ruling	Describes the constitution of Appellate Authority for Advance Ruling.
Section 113 (e)	Appellate Authority	Defines the meaning of 'Appellate Authority' as the one constituted under section 115.

115.5 FAQs

Q1. How many members shall constitute an AAAR and who will be these members?

Ans. Two members shall constitute an Appellate Authority for Advance Ruling (AAAR). These members will be: Chief Commissioner of CGST who will be designated by the Board and Commissioner of SGST who have jurisdiction over the applicant.

115.6 MCQS

Q1. The appellate authority shall comprise of:

(a) Chief Commissioner of CGST appointed by the President and jurisdictional Commissioner of SGST;

(b) Chief Commissioner of CGST appointed by the Board and jurisdictional Commissioner of CGST;

(c) Chief Commissioner of CGST appointed by the Board and jurisdictional Commissioner of SGST

(d) Board member and CESTAT member.

Ans. (c) Chief Commissioner of CGST appointed by the Board and jurisdictional Commissioner of SGST

Q2. The Appellate Authority for Advance Ruling (AAR) shall consist of:

(a) four members

(b) three members

(c) two members

(d) five members

Ans. (c) two members

116. Application for Advance Ruling

(1) An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and in such manner as may be prescribed, stating the question on which the advance ruling is sought.

(2) The question on which the advance ruling is sought shall be in respect of,

(a) classification of any goods and/or services under the Act;

(b) applicability of a notification issued under provisions of the Act having a bearing on the rate of tax;

(c) the principles to be adopted for the purposes of determination of value of the goods and/or services under the provisions of the Act;

(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 and/or services under the Act;

(f) whether applicant is required to be registered under the Act;

(g) whether any particular thing done by the applicant with respect to any goods and/or services amounts to or results in a supply of goods and/or services, within the meaning of that term.

(3) The application shall be accompanied by a fee as may be prescribed.

116.1 Introduction

This Section sets out the procedure for making an application for advance ruling and the questions on which ruling can be sought with prescribed fee.

116.2 Analysis

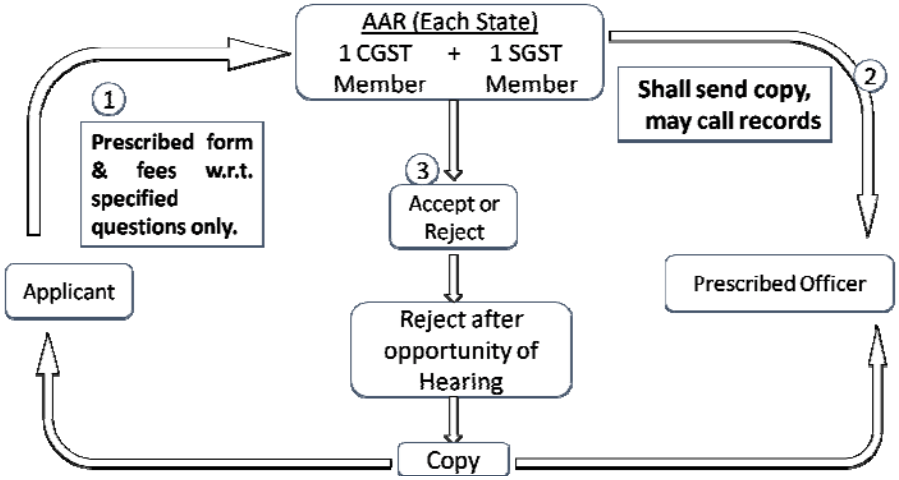
(i) An applicant who seeks an advance ruling should make an application in the prescribed form and manner and should State the question on which such a ruling is sought.

(ii) The question raised should be limited to the following:

- Classification of goods and / or services;
- Applicability of notification affecting the tax rate.
- Principles for determining the value of goods and / or services;
- Input credit admissibility on tax paid or deemed to be paid;
- Determination of liability to tax on goods and / or services;
- Registration requirement of an applicant;
- Whether any particular thing done by the applicant amounts to or results in supply of goods and / or services.

The analysis of above provision in a pictorial form is summarised as follows:

Application for Advance ruling – Sec: 113,114 & 116



* Not to admit if already before/decided by any Adjudicating or Appellate Authority.

116.3 Comparative review

The questions on which AAR could be sought is quite comprehensive as compared to the existing indirect tax regime.

Under 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.

116.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 113(c)	Application	This section states that 'application' means an application made to the Authority under section 116(1).
Section 113 (b)	Applicant	Defines applicant as a person who is registered or is desirous of obtaining registration under the GST Act.
Section 113(a)	Advance Ruling	Defines 'Advance Ruling' as a written decision on matters or questions specified in section 116(2) or section 118(1).

116.5 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, 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, 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, issue relating to notification having a bearing on tax rate can be raised before the AAR

Q5. On which questions, advance ruling can be sought by an applicant?

Ans. Advance ruling can be sought by an applicant in respect of the following questions specified in section 116(2):

(a) classification of any goods and/or services;

(b) applicability of a notification which have a bearing on the rate of tax;

(c) principles for determining value of the goods and/or services;

(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 and/or services;

(f) registration of the applicant;

(g) whether any particular thing done by the applicant amounts to or results in a supply of goods and/or services.

Q6. Can the application made to the authority be withdrawn at any time?

Ans. There is no such provision under GST law..

117. Procedure on receipt of application

Statutory provision

(1) On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the officers as may be prescribed 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 prescribed officers.

(2) The Authority may, after examining the application and the records called for and after hearing the applicant or authorized representative of the applicant as well as the authorized representative of the prescribed officers, 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, -

(a) already pending in the applicant's case before any First Appellate Authority, the Appellate Tribunal or any Court;

(b) the same as in a matter already decided by the First Appellate Authority, the Appellate Tribunal or any Court;

(c) the same as in a matter already pending in any proceedings in the applicant's case under any of the provisions of the Act;

(d) the same as in a matter in the applicant's case already decided by the adjudicating authority or assessing authority, whichever is applicable:

Provided further that no application shall be rejected under this sub-section unless an opportunity has been given to the applicant of being heard:

Provided also that where the application is rejected, reasons for such rejection shall be given in the order.

(3) A copy of every order made under sub-section (2) shall be sent to the applicant and to the prescribed officers.

(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 the authorized representative of the applicant as well as to the authorized representative of the prescribed or the jurisdictional CGST/SGST officer, pronounce its advance ruling on the question specified in the application.

Explanation.- For the purposes of this sub-section, "authorized representative" shall have the meaning assigned to it in section 105.

(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 or, as the case may be, the Appellate Authority shall pronounce its advance ruling in writing within ninety days of the receipt of application or, as the case may be, reference made under sub-section (5).

(7) Where the members of the Appellate Authority differ on any point or points referred to it under sub-section (5), it shall be deemed that no advance ruling can be issued in respect of the question covered by the reference application.

(8) A copy of the advance ruling pronounced by the Authority or, as the case may be, the Appellate Authority duly signed by the Members and certified in the prescribed manner shall be sent to the applicant and the jurisdictional CGST / SGST officer and, as the case may be, to the Authority, as soon as may be, after such pronouncement.

(9) Any ruling pronounced under this section shall have prospective effect only.

117.1. 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.

117.2. Analysis

Receipt of Application

(i) On receipt of an application, the AAR shall ensure that a copy of it is forwarded to the prescribed officers and, if necessary, direct them to furnish the relevant records.

(ii) The records so called for by the AAR should be returned as soon as possible to the concerned officers.

(iii) The AAR at its discretion would examine the application and the records called for, and after hearing the applicant or authorized representative of the applicant and prescribed officers should pass an order, either admitting or rejecting the application:

(iv) The AAR shall not admit the application if the issue raised is:

- Pending in the applicant's own case before any First Appellate Authority, the Appellate Tribunal or any Court;
- In a matter already decided by the First Appellate Authority, Appellate Tribunal or any Court;
- Ina matter already pending in any proceedings in the applicant's own case under any of the provisions of the Act;
- In a matter in the applicant's case already decided by the adjudicating authority or assessing authority in the applicant's case

(v) Before rejecting the application, the applicant has to be afforded 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 prescribed officers.

(viii) Ruling pronounced under this section shall have prospective effect only.

Pronouncement of advance ruling

(i) If on the other hand an 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 authorized representatives of the applicant and prescribed officers or the jurisdictional CGST/SGST Officer.
- Pronounce its advance ruling on the question specified in the application.

(ii) For the purposes of this sub-section, "authorized representative" shall have the meaning assigned to it in section 105.

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 final decision. It may be noted that the Appellate Authority for Advance Ruling shall be the one specified in this chapter.

(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 shall also pronounce the ruling within ninety days of such reference.

When advance ruling cannot be issued even after making a reference to Appellate authority.

If the members of the Appellate Authority differ on any point/s referred to it, then it would be treated as if no advance ruling can be issued in respect of the question covered by the reference application.

No retrospective effect

Any advance ruling pronounced by the AAR or Appellate authority shall have prospective effect only.

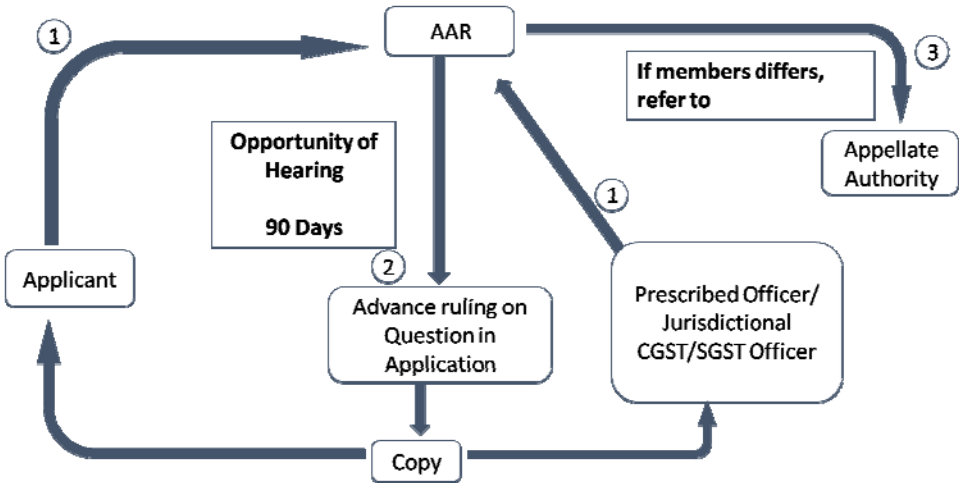
Submission of advance ruling pronounced.

A copy of the advance ruling pronounced by the concerned AAR / Appellate Authority, duly

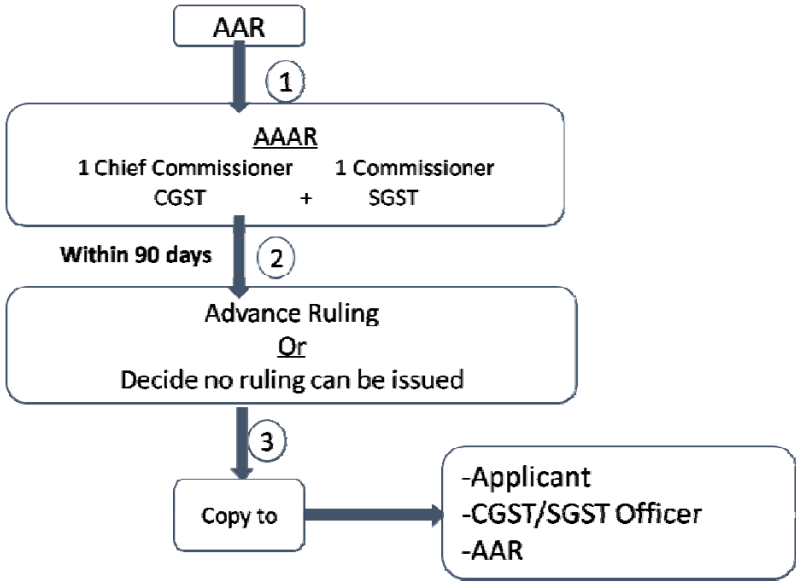
signed by the Members and certified, shall be sent to the applicant and to the concerned officers after pronouncement.

The analysis of above provision in a pictorial form is summarised as follows:

Procedure for Advance ruling – Sec: 117



Appellate Authority for Advance ruling – Sec: 115 & 117



Note: Rulings pronounced will only have a prospective effect

117.3. Comparative review

(i) The provision has some similarities with the Advance Rulings provision in Central Indirect Tax laws.

(ii) There is no restriction on the nature of issues, which could be referred for advance ruling.

(iii) In case of difference of opinion, the matter would be directly referred to the appellate authority, which is a new development.

117.4. Related Provisions

Section / Rule / Form	Description	Remarks
Section 105	Appearance by authorised representative	This section defines the meaning of authorised representative (AR), who can be appointed as an AR, disqualification of AR etc.

117.5. FAQs

Q1. What shall the Authority for Advance ruling (AAR) do after receiving an application for advance ruling?

Ans. After receiving an application for advance ruling, AAR shall forward a copy of the same to prescribed officers and if necessary, call upon them to furnish relevant records.

Q2. When AAR shall not admit the application for advance ruling?

Ans. AAR shall not admit the application where the issue raised is already:

(a) pending in the applicant's own case before any First Appellate Authority, the Appellate Tribunal or any Court;

(b) decided by the First Appellate Authority, the Appellate Tribunal or any Court;

(c) pending in any proceedings in the applicant's own case under any of the provisions of the Act;

(d) decided by the adjudicating or assessing authority in the applicant's own case.

Q3. 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.

Q4. 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.

Q5. To whom the copy of the order of admission or rejection of the application shall be sent?

Ans. Copy of the order of the AAR accepting or rejecting the application shall be sent to the applicant and the prescribed officers.

Q6. When a reference shall 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 differs on any question on which advance ruling is sought.

Q7 Under what circumstances, advance ruling cannot be issued?

Ans. If members of the appellate authority differ on any point or points of the question referred to them under section 117(5), then it shall be deemed that no advance ruling can be issued in respect of the question covered by the reference application.

Q8. Can the advance ruling pronounced under this section have a retrospective effect?

Ans. No. It has been made absolutely clear in section 117(9) that any ruling pronounced shall have prospective effect only.

117.6 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 prescribed officers

(c) None of the above

Ans. (b) forward a copy of the same to prescribed 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. Copy of the order of the AAR admitting or rejecting the application shall be sent to the:

(a) Applicant and the prescribed officers

(b) Applicant and the Chief Commissioner of CGST

(c) Applicant and the jurisdictional Commissioner of SGST

Ans. (a) Applicant and the prescribed officers

Q4. 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

Ans. (b) & (d) - After examining further materials placed before it by the applicant and after providing the applicant or his AR any opportunity of being heard

Q5. The AAR can refuse to give a ruling when:

(a) It relates to classification of goods or services

(b) If the issue is already decided by the Tribunal

(c) If the applicant is a resident

(d) If there is a difference of opinion between members of AAR.

Ans. (b) If the issue is already decided by the Tribunal

Q6. The AAR should pronounce the ruling within:

(a) 30 days

(b) 90 days

(c) 60 days

(d) 45 days.

Ans. (b) 90 days

Q7. When is an advance ruling said to have been issued?

(a) When any one member agrees

(b) When all the members agree

(c) When majority of the members agree

(d) All of the above

Ans. (b) When all the members agree

Q8. An advance ruling shall have

(a) Retrospective effect

(b) Prospective effect

(c) Both

(d) Neither

Ans. (b) Prospective effect

Legend:

(a) AAR-Authority for Advance Rulings

(b) AR-Authorized Representative

(c) CGST-Central Goods and Service Tax

(d) SGST-State Goods and Service Tax

118 Appeal to Appellate Authority

Statutory provision

(1) The prescribed or jurisdictional CGST/SGST officer or, as the case may be, an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 117, 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 prescribed or the jurisdictional CGST/SGST officer or, as the case may be, the applicant..

PROVIDED that the Appellate Authority may, if it is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid 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 the prescribed form and shall be verified in the prescribed manner.

118.1 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 117(4).

118.2 Analysis

(i) An appeal can be filed by the prescribed 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 first 30 days.

(iii) The appellate authority as mentioned in section 115, shall be located in each State and shall comprise of two members - the Chief Commissioner of CGST as designated by the Board and the Commissioner of SGST having jurisdiction over the applicant.

(iv) The appeal shall be in the prescribed form.

(v) The appeal shall be verified in the prescribed manner.

(vi) There is no mention of the fee to be paid by the appellant. This may be prescribed in the rules.

118.3 Comparative review

This is a new mechanism evolved which was not prevalent in the existing indirect tax regime.

118.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 115	Appellate authority for advance ruling	This section discusses about constitution of appellate authority in each State and who will be its members.

118.5 FAQs

Q1. Who can file an appeal before the appellate authority for advance ruling?

Ans. The prescribed or jurisdictional CGST/SGST 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 117(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.

Q3. Can a person other than departmental officer or applicant challenge the ruling before the appellate authority?

Ans. No, ruling can be challenged only by the jurisdictional CGST/SGST officer or an applicant who has aggrieved.

118.6 MCQ

Q1. The appeal should be filed within how many days of communication of the advance ruling

(i) 30 days

(ii) 60 days

(iii) any time

(iv) 90 days.

Ans. (i) 30 days

119. Orders of the Appellate Authority

Statutory provision

(1) The Appellate Authority may, after giving the parties to the appeal, an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against.

(2) The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing appeal under section 118.

(3) Where the members of the Appellate Authority differ on any point or points referred to in appeal, it shall be deemed that no advance ruling can be issued in respect of the question covered under the appeal.

(4) A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in the prescribed manner shall be sent to the applicant, the prescribed or the jurisdictional CGST / SGST officer and to the Authority, as soon as may be, after such pronouncement.

119.1 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 118.

119.2 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 confirm or modify the ruling appealed against.

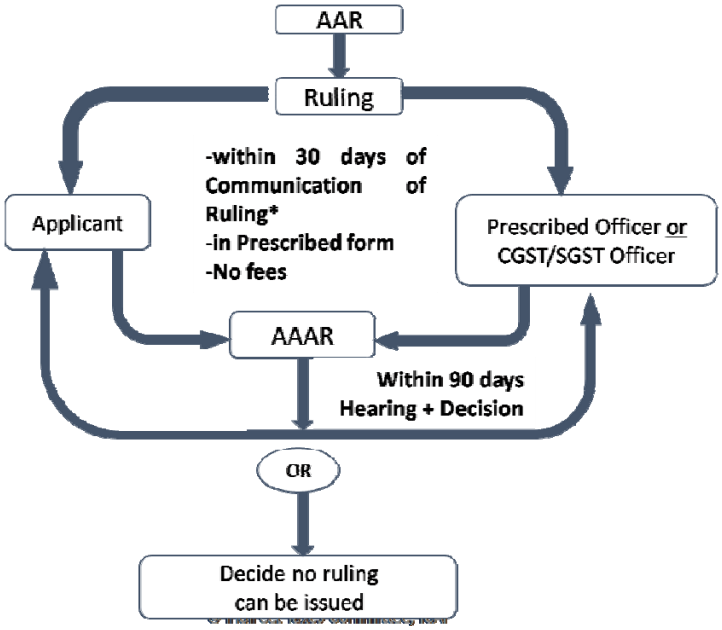
(iii) The order should be passed within 90 days from the date of filing appeal.

(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 possible in the matter.

(v) A copy of the appellate order should be signed by the members and communicated to the Officers and applicant, as soon as possible after such pronouncement

The analysis of above provision in a pictorial form is summarised as follows:

Appellate Authority for Advance ruling – Sec: 118 & 119



***Note:** Appellate Authority may allow further period of 30 days

119.3 Comparative review

Under current tax laws, there is no provision for constitution of an appellate authority.

119.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 115	Appellate authority for advance ruling	This section discusses about constitution of appellate authority in each State and who will be its members.

119.5 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 118(1), then it shall be deemed that no advance ruling can be issued in respect of the question covered under the appeal.

119.6 MCQs

Q1. Order by the appellate authority should be passed within

(i) 30 days

(ii) 90 days

(iii) 45 days

(iv) 60 days, from the date of filling of appeal.

Ans. (ii) 90 days

Q2. If there is a difference of opinion

(i) refer it to larger bench

(ii) refer it to High Court

(iii) no opinion to be expressed

(iv) remand the matter back to AAR.

Ans. (iii) no opinion to be expressed

120. Rectification of advance ruling

Statutory provision

The Authority or, as the case may be, the Appellate Authority may amend any order passed by it under section 117 or section 119, as the case may be, so as to rectify any mistake apparent from the record, if such mistake is noticed by the Authority or, as the case may be, the Appellate Authority on its own accord, or is brought to its notice by the prescribed or the jurisdictional CGST / SGST officer or the applicant 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 Authority or, as the case may be, the Appellate Authority has given notice to the applicant or, as the case may be, the appellant of its intention to do so and has allowed him a reasonable opportunity of being heard.

Explanation.— For the removal of doubts, it is hereby clarified that the Authority or, as the case may be, the Appellate Authority shall not, while rectifying any mistake apparent from record, amend substantive part of its order.

120.1 Introduction

This section deals with the circumstances 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.

120.2 Analysis

1. The advance ruling can be rectified by the authorities on their own or upon receipt of application from the jurisdictional officer or the applicant, if there is any mistake apparent on the record.
2. The rectification can be done within six months.
3. The rectification cannot result in substantial amendment of the order.
4. If the rectification results in increase in tax liability or denial of input credit then a hearing has to be given to the applicant/appellant.
5. The authority may, within six months from the date of an order passed by it under section 117(4) on a question specified in the application, amend such an order.
6. The Appellate authority may, within six months from the date of an order passed by it under section 117(6) on a reference made to it by the authority or under section 119 on an appeal made to it by the aggrieved party, amend such an 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 prescribed or the jurisdictional CGST / SGST officer or

(c) Is brought to its notice by the applicant.

7. Such rectification shall be made by the authority or the appellant authority only after giving the applicant or the appellant, as the case may be, a notice of such an intention and allowing him a reasonable opportunity of being heard, if such rectification has the effect of:

(a) enhancing the tax liability or

(b) reducing the amount of admissible input tax credit

Note: No time limit for making an application for rectification of mistake.

120.3 Comparative review

Under existing laws, there is no provision for rectification of advance ruling

120.4 Related Provisions

Statute	Section/Rule/ Form	Description	Remarks
GST	Section 117	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 117(6) provides for time limit of 90 days for pronouncement of advance ruling.
GST	Section 119	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.

120.5 FAQs

Q1. When 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, to rectify any mistake apparent from the record, which:

(a) is noticed by it on its own accord, or

(b) is brought to its notice by the prescribed or the jurisdictional CGST / SGST officer or ;

(c) is brought to its 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.

Q3. What is the time limit for amendment of an advance ruling order?

Ans. The time limit for amendment of an advance ruling order is 6 months from the date of the order passed by the authority or the appellant authority.

Q4. Can the rectification be done upon request of public?

Ans. No provision for rectification on request of public.

120.6 MCQs

Q1. Rectification should be done within how many months from the date of order

(i) six

(ii) four

(iii) nine

(iv) twelve.

Ans. (i) Six

Q2. 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

121. Applicability of advance ruling

Statutory provision

(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 116 of the application for advance ruling;

(b) on the jurisdictional tax authorities in respect of the applicant.

(2) The advance ruling referred to in sub-section (1) shall be binding as aforesaid unless the law, facts or circumstances supporting the original advance ruling have changed.

121.1 Introduction

It states the binding effect of an advance ruling.

121.2 Analysis

(i) The advance ruling pronounced by the Authority under this chapter shall be binding only on the applicant and on the jurisdictional tax authorities 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.

121.3 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.

121.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 116(2)	Applicability of advance ruling	This Section sets out the questions on which ruling can be sought.

121.5 FAQs

Q1. Is the advance ruling binding on other assessee?

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 116.

Q2. Are the tax authorities bound by the advance ruling?

Ans. Only the jurisdictional tax authorities, in respect of applicant who has sought advance ruling is bound by such rulings pronounced.

Q3. Can the advance ruling be used if there is change in facts and circumstances?

Ans. No, when there is change in facts and circumstances, advance ruling cannot be used.

Q4. On whom, advance ruling pronounced by the authority or appellate authority shall be binding?

Ans. The advance ruling pronounced by the authority or the appellate authority shall be binding only on the applicant and his jurisdictional tax authorities in respect of matters specified in section 116(2) till the time there is no change in the laws, facts or circumstances supporting the original advance ruling.

121.6 MCQs

Q1. The advance ruling is binding on the following persons:

(a) AAR

(b) appellate authority

(c) Applicant

(d) all assessees.

Ans. (c) Applicant

122. Advance Ruling to be void in certain circumstances

Statutory provision

(1) Where the Authority or, as the case may be, the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 117 or under sub-section (1) of section 119 has been obtained by the applicant or, as the case may be, 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 shall apply to the applicant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity has been given to the applicant of being heard.

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 in computing the period specified in sub-sections (2) and (8) of section 66 or sub-sections (2) and (8) of section 67, as the case may be.

(2) A copy of the order made under sub-section (1) shall be sent to the applicant and the prescribed officers.

122.1 Introduction

It states the circumstances under which the ruling would be considered as *void ab initio* and hence would lose its binding value.

122.2 Analysis

(i) If the Authorities (AAR and appellate authority) find that the advance ruling pronounced 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 (8) of both Section 66 and 67 respectively.

(v) A copy of the order so made shall be sent to the applicant and the prescribed officers.

122.3 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.*

122.4 Related Provisions

Section/Rule/ Form	Description	Remarks
Section 66(2) & 66 (8)	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 8 deals with time limit for issuance of adjudication order.
Section 67(2) & 67 (8)	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 8 deals with time limit for issuance of adjudication order.

122.5 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.

122.6 MCQ

Q1. The advance ruling can be withdrawn under which of the following circumstances:

(a) When there is fraud or suppression of material facts or misrepresentation of facts

(b) when there is coercion and undue influence

(c) without assigning reasons

(d) after Court ruling.

Ans. (a) When there is fraud or suppression of material facts or misrepresentation of facts

123. Powers of the Authority and Appellate Authority

Statutory provision

(1) The Authority or, as the case may be, the Appellate Authority shall, for the purpose of exercising its powers regarding 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, have all the powers of a civil court under the Code of Civil Procedure, 1908 (5 of 1908).

(2) The Authority or, as the case may be, 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 (2 of 1974), and every proceeding before the 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 the Indian Penal Code (45 of 1860).

123.1 Introduction

It states in clear terms the powers conferred on the AAR and appellate authority in the discharge of its functions.

123.2 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.

123.3 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.

123.4 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)

123.5 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

Legend:

CPC – Civil Procedure Code, 1908

IPC – Indian Penal Code, 1860

CrPC – Code of Criminal Procedure, 1973

124. Procedure of the Authority and the Appellate Authority

Statutory provision

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 in all matters arising out of the exercise of its powers under the Act.

124.1 Introduction

It states the procedure to be followed by the AAR and the appellate authority in discharging its functions.

124.2 Analysis

The Authorities shall have the power to regulate their own procedure.

124.3 Comparative review

There is no change in the powers of the authority to regulate its procedure under the GST laws as compared to the current laws except that the powers of the appellate authority has also been added under GST laws because of the creation of an appellate authority mechanism. 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.

124.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 124	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.

124.5 FAQs

Q1. Who should regulate the powers of AAR and appellate authority?

Ans. Authority for advance ruling or, as the case may be Appellate authority has the power to regulate its own procedures in all matters arising out of the exercise of its powers under this Act.

Q2. Who shall determine the procedure to be followed by the authority or the appellate authority?

Ans. The authority or the appellate authority shall have powers to regulate is own procedures with respect to all matters which arise out of the exercise of its power under the Act.

Chapter – XXIII

Presumption As to Documents

125. Presumption as to documents in certain cases

126. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence

Statutory provision

Section 125:

Presumption as to documents in certain cases

Where any document-

(i) is produced by any person under the Act or any other law, or

(ii) has been seized from the custody or control of any person under the Act or any other law, or

(iii) has been received from any place outside India in the course of any proceedings under the Act or any other law 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.

Section 126:

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); orb) a facsimile copy of a document; 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 (hereinafter referred to as a "computer printout"), if the conditions mentioned

in sub-section (2) and the other provisions contained in this section are satisfied in relation to the statement and the computer in question; or

(d) any information stored electronically in any device or media, including any hard copies made of such information shall be deemed to be also a document for the purposes of the Act and the rules made thereunder and shall be admissible in any proceedings there under, 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) The conditions referred to in sub-section (1) in respect of a computer printout shall be the following, namely:—

(a) the computer printout containing the statement was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, there was regularly supplied to the computer in the ordinary course of the said activities, information of the kind contained in the statement or of the kind from which the information so contained is derived;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then any respect in which it was not operating properly or was out of operation during that part of that period was not such as to affect the production of the document or the accuracy of the contents; and

(d) the information contained in the statement reproduced or is derived from information supplied to the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether —

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings under this Act and the rules made thereunder where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, —

(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;

(c) dealing with any of the matters to which the conditions mentioned in sub-section(2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this subsection it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, —

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a document shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation. — For the purposes of this section, —

(a) “computer” means any device that receives, stores and processes data, applying stipulated processes to the information and supplying results of these processes and includes the hard disc thereof or a mirror image of hard disc thereof; and

(b) any reference to information being derived from other information shall be a reference to its being derived there from by calculation, comparison or any other process.

125/126.1 Introduction

This chapter "Presumption as to Documents" (Chapter- XXIII) of the Revised Model GST law has two sections, Section 125 dealing with " Presumption as to Documents in Certain Cases and Section 126 deals with Admissibility of micro films, facsimile copies of documents and computer printouts as documents and evidence

125/126.2 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 competent authority 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.

Document has been defined as that includes written or printed record of any sort and electronic record as defined in the Information Technology Act, 2000 (Sec 2(38)). 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.

If any of the following documents are tendered as evidence by prosecution, then the Court shall presume that contents of such document are truthful and is signed or handwritten by the particular person or is executed or attested by the person who is supposed to execute so.		
Documents produced by any person under the Act;	Documents seized from the custody or control of any person under the Act;	Documents received from outside India during the course of proceedings.

125/126.3 Comparative Review

Comparison to Central Excise:

Sections 125 and 126 of the Revised Model GST 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 The Commissioner of Central Excise and Customs, Surat - Vs. Vinod Kumar Gupta, where a computer printout of the data collected on USB during a raid as an evidence against the manufacturer, and further, where the witnesses have 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 Rules.
- In the case of Commissioner of Central Excise, Ludhiana Vs. Ghansham Bassi, the Honourable Punjab and Haryana High Court noted that the Tribunal has 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 Act and also found that there was no evidence of clandestine removal. The charges of clandestine activities and removal of goods thereof are 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 shows that no legally justified reasons have 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.

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Chapter XXIV
Liability to Pay in Certain Cases

127. Liability in case of Transfer of Business

Statutory Provision:

(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, as the case may be, 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 or the lessee 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 and/or services effected by him with effect from the date of such transfer and shall, if he is an existing taxable person, apply within the prescribed time for amendment of his certificate of registration.

127.1 Introduction

This section deals with tax liability 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.

127.2 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.
- The transfer of business could be by way of:
  - Sale
  - Gift
  - Lease
  - Leave and license
  - Hire and
  - In any other manner

Tax liability: Both transferor and transferee will be jointly and severally liable for payment of taxes, interest and / or 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 or the lessee of business.

It will remain the liability of the transferee / lessee 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).

127.3 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.

127.4 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 127?

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 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

127.5 MCQ

Q1. Transfer of business includes ……

(a) Sale

(b) Lease

(c) 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

128 – Liability of Agent and Principal

Statutory Provision:

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall be jointly and severally liable to pay the tax payable on such goods under the Act.

128.1 Introduction

This section deals with casting liability on principal in addition to the liability of agent who effect the supply of goods on behalf of principal or procures goods on behalf of his principal.

128.2 Analysis

Under the GST law, in cases where –

- Goods are supplied by agent on behalf of principal; or
- 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.

128.3 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.

128.4 MCQ

Q1. Agent and Principal, both are liable to pay tax on supply or receipt of …….

(a) Goods only
(b) Services only
(c) Goods along with service
(d) None of the above

Ans. (a) Goods

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

129 – Liability in case of Amalgamation/Merger of companies

Statutory Provision

(1) When two or more companies are amalgamated or merged by the order of court or of Tribunal or of the Central Government 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 and/or services 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 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, where necessary, with effect from the date of the said order.

Explanation - Words and expressions used in this section but not defined shall have the respective meanings assigned to them in the Companies Act, 2013 (18 of 2013).

129.1 Introduction

This section deals with tax liability on transactions between the effective date and date of order (Tribunal/Court/C.G.) for amalgamation or merger of companies.

129.2 Analysis

(i) In cases of amalgamation or merger of two or more companies by virtue of order passed by Tribunal/Court/C.G., 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 the above mentioned 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 as supply by one entity and receipt by the other, viz., all provisions of this law would 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/CG 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 be cancelled with effect from the date of the said order.

(vi) For the purpose of this section, the definitions of the Companies Act, 2013 are made applicable.

129.3 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.

129.4 Related provisions

Statute	Section	Description
Companies Act, 2013	Section 18	For words and expressions not defined in CGST Act reference may be made to the Companies Act, 2013.

129.5 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.

Q2. In case a particular word is not defined in the CGST Act, then it is possible to refer to:

(a) Companies Act, 1956

(b) Companies Act, 2013,

(c) Companies Act, 1913

(d) General Clauses Act, 1897

Ans. (b) Companies Act, 2013

Legend:

CG – Central Government

130. Liability in case of company in liquidation

Statutory Provision:

(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 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 is not attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Explanation.- For the purposes of this section, the expressions "company" shall have the meaning respectively assigned to them under clause (20) and clause (68) of section 2 Respectively of the Companies Act, 2013 (18 of 2013).

130.1 Introduction

This section deals with the tax and other dues of a company in case it is wound up or liquidated.

130.2 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, the amount of tax, interest and penalty payable by the company after making necessary enquiry or calling of information.

(iii) When the 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.

130.3 Comparative review

This is comparable to the current indirect tax provisions, including the State level VAT laws.

130.4 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 shall the Director be not 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

131 – Liability of directors of Private Company

Statutory Provision:

(1) Notwithstanding anything contained in the Companies Act, 2013 (18 of 2013), where any tax due from a private company in respect of any supply of goods or services for any period or from any other company in respect of any supply of any period during which such other company was a private company cannot be recovered, then, every person who was a director of the private company during such period shall be jointly and severally liable for the payment of such tax 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 assessed in respect of any supply of goods or services for any period during which such company was a private company cannot be recovered, 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 due in respect of any supply of such private company.

Explanation.— For the purposes of this section, the expression "tax due" includes penalty, interest or any other sum payable under the Act.

131.1 Introduction

This section deals with recovery of tax dues (inclusive of interest and penalty) from the directors of the private company, where the private company has not discharged its liability towards the supply of goods or services.

131.2 Analysis

(i) If the tax dues (including interest and 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 negligence, misfeasance or breach.

(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 dues 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., where the private company is converted into public company. In such cases, the director of such private company will not be liable to pay any such amounts.

131.3 Comparative analysis with the present regime

No such provisions under the present indirect tax law provisions.

131.4 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 and 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

132 – Liability of a Partner of firm to pay tax

Statutory Provision:

Notwithstanding any contract to the contrary, 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.

132.1 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.

132.2 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 intimation to 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 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, 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.

132.3 Comparative review

Under the present law there is no equivalent provision.

132.4 FAQs

Q1. Whether the retiring partner is liable to pay tax?

Ans. Retiring partner shall be liable to pay tax, interest and penalty 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 give intimation to the Commissioner by a notice in writing 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 intimation to the Commissioner by a notice in writing of retirement of partner.

Q4. What is the time limit for the firm or partner to give intimation of retirement of partner?

Ans. The time limit to give intimation of 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

132.5 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. (a) 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 received by 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. (a) The date of intimation to received by the Commissioner

133. Liability of guardians, trustees etc.

Statutory Provision:

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, as the case may be, 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 shall, so far as may be, apply accordingly.

133.1 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.

133.2 Analysis

(i) In respect of business carried on 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;

(ii) The tax, interest, penalty or any other dues which such 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.

(iii) 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.

(iv) 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.

- 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 terminally ill.

133.3 Comparative review

Under the present law there is no equivalent provision.

133.4 FAQs

Q1. Who is liable for tax dues etc., in case of a business of minor or incapacitated person?

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?

The minor is deemed to be 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.

133.5 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

134. Liability of Courts of Wards etc.

Statutory Provision:

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, as the case may be, 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 shall, so far as may be, apply accordingly.

134.1 Introduction

This section empowers collection of tax, interest or penalty form 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.

134.2 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 to such amounts as if they were themselves conducting the business as taxable person/s:

- Court of Wards or
- Administrator general or
- Official trustee or
- Any receiver or manager or
- Any other person by whatever name and the designation called, 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 ₹ 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.

134.3 Comparative review

Under the present law there is no equivalent provision.

134.4 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 only conducting the business for himself

134.5 MCQ

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

135. Special Provisions regarding liability to pay tax interest or penalty in certain cases

Statutory Provision:

(1) 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) Where a taxable person, liable to pay tax, interest and 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, as the case may be, 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) Where a taxable person, liable to pay tax, interest and penalty under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall be jointly and severally 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) 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, as the case may be, 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.

135.1 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.

135.2 Analysis

Death of person (individual)

(i) If a person (an individual) who is liable to pay tax dies: -

- **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
- **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-

- It has been determined before his death but has remained unpaid or
- It has been determined after his death[12]

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

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.

[12] This is to overcome the Supreme Court decision in Shabina Abraham Vs CCE, 2015 (322) ELT 372 (SC),

— 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

(i) In case the guardian is carrying on the business on behalf 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

135.3 Comparative review

Under the present law there is no equivalent provision.

135.4 Related Provisions

None

135.5 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. — 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 which is due from the deceased person; or
— 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

135.6 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

Legend:

HUF – Hindu Undivided Family

AOP – Association of Persons

LLP – Limited Liability Partnership

136. Liability in other cases

Statutory Provision:

(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 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 was at the time of such discontinuance, a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, be liable jointly and severally 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 132, 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, as the case may be, to partition.

Explanation.- For the purpose of this chapter, a limited liability partnership formed and registered under the provisions of the Limited Liability Partnership Act, 2012 (743 of 2012) shall also be considered as a firm.

136.1 Introduction

This section discusses the liability of partners of firm or members of AOP or HUF on discontinuation of business.

136.2 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 132.

(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.

136.3 Comparative review

Under the present law there is no equivalent provision.

136.4 Related Provisions

None

136.5 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?

Ans. — 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

136.6 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

Legend:

HUF – Hindu Undivided Family

AOP – Association of Persons

LLP – Limited Liability Partnership

Chapter XXV
Miscellaneous Provisions

137. Special Procedure for Certain Processes

Statutory provision

The Central/State Government may, on recommendation of the Council, by notification and subject to such conditions and safeguards as may be specified therein, in respect of certain classes of taxable persons to be notified in this behalf, specify special procedures with regard to registration, filing of return, payment of tax and administration of such taxable persons by the CGST or SGST officers and the said taxable persons may opt to follow the procedures so prescribed.

137.1 Introduction

This provision is more or less akin to the compounding provision under the VAT, where option is provided to certain classes of taxable persons to opt for special procedures.

These categories of taxable persons shall be notified by the Central / State Government on the recommendation of the GST Council.

137.2 Analysis

The notification shall specify special procedures with regard to :

(i) Registration;

(ii) Filing of Return;

(iii) Payment of Tax; and

(iv) Administration of such notified taxable persons.

It is optional for the notified taxable persons to follow the special procedures so prescribed.

137.3 FAQ

Q1. Who is empowered to notify special procedures u/s. 137?

Ans. Central / State Govt. on the recommendation of GST Council.

Q2. Is it mandatory for the Taxable person to follow the special procedure prescribed?

Ans. No. It is only optional.

Q3. To whom the special procedure is applicable?

Ans. This is applicable to the class of taxable persons to be notified in this behalf.

137.4 MCQ

Q1. Which of the following processes in respect of which the Govt. will not be notifying special procedure?

(a) Registration

(b) Filing of Return

(c) Payment of Tax

(d) Refund of taxes.

Ans. (d) Refund of Taxes

Q2. Who is empowered to make notification u/s. 137 regarding special procedure for the specified process.

(a) Central /State Govt. on the recommendation of the Council;

(b) GST Council

(c) Board

(d) Central /State Govt. without any recommendation of the Council.

Ans. (a) Central /State Govt. on the recommendation of the Council

138. GST Compliance Rating

Statutory provision

(1) Every taxable person shall be assigned a GST compliance rating score based on his record of compliance with the provisions of this Act.

(2) The GST compliance rating score shall be determined on the basis of parameters to be prescribed in this behalf.

(3) The GST compliance rating score shall be updated at periodic intervals and intimated to the taxable person and also placed in the public domain in the manner prescribed.

138.1 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.

138.2 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:

- to the taxable person
- will be placed in the public domain

138.3 Comparative Review

Currently there is no rating system under any of the indirect tax laws.

138.4 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.

138.5 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)

139. Obligation to Furnish Information Return

Statutory provision

(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 (43 of 1961); or

(e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934); or

(f) a State Electricity Board; or an electricity distribution or transmission licensee under the Electricity Act, 2003 (36 of 2003), or any other entity entrusted, as the case may be, 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 (16 of 1908); or

(h) a Registrar within the meaning of the Companies Act, 2013 (18 of 2013); or

(i) the registering authority empowered to register motor vehicles under Chapter IV of the Motor Vehicles Act, 1988 (59 of 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 (30 of 2013); or

(k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956); or

(l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996 (22 of 1996); or

(m) an officer of the Reserve Bank of India, constituted under section 3 of the Reserve Bank of India Act, 1934 (2 of 1934); or

(n) Goods and Service Tax Network; or

(o) a person to whom a Unique Identity Number has been granted under sub-section (8) of section 23 ;or

(p) any other person as may be specified, on the recommendation of the Council, by the Central or State 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 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 (including electronic form) and manner, to such authority or agency as may be prescribed.

(2) Where the prescribed authority considers that the information submitted 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 prescribed authority may allow and if the defect is not rectified within the said period of thirty days or, as the case may be, the further period so allowed, then, notwithstanding anything contained in any other provision of this Act, such information return shall be treated as not submitted 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 prescribed 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.

139.1 Introduction

This is an administrative provision. This Section requires specified persons to furnish an information return with the prescribed authority.

139.2 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.	• Records of registration • Statement of accounts • Periodic returns or documents containing details of payment of tax • Any other details of transaction of goods or services • Transaction relating to bank account

• Banking Company • State Electricity Board • Registrar or Sub-Registrar • Registering authority of Motor Vehicles • Collector • Recognised Stock Exchange • Depository of Shares • Officer of Reserve Bank of India • Goods & Service Tax Network • Point (o) & (p) missing	• 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 ₹ 100/- per day for each day during which the failure continues, would be payable.
2. If no return is filed:

o May serve a notice requiring him to furnish such information return

o Should then be filed within a period not exceeding 90 days from the date of service of notice

139.3 Comparative Review

The provision is similar to Section 15A of Central Excise Act, 1944.

139.4 Related provisions

Section	Description
Section 140	Penalty for non-filing of Information Return

139.5 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 mainlining any of the above mentioned records / details would be required to file this return.

140 Penalty for failure to furnish information return

Statutory provision

If a person who is required to furnish an information return under Section 139 fails to do so within the period specified in the notice issued under sub-Section (3) thereof, the prescribed authority may direct that such person shall pay, by way of penalty, a sum of one hundred rupees for each day of the period during which the failure to furnish such return continues.

140.1 Introduction

This Section would be relevant where the information return as prescribed under Section 139is not filed.

140.2 Analysis

If the person who is required to file an 'information return' as prescribed under Section 139 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.

140.3 Comparative Review

The provision is similar to Section 15B of Central Excise Act, 1944.

140.4 Related provisions

Section	Description
Section 139	Filing of Information Return and issue of notice for non-filing

140.5 FAQs

Q1. What would be the penalty for not filing the information return?

Ans. Penalty of ₹ 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 be payable under Section 139.

Q3. Is there any maximum ceiling on penalty payable for failure to furnish information return u/s. 140?

Ans. No. There is no maximum ceiling prescribed under this section. ₹ 100 per day continues till the return is furnished.

141 Power to collect statistics

Statutory provision

(1) The Commissioner, if it considers that for the purposes of the better administration of the Act, it is necessary so to do, may by notification, direct that statistics be collected relating to any matter dealt with, by or in connection with the Act.

(2) Upon such notification being issued, the Commissioner, or any person authorized by the Commissioner in this behalf may call upon all concerned persons to furnish such information or returns as may be specified therein relating to any matter in respect of which statistics is to be collected.

(3) The form in which the persons to whom or, the authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such information or returns should be furnished, shall be as may be prescribed.

141.1 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.

141.2 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.

141.3 Related provisions

Section	Description
Section 142	Disclosure of information collected under Section 141

142 Disclosure of Information required under Section 141

Statutory provision

(1) No information of any individual return or part thereof, with respect to any matter given for the purposes of Section 141 shall, without the previous consent in writing of the taxpayer or person or his authorised agent, be published in such manner as to enable any particulars to be identified as referring to a particular taxpayer and no such information shall be used for the purpose of any proceedings under the provisions of the Act.

(2) Except for the purposes of prosecution under the Act, or any other Act, no person who is not engaged in the collection of statistics under the Act or of compilation or computerization thereof for the purposes of the Act, shall be permitted to see or have access to any information or any individual return referred to in that Section.

(3) If any person required to furnish any information or return under Section 141,-

(a) without reasonable cause fails to furnish such information or return as may by that Section be required, or

(b) wilfully furnishes or causes to furnish any information or return which he knows to be false,

he shall, on conviction, be punished with fine which may extend to one hundred 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 one thousand rupees.

(4) If any person engaged in connection with the collection of statistics under Section 141 or compilation or computerization thereof wilfully discloses any information or the contents of any return given or made under that Section, otherwise than in execution of his duties under that Section or for the purposes of the prosecution of an offence under the Act or under any other Act, he shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both:

Provided that, no prosecution shall be instituted under the sub-Section, except with the previous sanction of the Central Government or State Government.

(5) Nothing in this Section shall apply to the publication of any information relating to a class of dealers or class of transactions, if in the opinion of the competent authority, it is desirable in the public interest, to publish such information.

142.1 Introduction

This Section discusses about the way in which the information obtained under Section 141 needs to be handled. The Section also provides for consequences of non-filing or mishandling or divulging of information by the person responsible for collecting such information.

142.2 Analysis

— Any information obtained under Section 141 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 agent. 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.

— If any person does not furnish any information or return, without reasonable cause or wilfully furnishes or causes to furnish false information, a fine of ₹ 100/- for each day for which the offence continues upto a maximum of ₹ 1,000/- would be applicable.

— Any person who is engaged in connection with collection of statistics under Section 141 or compilation or computerization wilfully discloses any information or contents of any return under this Section, or otherwise in execution of his duties shall be punished with imprisonment of a term which may extend upto 6 months or ₹ 1,000/- or both.

No prosecution shall be initiated without the previous sanction of Central or State Government.

— If in public interest the competent authority desires that the information may be published, he may do so and the provisions of this Section will not apply in such cases.

142.3 Comparative Review

None

142.4 Related provisions

Section	Description
Section 141	Provisions for collection of statistics and filing of returns

143 Taking assistance from an IT professional

Statutory provision

If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of [Deputy/Assistant Commissioner] having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the information pertaining to a taxable person stored on a computer system does not reveal correct details, he may take assistance of an Information Technology professional for extraction of information from such computer system.

143.1 Introduction

This Section enables Commissioner or any person authorised not below the rank of Deputy/Assistant commissioner by him to take assistance of an Information Technology Professional in cases, where he is of the opinion that the information stored on a computer system, pertaining to taxable person does not reveal correct details

143.2 Analysis

This section will enable the Officer to take assistance of IT professional to extract information from computer system when he is of the opinion that correct details, which is in the interest of the revenue are not readily available from the computer system.

144 Drawal of Samples

Statutory provision

The Commissioner of CGST/SGST or an officer authorized by him may take samples of goods from the possession of any taxable persons, where he considers it necessary, and provide a receipt for any samples so taken.

144.1 Introduction

This Section discusses about authority of the GST officers to draw sample of goods.

144.2 Analysis

Sample of any goods may be drawn 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 provider a receipt for the same.

144.3 FAQs

Q1. For what purposes can drawal of samples be made?

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 drawal of 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.

145 Burden of Proof

Statutory provision

If any person claims that he is eligible for input tax credit, the burden of proving such claim or claims shall lie on him.

145.1 Introduction

This provision places the burden on the taxable person to prove his input tax claims.

145.2 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 claims has been vested with the taxable person:

- Not liable to pay tax under the Act – where the taxable person claims that he is not liable to pay tax.
- Eligibility to claim input tax credit: Where the taxable person claims any input tax credit under Section 16.

145.3 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 2 circumstances:

- Where the taxable person claims that he is not liable to pay tax
- Where the taxable person has claimed any input tax credit.

145.4 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 2 situations

(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 2 situations

146 Persons discharging functions under the Act shall be deemed to be public servants

Statutory provision

All persons discharging functions under the Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code, 1860 (45 of 1860).

146.1 Introduction

This provision designates all the persons under this Act are public servants.

146.2 Analysis

By virtue of this provision, all the authorities carrying out any function under this Act are designated as public servants. The meaning of public servants would be as contained in Section 21 of IPC, 1860. Accordingly, all the officers under this Act will also be governed by the provisions of the IPC Act to the extent it relates to their functions carried out under this Act.

146.3 Comparative Review

None

146.4 Related provisions

Section	Description
Section 147	Indemnity for all officers for anything done under this Act
Section 148	Disclosure of information by a public servant

147 Indemnity

Statutory provision

(1) No legal proceedings shall lie against any goods and services tax officer, for anything which is done or intended to be done in good faith under the Act or the rules.

(2) No departmental proceedings shall lie against any goods and services tax officer for passing any adjudication order or appellate order in good faith under the Act or the rules.

147.1 Introduction

This Section protects the GST officers from legal proceedings in respect of acts done in good faith.

147.2 Analysis

Immunity from any legal or departmental proceedings is provided to the GST officers for the acts done in good fait under the provisions of this Act.

Comparative Review

None

147.3 Related provisions

Section	Description	Remarks
Section 146	Deemed as public servants	All officers performing any function under this Act are designated as 'public servants'.
Section 148	Disclosure of information by a public servant	None

147.4 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.

148 Disclosure of information by a Public Servant

Statutory provision

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with the Act, or in any record of evidence given in the course of any proceedings under the Act (other than proceeding before a Criminal Court), or in any record of any proceedings under the Act shall, save as provided in sub-Section (4), be treated as confidential;

(2) Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 1872), no Court shall save as aforesaid, be entitled to require any GST officer to produce before it or to give evidence before it in respect of particulars referred to in sub-Section (1).

(3) Save as provided in sub-Section (4), if any GST officer discloses any of the particulars referred to in sub-Section (1), he shall, on conviction, be punished with imprisonment which may extend to six months or with fine or with both:

Provided that, no prosecution shall be instituted under this Section except with the previous sanction of the Central Government or the State Government, as the case may be.

(4) Nothing contained in this Section shall apply to the disclosure of,-

(a) any such particulars in respect of any such statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code (45 of 1860) or the Prevention of Corruption Act, 1988 (49 of 1988), or the Act, or any other law for the time being in force; or

(b) any such particulars to the Central Government or the State Government or to any person acting in the execution of this Act, for verification of such particulars or for the purpose of carrying out the object of the Act; or

(c) any such particulars when such disclosure is occasioned by the lawful employment under the Act of any process for the service of any notice or the recovery of any demand; or

(d) any such particulars to a Civil Court or Tribunal constituted under any Central law in any suit or proceeding, to which the Government or any authority under the Act is a party, which relates to any matter arising out of any proceeding under the Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or

(e) any such particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by the Act; or

(f) any such particulars where such particulars are relevant the purposes of any inquiry into the conduct of any GST officer, to any person or persons appointed as an inquiry officer under any relevant law; or

(g) such facts to an officer of the Central Government or any State Government as

may be necessary for the purpose of enabling that Government to levy or realise any tax or duty imposed by it; or

(h) any such 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 such particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under the Act against a practising advocate, 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, cost accountant, chartered accountant or company secretary, as the case may be; or

(j) any such 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 such particulars to an officer of the Central Government or any State Government as may be necessary for the purposes of any other law in force in India; and

(l) any information relating to any class of taxpayers or class of transactions for publication, if, in the opinion of the Competent authority, it is desirable in the public interest, to publish such information.

148.1 Introduction

(a) This Section lays down the guidelines for maintaining confidentiality of the information obtained during the course of any proceeding and the situations when such information can be disclosed.

(b) It also lays down the penal clauses for the violation of the confidentiality.

148.2 Analysis

(i) Confidentiality: The following shall be kept confidential:

— 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.

(ii) 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 are confidential (covered above in Point (i))

Note: Criminal Courts shall have the above rights.

(iii) Penal action on GST Officer:

— If any GST Officer discloses any of the particulars [as mentioned in point (i)], he shall be punishable with imprisonment upto 6 months or fine or both

— Prior sanction of the Central / State Government is required for initiating the prosecution proceedings under this Section.

(iv) Exceptions to Confidentiality: 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 the GST Act, 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 verification of such particulars or 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 / Tribunal constituted under any Central law

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 C&AG 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 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.

Penalty where confidential information gets disclosed in case other than the above: The GST officer shall be convicted and punished with imprisonment upto 6 months or with fine or both (fine and imprisonment).

148.3 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.

148.4 Related provisions

Section	Description	Remarks
Section 146	Deemed as public servants	All officers performing any function under this Act are designated as 'public servants'.
Section 147	Indemnity from legal proceedings	None

148.5 FAQs

Q1. Who is responsible for maintaining confidentiality of information?

Ans. Every GST Officer must maintain confidentiality of information obtained by him.

Q2. Can Courts access the records available with GST Officer?

Ans. Only Criminal Courts can access the records available with GST Officer.

Q3. What is punishment for violation of the above provision?

Ans. If any GST Officer discloses any of the particulars in situations other than which are allowed, he shall be punishable with imprisonment upto 6 months or fine or both.

Q4. 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 or under the GST Act.

Q5. 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.

Q6. 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.

Q7. 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.

Q8. 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.

148.6 MCQs

Q1. The GST officer disclosing confidential information in violation of law is punishable with -

(a) Mandatory Imprisonment

(b) Mandatory fine

(c) Imprisonment or fine or both

(d) None of the above

Ans. (c) Imprisonment or fine or both

Q2. GST Officer can disclose the information if

(a) Ordered by Higher Authority to disclose

(b) Required by the Criminal Courts in a proceeding

(c) Decided by him voluntarily

(d) None

Ans. (b) Required by the Criminal Courts in a proceeding

Q3. GST Officer can disclose the information to another GST officer if

(a) Required for issuing notice under the law

(b) Asked by other GST Officer

(c) Required by the Higher Authority

(d) As part of general practice

Ans. (a) Required for issuing notice under the law

Q4. GST Officer can disclose the information to –

(a) Criminal Courts

(b) Civil Courts (where Government is involved)

(c) Compiling Statistics

(d) All of the above

Ans. (a) All of the above

149 Publication of information respecting persons in certain cases

Statutory provision

(1) If the Competent Authority is of opinion that it is necessary or expedient in the public interest to publish the names of any person and any other particulars relating to any proceedings or prosecutions under the Act in respect of such person, it may cause to be published such names 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 the Act until the time for presenting an appeal to the First Appellate Authority under Section 98 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 Competent Authority, circumstances of the case justify it.

149.1 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.

149.2 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 98[1]) has expired and the persons involved, did not present any appeal (OR)
- The appeal is presented and it is disposed of (against such persons).

[1]Section 79 prescribes that the appeal before the First Appellate Authority must be filed within 3 Months from the date of communication of the order to the Appellant. Such period may be extended by further one month, if First Appellate Authority is satisfied that there was sufficient cause for not filing the appeal within time. (Hence, Maximum time available is 4 Months)

149.3 Comparative review

Similar Provisions as above find place in current laws as under:

Law	Distinction in the proposed GST draft
Central Excise (Sec.37E)	The draft Provisions are verbatim same as 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 draft 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

Law	Distinction in the proposed GST draft
	Section in respect of all persons who are convicted under the Act. However, this has been omitted in the new draft.
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). 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 draft GST law.* *This leaves the decision to publish solely to the discretion of the Competent Authority. Further, there are no enabling provisions u/s 154 to confer powers to the Governments to frame rules for such publication. Sec.155 has also not listed out the specific areas wherein the Board / Commissioner SGST can frame regulations.*
VAT Laws	Similar Provisions as that of the Draft 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)*

149.4 Related provisions

Section	Description	Remarks
Section 98	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.98 is relevant.

149.5 FAQs

Q1. Should prosecution proceedings alone be published?

Ans. No. Sec.149uses the words "any proceedings or prosecutions". 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 proposed Sec.149, 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. The proposed Sec.149 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. The proposed Sec.149 indicates that the competent authority may publish names and other particulars, in relation to any proceeding or prosecutions. 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. The Proposed Sec.149 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.

149.6 MCQs

Q1. Who can publish the names and particulars

(a) Courts

(b) Appellate Authority

(c) Any Adjudicating Authority

(d) Competent Authority

Ans. (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

Ans. (c) At the discretion of the Competent Authority

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

Ans. (b) Only Names of the Directors

150 Assessment proceedings not to be invalid on certain grounds

Statutory provision

(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 the 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 is/are in substance and effect in conformity with or according to the intents, purposes and requirements of the Act or any earlier 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 earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.

150.1 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.

150.2 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.

151. Rectification of mistakes or errors apparent from record

Statutory provision

Without prejudice to the provisions of Section 150, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or summons or notice or certificate or any other document, may rectify any error or mistake which is apparent from record in such decision or order or summons or notice or certificate or any other document, either on its own motion or where such error or mistake is brought to its notice by any CGST / SGST officer or by the affected person within a period of three months from the date of issue of such decision or order or summons or notice or certificate or 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 summons or notice or certificate or any other document:

Provided further that the period of six months referred to in the first proviso shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error or mistake, arising from any accidental slip or omission:

Provided also that the principles of natural justice shall be followed by the authority carrying out such rectification if it adversely affects any person.

Explanation.— For the removal of doubts, it is hereby clarified that the authority shall not, while rectifying any mistake apparent from record, amend substantive part of its decision or order or summons or notice or certificate or any other document passed or, as the case may be, issued under the provisions of this Act.

151.1 Introduction

While the authority to issue any decision, order, summons, notice, certificate or other document is expected to be issue 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 opportunity to make such rectification with some caution and due process being prescribed.

151.2 Analysis

This Section begins with caution in stating that:

- no prejudice will be caused to the validity of proceedings listed in Section 128 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 / CGST 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.

151.3 Comparative review

Starting from Civil Procedure, all laws have provisions to rectify errors apparent on the face of the records. It includes Income Tax Act, Central Excise, Customs, Service Tax and Different Sales tax and other laws as well.

151.4 Related provisions

Statute	Section	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,—

Statute	Section	Description
		(a) amend any order passed by it under the provisions of this Act; (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.
IGST	Section 24	Power of Settlement Commission to rectify error apparent on the face of the record

151.5 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.

151.6 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

Ans. (a) Only errors which are apparent on the face of the record

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

Ans. (b) If it is evident from the record itself and does not require long drawn out reasoning

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.

Ans. (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

Ans. (b) The authority itself, an officer or 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

Ans. (b) Yes

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.

Ans. (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

Ans. (c) If there is an adverse effect then principles of natural justice have to be complied with

152. Bar of jurisdiction of civil courts

Statutory provision

Save as provided by Section 106 and 107, 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 the Act;

152.1 Introduction

With increase in Administrative law whereby the departmental machinery has been created to deal with disputes, civil court jurisdiction is restricted. It is now long time since whenever new liability is created a 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 106 and 107, appeal to High Court and Special leave to the Supreme Court are provided. These are the only instances of where this bar is not applicable.

152.2 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 are presiding 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 Model 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, these 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 Art. 32,136 etc.

Section 106 relates to appeal on substantial question of law to High Court and Section 107 a leave to appeal therefrom.

152.3 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.

153 Levy of fees

Statutory provision

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, which may include a fee for such application also.

153.1 Introduction

This provision empowers the Central Government to collect fees for supplying photo copy of the orders / documents.

153.2 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. Fee applies to the application seeking the document or order as well as for its issuance. It is important to note that a new procedure of securing an authenticated copy of the document or order is provided for. This is a hallmark of the procedure prescribed under CPC for receiving documents.

153.3 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 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 Eg. 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.

153.4 Related provisions

Section	Description	Remarks
153	Powers to Levy	Fees to be collected for giving copies of any order / document.

153.5 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 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.

153.6 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

Ans. (a) Primary Copy of the Appellate Order

Q2. Fees must be paid

(a) Before obtaining Copy of Order

(b) After obtaining Copy of Order

Ans. (a) Before obtaining Copy of Order

154. Power of Central (or State) Government to make rules and

Statutory provision

(1) The Central Government (or the State Government) may, on the recommendation of the Council, make rules, including rules conferring the power to issue notifications with retrospective effect under those 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 —

(i) provide for the date for determination of rate of tax and the place of supply of goods or services or both;

(ii) having regard to the normal practice in the supply of goods or services, define or specify the kinds of trade discount to be excluded from the value under Section 15 including the circumstances in which and the conditions subject to which such discount is to be so excluded;

(iii) provide for determining the value of taxable supplies in the situations mentioned under Section 15;

(iv) provide, subject to such conditions as may be prescribed, for the grant of input tax credit of tax paid on the input supplies of goods or services used in or in relation to the providing of the output taxable supplies of goods or services, and the manner of utilization of such credit;

(v) provide for the lapsing of input tax credit lying unutilized, in the circumstances as may be specified in the rules;

(vi) provide for withdrawal of facilities or imposition of restrictions (including restrictions on utilisation of input tax credit) on taxable person or suspension or revocation of registration of taxable person, for dealing with evasion of tax or misuse of input tax credit;

(vii) provide, subject to such conditions as may be prescribed, for the carrying forward of the unutilized balances of CENVAT credit of the duties of excise and the service tax, under the CENVAT Credit Rules 2004, (or of VAT credit under the State VAT credit rules) lying with the taxable persons on the date of their switching over to GST;

(viii) specify the persons who shall get themselves registered under section 23 and the time, manner and form in which application for registration shall be made;

(ix) provide for the manner of verification of application and issue of registration under the Act and the fees, if any, to be charged therefor;

(x) provide for the situations and manner of grant of deemed registration under the Act;

(xi) provide for the manner of migration, amendment, surrender, revocation, suspension, cancellation of registration under the Act;

(xii) provide for the assessment and collection of tax, the authorities by whom functions

under the Act are to be discharged, the issue of notices requiring payment, the manner in which tax shall be payable, and the recovery of tax not paid;

(xiii) impose on taxable persons or other persons as may be specified, the duty of furnishing information, maintaining records and filing returns, and may also prescribe the nature of such information and the form of such records and returns, the particulars to be contained therein, and the manner in which they shall be verified;

(xiv) provide for the form, manner and frequency of the returns to be furnished and the late fee for delayed furnishing of return under relevant section;

(xv) provide for charging or payment of interest under the various provisions of the Act;

(xvi) provide for the detention or attachment of goods, plant, machinery or material and other movable or immovable properties for the purpose of exacting the tax on taxable supplies in respect of which breaches of the Act or rules made thereunder have been committed and the disposal of things so detained or attached or confiscated;

(xvii) authorise and regulate the compounding of offences against, or liabilities incurred under the Act or the rules made thereunder;

(xviii) provide for the amount to be paid for compounding and the manner of compounding of offences under section 97;

(xix) provide for publication, subject to such conditions as may be specified, the names and other particulars of persons found guilty of contravention of any provision of the Act or of any rule made thereunder;

(xx) provide for the manner of recovery of any amount due to the Central Government (or State government) under section 72;

(xxi) authorise and regulate the inspection and audit of business premises and provide for the taking of samples, and for the making of tests, of any substance produced therein, and for the inspection or search of any place or conveyance used for the production, storage, sale, supply or transport of goods, and so far as such inspection or search is essential for the proper levy and collection of the tax imposed by the Act, of any other taxable supply of goods or services;

(xxii) specify the form and manner in which application for refund shall be made under section 48;

(xxiii) provide for the manner in which amounts shall be credited to the Consumer Welfare Fund, their utilization, and the form in which the accounts and records relating to the Fund shall be maintained;

(xxiv) specify the forms in which appeals, applications and memoranda of cross objections shall be filed and verified under Chapter XXI of the Act;

(xxv) provide for the qualifications and the manner of appointment of the National President, the State President, and the Members of the Appellate Tribunal under section 100 of the Act, and other matters related or incidental thereto;

(xxvi)	regulate in such manner as the Central Government / State Government thinks fit, the movement of supplies from any part of India to any other part thereof;
(xxvii)	regulate the removal of taxable supplies of goods from the place where produced, stored or manufactured or subjected to any process of production or manufacture and their transport to or from the premises of a registered person, or a bonded warehouse, or to a market;
(xxviii)	provide for the appointment, licensing, management and supervision of bonded warehouses and the procedure to be followed for entry of goods into such warehouses and clearance of goods therefrom;
(xxix)	provide for the distinguishing of supply of goods which have been manufactured after registration, of materials which have been imported, and of supply of goods on which tax has been paid, or which are exempt from tax under this Act, or any other class of goods as may be specified in such rules;
(xxx)	require that taxable supplies of specified goods shall not be made except in prescribed containers, bearing a banderol, stamp or label of such nature and affixed in such manner as may be prescribed;
(xxxi)	provide for the grant of a rebate of the tax paid on supply of goods or services which are exported out of India or shipped for consumption on a voyage to any port outside India including interest thereon;
(xxxii)	provide for rebate of tax paid or payable on the taxable supply of services used as input services in the supply of goods or services exported out of India under section 48;
(xxxiii)	provide for the charging of fees for the examination of goods intended for export out of India and for rendering any other service by a GST Officer under this Act or the rules made thereunder;
(xxxiv)	authorise the Board (or competent authority) or officers of GST, as the case may be, appointed for the purposes of this Act to provide, by written instructions, for supplemental matters arising out of any rule made by the Central Government (or the State Government) under this section;
(xxxv)	provide for the manner of provisional attachment of property under section 77;
(xxxvi)	make provisions for determining export of taxable supply of services;
(xxxvii)	provide for grant of exemption to, or rebate of tax paid on, taxable supply of services which are exported out of India;
(xxxviii)	provide for manner of administering of payment of taxes under the compounding of tax;
(xxxix)	provide for dealing with situations where goods are returned;
(xl)	provide for specifying the details to be given in the invoices, the maintenance of accounts, the furnishing of audit reports, and matters related thereto;

(xli) provide for the qualifications and the manner of appointment of the Advance Ruling authority under section 114 of the Act, and other matters related to functioning of the authority;

(xlii) provide for the qualifications of tax return preparers, tax practitioners and authorized representatives under various provisions of the Act, the manner of their selection or appointment or nomination, their codes of conduct, and other matters related or incidental thereto;

(xliii) provide for matters relating to tax deducted at source and tax collected at source;

(xliv) provide for matters covered by Chapter XXVII;

(xlv) provide for the suspension of certain facilities admissible under this Act or the rules made thereunder in case of repeat violations of conditions and restrictions as may be prescribed;

(xlvi) provide for manner of conduct of audit of registered taxable person under Chapter XVI; and

(xlvii) any other matter related to administering or enforcing the provisions of the Act.

(3) The power to make rules conferred by this section shall on the first occasion of the exercise thereof 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 Chapter come into force.

(4) In making rules under this Section, the Central Government (or State Government) may provide that any person committing a breach of any rule shall, where no other penalty is provided by the Act, be liable to a penalty not exceeding ten thousand rupees

154.1 Introduction

This is delegation of legislation to the administrative authority, which has become regular practice and standard feature of modern legislation. This has to be read with the other Section 155 regarding regulations. While under this Section the Government is given the power to make rules, under Section 155 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.

154.2 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. 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". Specific cases where such power is to be exercised are listed as 47 topics. 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 XXIII.

Finally, in order to ensure the rules are enforceable, breach of the rules are recognized as a cause for imposing penalty not exceeding ₹ 10,000/-. 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 Section 66 of the Act.

154.3 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.

154.4 Related provisions

Statute	Section
Central Excise Act, 1984	Section 37. Power of Central Government to make rules.
Chapter V of the Finance Act, 1994	Power to make rules. -

154.5 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.

154.6 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

Ans. (c) Yes. Subject to the limitation that it cannot be made beyond the date on which the chapter comes into force

155 General power to make Regulations

Statutory Provision

(1) The Commissioner may make regulations consistent with this Act and rules, generally to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing powers, such regulations may provide for all or any of the following matters namely-

(a) .....

(b) .....

(c) .....

155.1 Introduction

While topics for rule making are listed under Section 154 leaving the domain to the appropriate Government, topics for making regulation listed under Section 155 are reserved for the Board or Commissioner of SGST. These are mutually exclusive domains

155.2 Analysis

The Commissioner of SGST 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.

155.3 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 Finance Act in respect of Service Tax

156. Delegation of powers

Statutory provision

The Competent Authority may, by notification in the Gazette direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under the Act may be exercisable also by another authority or officer as may be specified in such notification.

156.1 Introduction

This enables the Competent Authority to delegate the power exercisable by one authority to another.

156.2 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.

156.3 Comparative review

Delegation of powers for administrative exigencies is part of laws dealing with administrative powers

156.4 Related provisions

Statute	Section	Description
Central Excise Act, 1984	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 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

Statute	Section	Description
		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 maybe exercisable also by a gazetted officer of Central Excise empowered in this behalf by the Board.

156.5 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.

156.6 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

Ans. (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

Ans. (c) The Competent Authority

157. Instructions to GST Officers

Statutory provision

(1) The Board [The Competent Authority of the State Government as notified] may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of the Act, issue such orders, instructions or directions to the GST Officers as it may deem fit, and thereupon all GST officers and all other persons employed in the execution of the Act shall observe and follow such orders, instructions or directions:

Provided that no such orders, instructions or directions shall be issued—

(a) so as to require any GST 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 First Appellate Authority in the exercise of his appellate functions.

(2) The Commissioner specified in sub-section (79), (83) of section 2, sub-section (3) of section 6, clause(b) of sub-section(4) of section 17 , clause (a) of subsection (7) of section 23, sub-section (1) of section 32, sub-section (2) of section 33, sub-section (6) of section 34, section 88, sub-section (3) of section 101, sub-section (1) of section 141 , and sub-section (1) of 155 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.

157.1 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.

157.2 Analysis

There are 3 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. The Competent Authority is not defined in the Act which is expected to be notified in due course. It can be taken that, consistent with prevailing practice, it would be either the head of the department or a body of senior officials. Again, GST officer is not defined. Taking into account the meaning, understanding and practice it will certainly include the assessing and field level officers.

It further excludes the following:

- Directions to an officer with regard to carrying out a particular assessment or disposal of a case. But this does not preclude directions in general on any subject for purposes of uniformity in implementation of the Act that an officer may adopt and follow on his own in a particular assessment
- Interference with the discretion of the First Appellate Authority in exercise of appellate functions. This provision upholds the independence of the quasi-judicial authority. The revisionary powers of Commissioner of SGST under Section 80 of SGST Act does not violate this principle because revision is after passing of orders (by FAA lower in rank that Commissioner) and not before passing such orders.

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.

157.3 Comparative review

Central Excise, Customs, majority of the State VAT enactments and Income Tax contain similar provisions.

157.4 Related provisions

Statute	Section	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

Statute	Section	Description
		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.

157.5 MCQs

Q1. In a particular assessment, GST officer has a doubt, and he seeks clarification from the Superior officer, who gives him instruction on the matter. Whether the GST Officer can ignore it?

(a) Coming from the Superior Officer it is binding on the GST officer

(b) It should not be followed as only Competent Authority can issue instructions and only on general issues

(c) If it is in favour of the department it has to be followed as otherwise the interest of revenue will be affected

(d) None of the above

Ans. (b) It should not be followed as only Competent Authority can issue instructions and only on general issues

Q2. The Competent Authority can issue instruction to the field formation to bring in uniformity to all officers

(a) True

(b) False

Ans. (a) True

Q3. Whether the Competent Authority on a long pending issue pending at various level, give instructions to Appellate Authorities?

(a) Yes. As it is to bring in uniformity

(b) No. He cannot interfere with appellate functions

(c) Yes. As the Competent Authority is empowered to issue instructions

(d) None of the above.

Ans. (b) No. He cannot interfere with appellate functions

158. Removal of difficulties

Statutory provision

(1) If any difficulty arises in giving effect to any provision of the Act, the Central Government / State Government may, on the recommendation of Council, by general or special order published in the Gazette, do anything which appears to it to be necessary or expedient for the purpose of removing the difficulty:

Provided that no such order shall be made after the expiry of a period of two years from the date of effect of the provision giving rise to the difficulty.

(2) Every order made under this Section shall be laid, as soon as may be, after it is made, before Parliament / State Legislature.

158.1 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.

158.2 Analysis

(i) The Central Government / State Government identifies that there is a difficulty in implementation of any provision of the GST Legislations.

(ii) In such case, they have powers to issue a general or special order, to carry out anything to remove such difficulty.

(iii) Such activity of the Government must be consistent with the provisions of the Act and should be necessary or expedient.

(iv) Maximum Time limit for passing such order shall be 2 years from the date of effect of the provision giving rise to the difficulty.

If such an order is issued by the Central / State Government, then it shall be placed before the Parliament / State Legislature. It must be noted that no affirmative or other action is required by the Parliament / State Legislature for these orders to become operative. Hence, the orders issued under this Section become operative and continue to do so unless corrected or aborted when placed before the Parliament / State Legislature.

158.3 Comparative review

The above provisions are present across almost all tax legislations, to ensure that any practical difficulties in implementation can be addressed.

158.4 Related provisions

This is an independent Section and would be applicable for implementation of all provisions of the GST Law.

158.5 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 158?

Ans. The Maximum time limit is 2 years from the date of effect of relevant provision.

Q4. Whether prior approval of the Parliament / Stage Legislature is required?

Ans. No. The order must be placed before the Parliament / Stage Legislature, at the earliest time, after the order is issued.

Q5. 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.

158.6 MCQs

1. Who can issue the Order?
   (a) Central Government
   (b) State Government
   (c) Either (a) or (b)
   (d) None

Ans. (c) Either (a) or (b)

2. Whether Prior approval of the Parliament is necessary?
   (a) Yes
   (b) No

Ans. (b) No

3. What is the maximum period for exercising this power?
   (a) 4 years
   (b) 3 years
   (c) 2 years
   (d) 1 years

Ans. (c) 2 years

159. Service of notice in certain circumstances

Statutory provision

(1) Any decision, order, summons, notice or other communication under the 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 taxpayer or to his manager or to agent duly authorized or an advocate or a tax practitioner holding authority to appear in the proceeding on behalf of the taxpayer or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxpayer, or

(b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised agent, 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 taxpayer 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, or

(g) if the mode prescribed under (f) is also not practicable for any reason, then by affixing a copy thereof on the notice board of the 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 a registered letter in transit unless the contrary is proved.

159.1 Introduction

Service of communication is an essential step of any process of law. This Section details the mode of service that is considered valid.

159.2 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 can be sent to the person

(c) **Mode 3 – Electronic Means**

- by facsimile message (FAX), if such address is furnished or
- Email or
- Displaying on dashboard of the taxpayer (if available on the web-site) or
- by sending a message on his registered mobile number or

(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 Post:** If such communications are sent by registered post, it shall be treated as received by the addressee at the expiry of the normal period taken by a registered letter in transit (unless the contrary is proved).

159.3 Comparative review

The following are the major improvements / inclusions made in the proposed 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 (FAX / Email / SMS / Dashboard of taxpayer in the Government Website) — Publication in Newspaper
Additional Addressees (if main addressee is not available)	Delivery through messenger or by courier to following persons are accepted: 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 post, ***it shall be treated as received by the addressee at the expiry of the normal period taken by a registered letter 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.

159.4 Related provisions

Section 159 relates to all communications issued under the law and hence any communication given under any provision, shall be governed by this provision,

159.5 FAQs

Q1. What are the approved modes of communication?

Ans. Physical Delivery, Registered Post, Courier, Email, FAX, SMS, Display of notice in Government Website, Publication in newspaper, 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.

159.6 MCQs

Q1. Among the following, which method is not approved?

(a) Post

(b) Courier

(c) Email

(d) Notice to Addressee's Debtors

Ans. (d)

Q2. Among the following, to whom the notice cannot be served?

(a) Authorised Agent

(b) Family Member

(c) Employee

(d) Partner

Ans. (d)

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.

Ans. (a)

160. Rounding off of tax etc.

Statutory provision

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 the 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.

160.1 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.

160.2 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.

160.3 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.

160.4 Related provisions

This provision shall apply to any amount calculated under the other provisions of the Act.

160.5 FAQs

Q1. If the Show Cause Notice mentions the tax as ₹ 102.30 and penalty as ₹ 102.30, then what is the amount payable?

.Ans. If the paise is less than 50 then that part has to be ignored. Total amount payable is ₹ 102 + ₹ 102 = ₹ 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).

160.6 MCQs

Q1. If the amount of tax is ₹ 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

Ans. (a)

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

Ans. (d)

Q3. Which of the following shall be rounded off?

(a) CGST

(b) SGST

(c) Both

(d) None of the above

Ans. (c)

161. Effect of amendments etc. of rules, notifications or orders

Statutory provision

Where any rule, notification or order made or issued under the Act or any notification or order issued under such rule, is amended, repealed, superseded or rescinded, then, unless a different intention appears, such amendment, repeal, supersession or rescinding shall not –

(a) revive anything not in force or existing at the time at which the amendment, repeal, supersession or rescinding takes effect; or

(b) affect the previous operation of any rule, notification or order so amended, repealed, superseded or rescinded or anything duly done or suffered thereunder; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any rule, notification or order so amended, repealed, superseded or rescinded; or

(d) affect any penalty, forfeiture or punishment incurred in respect of any offence committed under or in violation of any rule, notification or order so amended, repealed, superseded or rescinded; or

(e) affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced and any such penalty, forfeiture or punishment may be imposed as if the rule, notification or order, as the case may be, had not been amended, repealed, superseded or rescinded.

161.1 Introduction

This provision intends to ensure that any change in the legislations shall have effect only on the transactions / acts to be carried out in future and shall not be applicable for the transactions / acts / courses of actions already done before the change has come into effect. This provision is in line with Section 6 of the General Clauses Act, 1897 as it applies to repeal of laws.

161.2 Analysis

(i) **Nature of Change:** Amendment / Repeal / Supersession / Cancellation

(ii) **Nature of Law:** Any rule / notification / order

(iii) **Effect:**

- (a) Such a change shall have only prospective effect (unless the intention appears to be different)
- (b) **No new effect:** Such a change shall not bring into existence, anything that is not already in existence.
- (c) **No impact on earlier law:**
  - Such Change shall be effective only for the period after the change and for all acts done after such change.

- Hence, previous law shall continue to be applicable for the period prior to such change.
- Further, it shall not affect anything which is already done or suffered under the previous law.

(d) **No impact on accrued rights / liability under previous law:**

- Such Change shall not alter any right / privilege and liability / obligation determined as per the previous law.

(e) **No impact on penalty / punishment under previous law:**

- Such Change shall not alter any penalty, forfeiture or punishment, which is already incurred for an offence / violation under the previous law.

(f) **No impact on any proceeding under previous law:**

- Such Change shall not have any impact on the investigation / legal proceeding / remedy which was instituted under the previous law.
- The investigation / legal proceeding / remedy may be instituted / continued or enforced for the period for which the previous law applies, based on the provisions of the previous law.

161.3 Comparative review

Similar enabling provisions are available in Central Excise Act (Sec.38A), Service Tax Provisions (Sec.83 of the Finance Act 1994) and also in State VAT Provisions.

161.4 Related provisions

This provision shall apply to any amendment / cancellation of any rule / notification / order (issued under the Act / rules).

161.5 FAQs

Q1. Any amendment made in a rule will have prospective or retrospective effect?

Ans. Unless the intention differs, every amendment will have only prospective impact.

Q2. If a notice was issued as per the earlier law, but such law was superseded then will the notice be valid?

Ans. Such notice shall continue to be valid as it is for the period before change.

Q3. If the amendment specifically makes it effective from retrospective period, then will this provision override?

Ans. As the provision specifically mentions that if the intention is different as per the amendment, then such intention will override the law. Hence, such amendment will have retrospective effect.

Q4. If a violation was committed for the period before change, whereas the penal action was initiated after change, will the penalty as per the old law or new law apply?

Ans. Penalty as per the old law is applicable.

Q5. If the new law had prescribed a tax evasion amount for imprisonment, will the accumulated amount of tax evasion prior to the date of change be considered?

Ans. As per various decisions on the similar issues, the accumulated amount including that related to the periods prior to change shall be considered for the purposes of determination of imprisonment.

161.6 MCQs

Q1. Any amendment made in a rule will have …… Effect?

(i) Prospective

(ii) Retrospective

(iii) No

(iv) Overriding

Ans. (i)

Q2. Penalty for the period prior to change shall be decided as per …… law

(i) New

(ii) Old

(iii) Both

(iv) None

Ans. (ii)

Q3. If a Credit is allowed as per the old law and it was removed by the new law, then it must be

(i) Partially allowed

(ii) Disallowed

(iii) Allowed

(iv) Allowed at the discretion of the department

Ans. (iii)

Q4. If a violation was not mentioned for a particular period as per the old law, whereas it is introduced as per the new rule, will it apply to an act which was committed before change, but identified after change?

(i) Yes

(ii) No applied subject to discretion of the department

(iii) Partially applied

Ans. (ii)

162 Publication of rules and notifications and laying of rules before Parliament & State legislature

Statutory provision

(1) All rules made and notifications issued under the Act shall be published in the Official Gazette.

(2) Every rule made under the Act, every notification issued under Section -----, Section ---, Section ----- and Section ----- (depending on the final full draft) and every order made under Section -----, Section ----, Section ----- and Section ----- (depending on the final full draft), other than an order relating to goods or services or both of strategic, secret, individual or personal nature, shall be laid, as soon as may be after it is made or issued, before Parliament / State Legislature, 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, Parliament / State Legislature agree in making any modification in the rule or notification or order, or Parliament / State Legislature agree that the rule should not be made or notification or order should not be issued or made, the rule or notification or order 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 notification or order.

162.1 Introduction

Delegation requires superintendence of the legislature. This superintendence is provided by the Parliament / State Legislature by following the 'laying down' procedure described in Section 23 of the General Clauses' Act, 1897. This Section provides for the oversight over exercise of delegated powers by the delegator - Parliament / State Legislature.

It must be noted that no affirmative or other action is required by the Parliament / State Legislature for the specified rules to become operative. And unless modified or annulled, the specified rules become operative and continue to do so unless corrected or aborted when placed before the Parliament / State Legislature.

162.2 Analysis

All rules and notifications issued under the Act shall be published in the Official Gazette. But, only those rules specified, notifications issued under specified Section and orders issued under specified Section listed in sub-Section 2 require to follow 'laying down' procedure before the Parliament / State Legislature.

(i) Every such rule, notification and order issued under the specified Sections are required to be placed before Parliament / State Legislature for a period of 30 days, while it is in session.

(ii) The above period may be in a single session or in two or more successive sessions.

(iii) However, the Parliament / State Legislature can modify or annul the rule / notification / order before the conclusion of the subsequent session which immediately follows the sessions during which the rule / notification / order was placed before the Parliament / State Legislature.

(iv) If the Parliament / State Legislature agree in modification or agree that the rule / notification / order should not be made, then such rule / notification / order shall have effect only in such modified form or shall have no effect (in case of annulment)

(v) However, such modification or annulment shall not affect any act which is previously done under that rule / notification / order.

(vi) **Exception:** Any order relating to goods / services / both which have strategic, secret, individual or personal impact, shall not be placed before the Parliament / State Legislature.

162.3 Comparative review

Similar provisions are already available in Central Excise Law (Section 38), Service Tax Provisions (Section 83 of the Finance Act 1994) and also in State VAT provisions.

162.4 Related provisions

Such Provision is applicable for any order / notification / rule made under the provisions to be specified in the above Section.

162.5 FAQs

Q1. Should all notifications be placed before the Parliament?

Ans. Notifications issued under the specified Sections (to be included in the final draft) shall be placed before the parliament.

Q2. What type of orders shall not be placed before the Parliament?

Ans. Orders relating to goods / services / both which have strategic, secret, individual or personal impact, shall not be placed before the Parliament / State Legislature.

Q3. Can the Parliament / State Legislature make amendment in the rule?

Ans. Yes. The Parliament / State Legislature can make amendments in the rules within the expiry of the session immediately following the session(s) in which the rule was placed before it.

Q4. Whether the past acts done prior to modification be valid?

Ans. The provision specifically makes it clear that the past acts done prior to modification shall be valid.

162.6 MCQ

Q1. What are the laws to be placed before the Parliament / State Legislature?

(a) Rules

(b) Trade Notices

(c) Circulars

(d) None of the above

Ans. (a)

Q2. How many days the notifications / rules / order must be placed?

(a) 45

(b) 30

(c) 60

(d) 100

Ans. (b)

Q3. What are the powers with the Parliament / State Legislature?

(a) To annul

(b) To Modify

(c) Both modify and annul

(d) None

Ans. (c)

Q4. What are the types of orders which shall not be placed before the Parliament?

(a) Orders of Strategic nature

(b) Orders of Secret nature

(c) Orders of Individual nature

(d) All of the above orders

Ans. (d)

163. Anti-profiteering Measure

Statutory Provision

(1) The Central Government may by law constitute an Authority, or entrust an existing Authority constituted under any law, to examine whether input tax credits availed by any registered taxable person or the reduction in the price on account of any reduction in the tax rate have actually resulted in a commensurate reduction in the price of the said goods and/or services supplied by him.

(2) The Authority referred to in sub-section (1) shall exercise such functions and have such powers, including those for imposition of penalty, as may be prescribed in cases where it finds that the price being charged has not been reduced as aforesaid.

163.1 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 Govt. may by law constitute an Authority or entrust an existing authority for this purpose.

163.2 FAQs

Q1. Who will constitute the authority for anti-profiteering measure?

Ans. The Central Govt. by law.

Q2. What is the responsibility of the authority?

Ans. To examine whether

(a) Input tax credit availed by TP have actually resulted in commensurate reduction in price of goods/services;

(b) The reduction in price on account of reduction in tax rate have actually resulted in a commensurate reduction in price of goods/services;

Q3. Whether the authority can impose penalty?

Ans. Yes. Can imposepenalty in cases where it finds that the price being charged has been reduced.

Chapter XXIV
Repeal and Saving

164. Repeal and Saving

Statutory provision

(1) From the date of commencement of the Act, the (State) General Sales Tax/Value Added Tax Act, the Central Excise Act 1944, and the Central Excise Tariff Act 1985 shall apply only in respect of goods included in the entry 84 and entry 54 of the Union List and the State List respectively, of the Schedule VII to the Constitution of India.

PROVIDED that the aforesaid restriction of the application of the statutes referred above shall not—

(a) Revive anything not in force or existing at the time at which the restriction takes effect; or

(b) Affect the previous operation of the unrestricted Acts or anything duly done or suffered thereunder; or

(c) Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the unrestricted Acts; or

(d) 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 unrestricted Acts; or

(e) 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.

(f) 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.

(2) The following Acts are hereby repealed, to the extent mentioned hereunder, namely:- (as per the taxes subsumed under GST …….)

(a) The Entry Tax Act,……..

(b) The Entertainment Tax, ……..

(c) The Luxury Tax Act, ……..

(d) Duty of Excise on Medicinal and Toilet Preparation Act, ……

(e) Chapter V of the Finance Act, 1994.

(3) The repeals referred to in sub-section (2) shall not—

(a) Revive anything not in force or existing at the time at which the repeal takes effect; or

(b) Affect the previous operation of the repealed Acts or anything duly done or suffered thereunder; or

(c) Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the repealed Acts; or

(d) 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 repealed Acts; or

(e) 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 enacted.

(f) 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.

164.1 Introduction

This provision indicates 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.

164.2 Analysis

(a) This provision has to be read along with the Transition provisions in chapter XXV.

(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.

(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 restriction 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 unrestricted/repealed Acts or anything duly done or suffered thereunder. *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 unrestricted/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 unrestricted/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.*

164.3 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.

164.4 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 abate or be dismissed.

164.5 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.

Legend:

SCN – Show Cause Notice

CESTAT – Customs, Excise and Service Tax Appellate Tribunal

GST – Goods and Service Tax

ST – Service Tax

CE – Central Excise

Chapter – XXVII
Transitional Provisions

165. General provisions

Statutory provision

Notwithstanding anything contained elsewhere in the Act and until specifically so or otherwise prescribed or notified or done in accordance with the provisions of the Act,

(a) All persons appointed by the respective Governments for discharging various functions under the Central/State laws relating to taxes on goods or services (which are being subsumed in GST) and continuing in office on the appointed day, shall be deemed to have been appointed as GST officers/Competent Authorities under the respective provisions of the Act.

(b) The Central Government (or the State Government) may issue orders or make rules consistent with the need for smooth transition to GST including the matters not specifically covered herein after so long as such matters are not in conflict with the purposes of the Act.

165.1 Introduction

This transition provision provides that the Officers under the current tax regime (that are being subsumed into GST) to continue as GST Officers. For the purpose of transition no other provision of the Act shall apply unless it is specifically stated / prescribed or notified.

165.2 Analysis

Through this provision, the Officers administering the current tax / levies that are being subsumed into GST would be appointed as GST officers.

Some of the Laws being subsumed into GST and the departments they are currently under are reflected in the following Table:

Law	Department
Central Excise	Ministry of Finance, Government of India Central Board of Excise and Customs
Service Tax	Ministry of Finance, Government of India Central Board of Excise and Customs
Value Added Tax	State Government / Commercial Taxes Department
Central Sales Tax	Central law, administered by the respective State Governments / Commercial Taxes Department
Entry Taxes / Entertainment Tax / Luxury Tax	State Government / Commercial Taxes Department

It is important to note that there are certain other levies which are administered by the above departments but which would not be subsumed into GST. They include:

- Professional taxes – administered by the Commercial Taxes Departments
- Customs Duty – administered by the Central Board of Excise and Customs

In reality, the Officers are given roles to perform prescribed functions under the various laws indicated above, of course, within the realm of the relevant Government (Union or State). Eg: an Officer in CBEC may be given a role in Central Excise, Service Tax or Customs.

In terms of clause (a) of this Section, only such Officers who are discharging various functions relating to taxes which are being subsumed into GST would be appointed as Officers under the GST law. This being the case, the question as to whether an Officer discharging the functions under the Customs law could be a nominated GST Officer does not arise.

166. Migration of existing Tax Payers to GST

Statutory provision

(1) On the appointed day, every person registered under any of the earlier laws and having a valid PAN shall be issued a certificate of registration on a provisional basis in such form and manner as may be prescribed.

(2) The certificate of registration issued under sub-section (1) shall be valid for a period of six months from the date of its issue:

PROVIDED that the said validity period may be extended for such further period as the Central/State Government may, on the recommendation of the Council, notify.

(3) Every person to whom a certificate of registration has been issued under subsection (1) shall, within the period specified under sub-section (2), furnish such information as may be prescribed.

(4) On furnishing of such information, the certificate of registration issued under subsection (1) shall, subject to the provisions of section 23, be granted on a final basis by the Central/State Government.

(5) The certificate of registration issued to a person under sub-section (1) may be cancelled if such person fails to furnish, within the time specified under subsection (2), the information prescribed under sub-section (3).

(6) 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 23.

(7) A person to whom a certificate of registration has been issued on a provisional basis and who is eligible to pay tax under section 9, may opt to do so within such time and in such manner as may be prescribed:

PROVIDED that where the said person does not opt to pay tax under section 9 within the time prescribed in this behalf, he shall be liable to pay tax under section 8.

166.1 Introduction

This transitory provision deals with migration of existing registrants into the GST regime. All existing registrants having a valid PAN will be issued provisional registration certificate and the same will be valid for an initial period of 6 months. After furnishing required information final registration will be granted. If the information is not furnished within the prescribed time limit, the registration will be cancelled.

166.2 Analysis

As a 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 registration certificates would be issued on a provisional basis on appointed day;

(ii) The provisional certificate would be valid for 6 months from the date of its issue. It may be extended by the Central / State Govt. based on the recommendation of the Council;

(iii) A person who holds a provisional certificate of registration is required to furnish certain information as may be prescribed;

(iv) Thereafter, the certificate of registration would be granted on a final basis;

(v) If the person to whom the provisional certificate is granted does not furnish the prescribed information, the registration may be cancelled. In such circumstances, the provisional certificate issued would also be deemed to have not been issued.

(vi) A person to whom provisional certificate is issued and who is eligible to pay tax under composition, may opt to do so within such time and in such manner as may be prescribed. 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 8.

Rule 14 of Draft GST Registration Rules, prescribe the following the procedure for migration:

(i) The provisional registration shall be granted in Form GST REG-21, incorporating the Goods and Services Tax Identification Number (GSTIN).

(ii) The information and documents shall be submitted electronically in an application in Form GST REG-20.

(iii) If the information and 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 taxable person electronically on the Common Portal.

(iv) Where 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-22.

(v) No provisional registration shall be cancelled without serving a show cause in Form GST REG-23 and without affording the person concerned a reasonable opportunity of being heard.

(vi) Every existing taxpayer / registrant, who is not liable to be registered under the Act may, at his option, file electronically an application in Form GST REG-24 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.

166.3 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.

166.4 Related provisions

Section	Description	Remarks
Section 23 read with Schedule V	Registration	Obligation of taxable persons to register
Section 25(1) & 25(2)	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. 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.

Pictorially, Analysis of this transition provision can 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 Schedule IV of the Act – then compulsorily to be registered
- If not liable to be registered under Schedule IV 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 Schedule IV of the Act or not
- Six months' / 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 :
  a) 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 23 of the Act/If he does not furnish the prescribed information within prescribed time period.

167. Amount of CENVAT credit carried forward in a return to be allowed as input tax credit

Statutory provision

A registered taxable person, other than a person opting to pay tax under section 9 , 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 earlier law in such manner as may be prescribed:

PROVIDED that the registered taxable person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act.

CGST law

(1) A registered taxable person, other than a person opting to pay tax under section 9, shall be entitled to take, in his electronic credit ledger, credit of the amount of Value Added Tax **[**and Entry Tax**]** carried forward in the a return relating to the period ending with the day immediately preceding the appointed day, furnished, by him under the earlier law, not later than ninety days after the said day, in such manner as may be prescribed:

PROVIDED that the registered taxable person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

PROVIDED FURTHER that so much of the said credit as is attributable to any claim related to section 3, sub-section (3) of section 5, section 6 or section 6A of the Central Sales Tax Act, 1956 (74 of 1956) that is not substantiated in the manner, and within the period, prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the electronic credit ledger:

PROVIDED ALSO that an amount equivalent to the credit specified in the second proviso shall be refunded under *the* earlier law when the said claims are substantiated in the manner prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957.

(2) The amount of credit under the second proviso to sub-section (1) shall be calculated in such manner as may be prescribed.

SGST law

167.1 Introduction

This transition provision enables carry forward of unutilized input credit under the CENVAT Credit Rules, 2004 and the State level VAT Acts into the GST regime. This provision deals with the methodology of carry forward as per the return filed under the earlier law including matters pending under any proceedings.

167.2 Analysis

The amount of any input credit carried forward in a return, which is unutilized under the GST tax regime may be carried forward into the GST regime except in the case of a person paying

tax under composition. It is important to note that such credit carried forward under the earlier law is also admissible as input credit under GST Law.

- A registered taxable person (except person opting for composition scheme) shall be allowed to take the amount of CENVAT Credit carried forward in the return furnished relating to the period ending on the day immediately preceding the appointed day under the earlier law. However, the said credit should be admissible under the provisions of the CGST Act.
- A registered taxable person (except person opting for composition scheme) shall be allowed to take the amount of VAT and entry tax carried forward in the return furnished relating to the period ending on the day immediately preceding the appointed day under the earlier law within 90 days from the date these provisions comes into effect. However, the said credit should be admissible under the provisions of the SGST Act.

Particulars	**CGST**	**SGST**
Credit to be carried forward	CENVAT credit	Input credit under the relevant State VAT law
Relevant law	CENVAT Credit Rules, 2004	Relevant State VAT law
Laws to be subsumed and the relevant credit	Central Excise Service tax	Relevant State VAT law Relevant State Entry Tax Law
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.	— VAT paid on 'inputs' — VAT paid on 'capital goods' — Entry tax paid on goods
Conditions	— Must qualify for input credit under the GST law — Must have been reflected	— Must qualify for input credit under the GST law — must have been reflected as input

Particulars	CGST	SGST
	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 or half yearly return, as the case may be (Redraft)	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 or half yearly return, as the case may be not later than 90 days after the said day — So far as the CST Laws are concerned the relevant provision reads 'So much of the said credit as is attributable to any claim related to section 3, section 5(3), section 6 or section 6A of the Central Sales Tax Act, 1956 that is not substantiated in the manner, and within the period prescribed in rule 12 of the Central Sales Tax (Registration and Turnover) Rules, 1957 shall not be eligible to be credited to the electronic credit ledger'. It necessarily means that if the relevant declaration / statutory Forms (in respect of inter-state sales) are not filed within the time prescribed under Rule 12 of the CST (R & T) Rules 1957 then the corresponding input tax credit claims must to be reversed. However, when the said claims are subsequently substantiated in terms of Rule 12, then the assessee shall be refunded an amount attributable to such credits so reversed.
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 as CGST	— Would be available as a balance in the **electronic credit ledger** of the tax payer as SGST

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
Additional Duty u/s 3(1) of CTA	40,000
Additional Duty u/s 3(5) of CTA	30,000
Input Tax Credit under VAT	50,000
Total	440,000

What will be the amount of opening CGST and SGST to be brought forward as per the GST Law as on 1st July, 2017?

Ans. The amount of CGST and SGST 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
Total CGST	**385,000**

Note: KKC will not be allowed

SGST Components	SGST Value
Input Tax Credit under VAT	50,000
Total SGST	**50,000**

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
Additional Duty u/s 3(5) of CTA	30,000
Total CGST	**390,000**

Note: Service Provider not entitled to avail credit of SAD.

167.3 Related provisions

Section	Description
Section 10 read with Schedule V	Meaning of 'taxable person'
Section 2(43)	Definition of 'Electronic Credit Ledger'
Section 16 to 22	Manner of taking input tax credit
Section 72	Recovery of tax

168. Unavailed cenvat credit on capital goods, not carried forward in a return, to be allowed in certain situations.

A registered taxable person, other than a person opting to pay tax under section 9, 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 earlier 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 taxable person shall not be allowed to take credit unless the said credit was admissible as cenvat credit under the earlier law and is also admissible as input tax credit under this Act:

Explanation 1.- 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 earlier law from the aggregate amount of cenvat credit to which the said person was entitled in respect of the said capital goods under the earlier law.

Explanation 2.- Capital goods means the goods as defined under clause (a) of rule 2 of CENVAT Credit Rules, 2004.

(CGST Law)

A registered taxable person, other than a person opting to pay tax under section 9, shall be entitled to take, in his electronic credit ledger, credit of the unavailed input tax credit in respect of capital goods, not carried forward in a return, furnished under the earlier 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 taxable person shall not be allowed to take credit unless the said credit was admissible as input tax credit under the earlier law and is so admissible under this Act:

Explanation.- For the purposes of this section, the expression "unavailed input tax credit" means the amount that remains after subtracting the amount of input tax credit already availed in respect of capital goods by the taxable person under the earlier law from the aggregate amount of input tax credit to which the said person was entitled in respect of the said capital goods under the earlier law.

(SGST Law)

168.1 Introduction

This transitional provision enables a person to avail credit of the balance amount (unavailed portion) in respect of capital goods, that has not been availed under the earlier laws. The unavailed portion of credit relating to capital goods under the earlier laws not carried forward through a return can be availed, provided such credit are admissible under the GST laws.

168.2 Analysis

A registered taxable person (except person opting for composition scheme) shall be allowed to take the amount of CENVAT Credit on capital goods not carried forward in return. However, the said credit should be admissible under the earlier law as well as under the provisions of the CGST/SGST 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 earlier law from the aggregate amount of Cenvat credit to which the said person was entitled in respect of the said capital goods under the earlier 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. 50% 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.
- Under the State level VAT laws, in select States, VAT paid on eligible capital goods is allowed on credit in 6 or 12 equated monthly instalments beginning from the month on which such capital goods were put to use / commercial production began, as relevant. In some states the entire credit could be availed in the month in which commercial production commences.
- 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 ₹ 11,25,000 (including excise duty of ₹ 1,25,000)on 5th May, 2016. In the financial year 2016-17, he could only avail CENVAT Credit to the extent of 50% i.e. ₹ 62,500. The unavailed CENVAT Credit on capital goods as on 1st April, 2017 will be ₹ 125,000 – 62,500 = ₹ 62,500.

  Eg 2: CENVAT Credit on Capital Goods used outside the factory of manufacturer is not allowable[13]. So, it will not be admissible as input tax credit in the GST Law either.

  Eg 3: CENVAT Credit on Capital Goods used within the factory is eligible. Any unavailed CENVAT credit of this nature will be allowed to be taken as CGST if the same is also admissible as Input Tax Credit under the GST law.

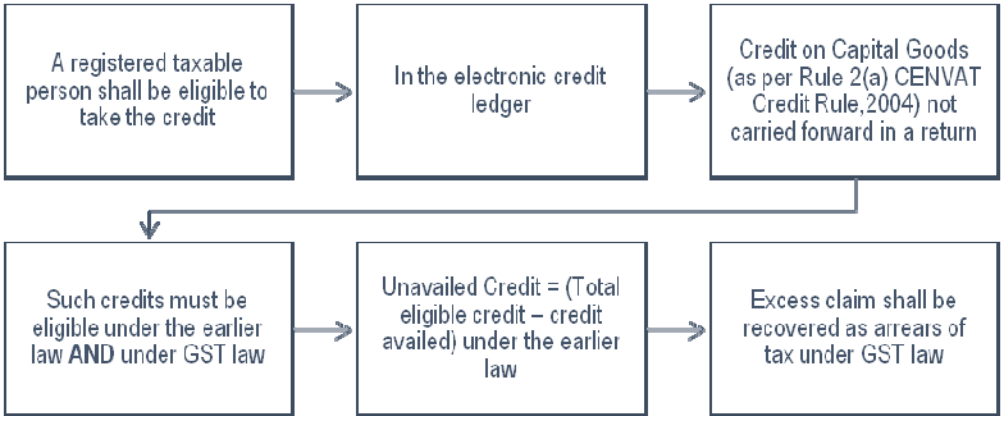
The details, conditions and documentation is as follows:

Particulars	CGST	SGST
Credit to be carried forward	CENVAT credit	Input credit under the relevant State VAT law
Relevant law	CENVAT Credit Rules, 2004	Relevant State VAT law
Details of credit to be	— Central Excise paid on	— VAT paid on 'capital

[13] Madras Cement v. CCE (2003) 158 ELT 293 = 56 RLT 978 (CESTAT 3 member bench)

Particulars	CGST	SGST
carried forward	'capital goods' — Countervailing duty paid on 'capital goods' — Special Additional Duty paid on 'capital goods'	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	— 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 and VAT Credit as SGST Credit in the very same Electronic Credit Ledger. Under no circumstances can the credit so availed be permitted to be inter-changed.



168.4 Related provisions

Section	Description
Section 10 read with Schedule V	Meaning of 'taxable person'
Section 2(43)	Definition of 'Electronic Credit Ledger'
Section 16 - 22	Manner of taking input tax credit
Section 72	Recovery of tax

169. Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations

(1) A registered taxable person, who was not liable to be registered under the earlier 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, shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes 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 taxable person passes on the benefit of such credit by way of reduced prices to the recipient;

(iii) the said taxable person is eligible for input tax credit on such inputs under this Act;

(iv) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs;

(v) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(vi) the supplier of services is not eligible for any abatement under the Act:

PROVIDED that where a registered taxable 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 taxable person shall, subject to such conditions, limitations and safeguards as may be prescribed, be allowed to take credit at the rate and in the manner prescribed.

(2) The amount of credit under sub-section (1) shall be calculated in such manner as may be prescribed.

Explanation.— For the purpose of this section and section 170, section 171 and section 172, the expression “eligible duties and taxes” 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

(viii) the service tax leviable under section 66B of the Finance Act, 1994 (32 of 1994);—

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day.

(CGST Law)

(1) A registered taxable person, who was not liable to be registered under the earlier law or who was engaged in the sale of exempted goods under the earlier law but which are liable to tax under this Act, shall be entitled to take, in his electronic credit ledger, credit of the Value Added Tax [and entry tax] 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 taxable person passes on the benefit of such credit by way of reduced prices to the recipient;

(iii) the said taxable person is eligible for input tax credit under this Act;

(iv) the said inputs were not [specified in Schedule--- of the earlier law or in the rules made thereunder or in any notification issued under the earlier law] as inputs on which credit was not admissible under the earlier law;

(v) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of tax under the earlier law in respect of such inputs; and

(vi) such invoice and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(2) The amount of credit under sub-section (1) shall be calculated in such manner as may be prescribed.

(SGST Law)

169.1 Introduction

This transitory provision sets out the conditions and procedure for availing input credit in respect of stock held on appointed day by a registered taxable person under the GST Law, who was not required to be registered under the earlier law or was a manufacturer of exempt goods or engaged in provision of exempted services, or 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 under the earlier Central / State laws but became taxable under the GST Laws. 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 the credit.

169.2 Analysis

The following person 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 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.

The credit shall be allowed to the aforesaid 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.
- the said taxable person passes on the benefit of such credit by way of reduced prices to the recipient.
- the said taxable person is eligible for input tax credit on such inputs under CGST Act.
- the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs.
- 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 enclosing payment of duty/tax .

However, in such cases the person will have to follow certain conditions which will be prescribed later.

- such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the date on which these provisions come into effect.
- the supplier of services is not eligible for any abatement under the CGST Act.

- Eligible Duties and taxes 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 excise duty specified in the 1st Schedule to the Central Excise Tariff Act, 1985.
    - the duty of excise specified in the 2nd Schedule to the Central Excise Tariff Act, 1985.
    - the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978.
    - the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957
    - the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001.
    - the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975.
    - the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975.
    - the service tax leviable under section 66B of the Finance Act, 1994.
- The following person shall be entitled to take **credit of VAT and Entry Tax** 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:
    - A registered taxable person, who was not liable to be registered under the earlier law or
    - who was engaged in the sale of exempted goods under the earlier law but which are liable to tax under the SGST Act.
- The conditions subject to which the credit shall be allowed are almost same as that prescribed under the CGST Act, other than the condition that the said inputs were not specified [in Schedule--- of the earlier law or in the rules made thereunder or in any notification issued under the earlier law] as inputs on which credit was not admissible under the earlier law.
- It is to be noted that a registered taxable person who was engaged in the manufacture of non exempted as well as exempted goods or provision of non-exempted as well as exempted services shall be entitled to take:
    - the amount of Cenvat credit carried forward in a return furnished under the earlier law by him; and
    - 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 date this provision comes into effect relating to exempted goods or services.

The amount of credit shall be calculated in accordance with the generally accepted accounting principles as per rules prescribed of credit availment is as follows:

Particulars	CGST	SGST
Credit to be carried forward	CENVAT credit	Input credit under the relevant State VAT law
Relevant law	CENVAT Credit Rules, 2004	Relevant State VAT law
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' — Service tax u/s. 66B of the Finance Act, 1994.	— VAT paid on 'inputs'
Form in which the credit would be available under the GST law	— 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 Register and VAT Credit as SGST Credit in the very same Electronic Credit Register. Under no circumstances can the credit so availed be interchanged. It should be clearly understood that the provisions of earlier central laws that are to be subsumed under GST would be categorized under CGST and VAT / CST under SGST.

Credit of eligible duties and taxes on input held in stock

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	• 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 • The taxable person passes on the benefit of such credit to recipients by way of reduced prices • 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

169.3 Related provisions

Section	Description	Remarks
Section 10 read with Schedule V	Meaning of 'taxable person'	Only the taxable person will be allowed to take the credit of eligible duties and taxes.
Section 2(43)	Definition of 'Electronic Credit Ledger'	Input tax credit will be taken in this document.
2(99)	Definition of Taxable supply	Only inputs intended to be used for taxable supplies are allowed as credit.
Section 2(46)	Definition of 'first stage dealer'	A person who satisfies the definition under section 2(46) as an FSD will be allowed to take the credit of eligible duties and taxes.

Section 2(91)	Definition of 'second stage dealer'	A person who satisfies the definition under section 2(91) as a SSD will be allowed to take the credit of eligible duties and taxes.
Section 2(82)	Definition of 'registered importer'	A person who was a registered importer under existing law will be allowed to take the credit of eligible duties and taxes.
Section 16 to 22	Manner of taking input tax credit	This is for determining the admissibility of Input tax credit under the GST law
Section 72	Recovery of tax	For recovery of arrears of tax under GST for demand arising from proceedings under earlier law
Rule 9(1)	Documents and Accounts	Contains the list of documents on the basis of which CENVAT Credit can be taken
Rule 2(d)	Definition of exempted goods	One of the possible preconditions in respect of category of person is engaged in manufacture/sale of exempted goods
Proviso to Rule 4(7)	Time limit for admissibility of CENVAT Credit	Similar time limit prescribed under one of the conditions for availment of credit under GST law
Rule 9	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	Registration under Service Tax	One of the possible preconditions in respect of category of persons is non registration in earlier law.

170. Credit of eligible duties and taxes in respect of inputs held in stock to be allowed in certain situations

(1) A registered taxable person, who was engaged in the manufacture of non-exempted as well as exempted goods under the Central Excise Act, 1944 (1 of 1944) or provision of non-exempted as well as exempted services under Chapter V of Finance Act, 1994 (32 of 1994), shall be entitled to take, in his electronic credit ledger,

(a) the amount of Cenvat credit carried forward in a return furnished under the earlier law by him in terms of section 167; 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 exempted goods or services, in terms of section 169.

(CGST Law)

170.1 Introduction

This transitional provision sets out the provisions for availing input credit by a taxable person who was engaged in the manufacture of non-exempted as well as exempted goods under the Central Excise Act, 1944 or provision of non-exempted as well as exempted services under Chapter V of Finance Act, 1994.

170.2 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 & TAXES' and the amount of cenvat credit carried forward in a return furnished under the earlier law by him.

The definition of 'Eligible Duties and Taxes' as stated in section 169 is applicable here.

The claim of transitional credit under this Section is subject to the following conditions:

(i) The person must be a registered taxable person under the GST Laws.

(ii) The taxable person must have been engaged in the manufacture of non-exempted as well as exempted goods under the Central Excise Act, 1944 or provision of non-exempted as well as exempted services under Chapter V of Finance Act, 1994.

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 167 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 169.

Particulars	CGST
Relevant law	CENVAT Credit Rules, 2004
Form in which the credit would be available under the GST law	Would be available as a balance in the electronic credit ledger of the tax payer

It may be noted here that this provision does not contain the condition that such exempted goods or exempted services should be taxable under GST. This means that the credit would be allowed irrespective of whether or not such goods/services are taxable under GST. However, the same will then be apportioned in terms of section 17.

170.3 Related provisions

Section	Description
Section 10 read with Schedule V	Meaning of 'taxable person'
Section 2(43)	Definition of 'Electronic Credit Ledger'
Section 2(99)	Definition of Taxable supply
Section 16 to 22	Manner of taking input tax credit
Section 72	Recovery of tax
Section 169	Credit of Eligible duties & taxes

171. Credit of eligible duties and taxes in respect of inputs or input services during transit

(1) A registered taxable 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 before the appointed day, subject to the condition that the invoice or any other duty/tax paying document of the same was recorded in the books of accounts of such person within a period of thirty 30 days from the appointed day:

PROVIDED that the aforesaid period of thirty 30 days may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding thirty days.

(2) The said registered taxable person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under sub-section (1).

(CGST Law)

(1) A registered taxable person shall be entitled to take, in his electronic credit ledger, credit of Value Added Tax [and entry tax] in respect of inputs received on or after the appointed day but the tax in respect of which has been paid before the appointed day, subject to the condition that the invoice or any other tax paying document of the same was either received or recorded in the books of accounts of such person within a period of thirty days from the appointed day:

PROVIDED that the aforesaid period of thirty days may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding thirty days.

(2) The said registered taxable person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under sub-section (1).

(SGST Law)

171.1 Introduction

This transitional provision sets out the conditions and procedure for availing input credit in case of transactions that are spread over the transition period.

171.2 Analysis

(i) A registered taxable person shall be entitled to take credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed date but the duty or tax in respect of which has been paid before the appointed day. However, the invoice or other duty/tax paying document of the same must be recorded in the books of accounts of such person within a period of thirty days from the appointed day. The said period may be extended by the competent authority for further period not exceeding 30 days. **(CGST Law)**

(ii) The registered taxable person shall furnish a statement in prescribed manner, in respect of credit so taken.

(iii) The provisions contained under the SGST Law are similar to the CGST Law.

171.3 Related provisions

Section	Description
Section 10 read with Schedule V	Meaning of 'taxable person'
Section 2(43)	Definition of 'Electronic Credit Ledger'
Section 2(99)	Definition of Taxable supply
Section 16 to 22	Manner of taking input tax credit
Section 72	Recovery of tax
Section 169	Credit of Eligible duties & taxes

172. 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 taxable person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the earlier law (hereinafter referred to in this section as a "composition taxpayer"), 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 date 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 person is not paying tax under section 9;

(iii) the said taxable person is eligible for input tax credit on such inputs under this Act;

(iv) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of inputs; and

(v) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(2) The amount of credit under sub-section (1) shall be calculated in such manner as may be prescribed.

(CGST Law)

(1) A registered taxable person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the earlier law (hereinafter referred to in this section as a "composition taxpayer"), shall be entitled to take, in his electronic credit ledger, credit of Value Added Tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed date 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 person is not paying tax under section 9;

(iii) the said taxable person is eligible for input tax credit on such inputs under this Act;

(iv) the said inputs were not [specified in Schedule--- of the earlier law or in the rules made thereunder or in any notification issued under the earlier law] as inputs on which credit was not admissible under the earlier law;

(v) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of tax under the earlier law in respect of inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the appointed day; and

(vi) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.

(2) The amount of credit under sub-section (1) shall be calculated in such manner as may be prescribed.

(SGST Law)

172.1 Introduction

This transitional provision sets out the conditions and procedure for availing input credit by a taxable 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.

172.2 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 & TAXES'. The claim of transitional credit under this Section is subject to the following conditions:

(i) The person must be a registered taxable person under the GST Laws.

(ii) The taxable person must have also been registered under the earlier law and should have opted for payment of tax at a fixed rate or fixed amount under the composition scheme under the earlier law.

(iii) Specified taxes / duties paid on 'inputs' would be allowed as ITC credit.

(iv) The taxable person should opt for payment of tax under the regular scheme under the GST law (cannot be a composition taxpayer u/s 9 of GST Laws).

(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 taxable person should be in possession of the invoice and such other documents (as may be prescribed).

(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.

173. Exempted goods returned to the place of business on or after the appointed day

Where any goods on which duty had been exempt under the earlier 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, no tax shall be payable thereon if such goods are returned 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 tax shall be payable by the person returning the goods if the said goods are liable to tax under this Act and are returned after a period of six months from the appointed day.

PROVIDED FURTHER that no tax shall be payable if the goods are returned by a person who is not registered under the Act.

(CGST Law)

Where any goods on which tax had been exempt under the earlier law at the time of sale 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, no tax shall be payable thereon if such goods are returned 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 tax shall be payable by the person returning the goods if the said goods are liable to tax under this Act and are returned after a period of six months from the appointed day.

PROVIDED FURTHER that no tax shall be payable if the goods are returned by a person who is not registered under the Act.

(SGST Act)

173.1 Introduction

This transitional provision, provides for non-payment of GST on return of exempted goods - viz., where the removal / sale, as the case may be was under the earlier law, and the return is under the GST law.

173.2 Analysis

This provision extends exemption in respect of purchase returns, viz., where the purchase was under the earlier law and the corresponding purchase return is under the GST law. This provision would be applicable in the following circumstances:

(i) No tax or duty was paid at the time of removal / sale: Removal would mean no excise duty was paid at the time of removal as the same was exempt; Sale would mean no VAT / CST was paid as the same was exempt

(ii) While the law provides that the return can be to any place of business and not

necessarily to the same place of business from where it was removed / sold. The goods must be identifiable to the satisfaction to the Proper Officer**.**

(iii) **Time period:** The Section provides for timelines for both, purchase and purchase returns

(a) **Purchase:** Should have taken **place not earlier than 6 months** from the date of introduction of GST

(b) **Purchase return:** Should be **within 6 months** from the date of introduction of GST

Note: This implies that the difference between the date of purchase and the return thereto cannot exceed 1 year.

Eg 1: A manufacturer had removed exempted goods for sale worth ₹ 5,00,000 on 1st November, 2016. These goods become taxable under GST. GST is assumed to be applicable from 1st April, 2017. On 10th June, 2017, goods worth ₹ 1,00,000 is returned by the buyer. Since, the goods are returned within 6 months from the date of applicability of GST, no tax will be payable.

Eg 2: In example 1 above, if the goods had been returned on 10th October, 2017, then the tax will have to be paid by the buyer who returned the goods on the value of ₹ 1,00,000 because the 6 months period elapses from the date of applicability of GST.

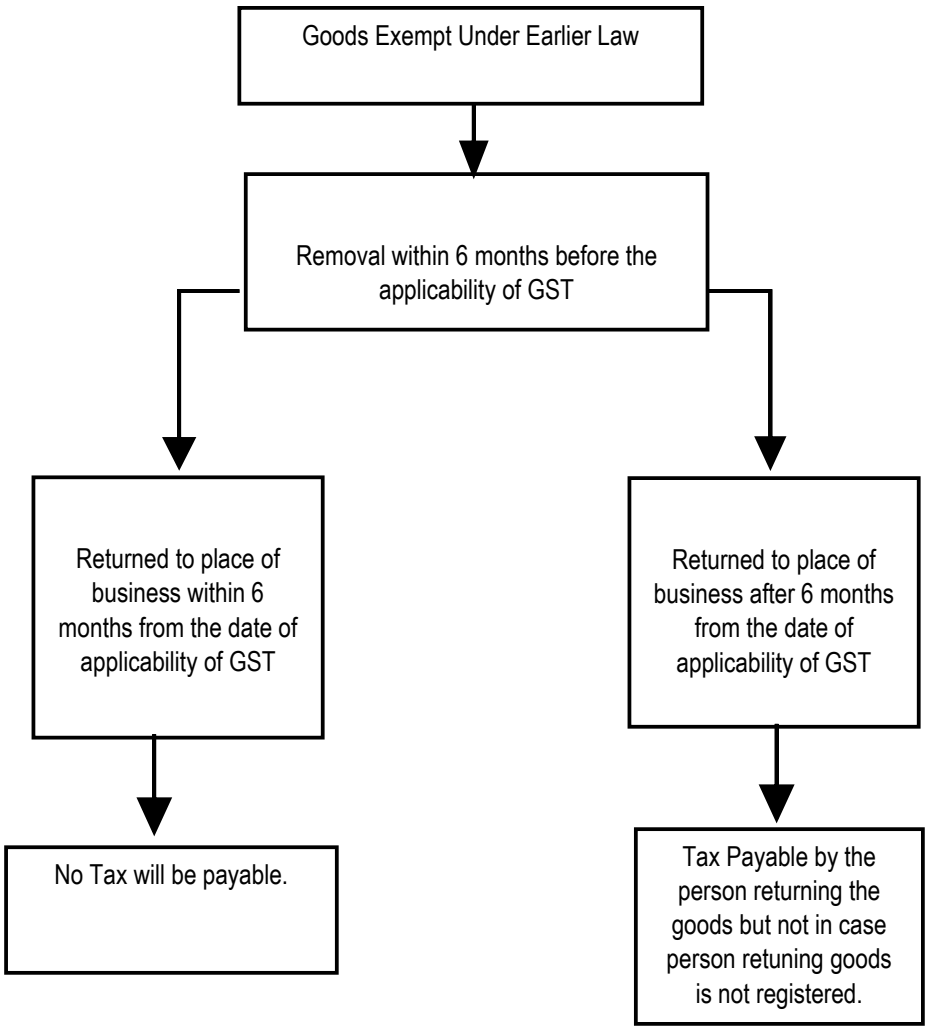
If the above conditions on timelines are not satisfied, on the return of goods by the purchaser to any place of business of the taxable person (original supplier), the said exemption would not be available. It would mean that the return of the goods would then qualify as 'supply' in the hands of the person returning the goods and would accordingly be liable to GST.

It may further be noted that no tax shall be payable if the goods are returned by an unregistered person.

173.3 Related provisions

Section	Description
Section 174	Duty paid on goods returned to the place of business on or after the appointed day

This transitional provision can be presented as a flowchart as under:



174. Duty (Tax – in SGST Act) paid goods returned to place of business on or after the appointed day

Statutory provision

Where any goods on which duty had been paid under the earlier 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 taxable person shall be eligible for refund of the duty paid under the earlier law where such goods are returned by a person, other than a registered taxable 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 taxable person the return of the goods shall be deemed to be a supply.

(CGST Law)

Where any goods on which tax had been paid under the earlier law at the time of sale thereof, not being earlier than six months prior to the appointed day, are returned to the supplier thereof on or after the appointed day, the registered taxable person shall be eligible for refund of the tax paid under the earlier law where such goods are returned by a person, other than a registered taxable person, to the said supplier 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 taxable person the return of the goods shall be deemed to be a supply.

(SGST Law)

174.1 Introduction

This transitional provision provides for non-payment of GST on return of duty paid goods - viz., where the removal / sale, as the case may be was subjected to duty / tax under the earlier law and the return is under the GST law.

This provision is broadly similar to the provisions contained in Section 173 but for two differences, which are detailed in the following paragraphs.

174.2 Analysis

This section provides for refund in respect of purchase returns, viz., where the purchase was under the earlier law and the purchase return is under the GST law. The exemption would be applicable in the hands of the taxable person returning the goods. Insofar as it relates to the transitional benefit for the tax paid under the old law, the Section provides that the person receiving the said goods under the GST regime would be eligible to take refund of the duty paid earlier at the time of removal / sale, as the case may be.

Differences between Section 173 and 174:

Section 173	**Section 174**
No tax / duty was paid under the old law since the same was exempt	Tax / duty, as applicable should have been paid under the old law
Since no duty / tax was paid, no credit or reversal would be required	Tax / duty paid under the old law will be allowed as refund to the recipient of goods under the GST law

This provision would be applicable in the following circumstances:

(i) **Tax or duty was paid at the time of removal / sale:** Central Excise duty or VAT / CST, as the case may be should have been paid when the goods were removed / sold under the earlier law.

(ii) **Purchase return should be to any place of business:** While the law provides that the return can be to any place of business and not necessarily to the same place of business from where it was removed / sold, it is essential that the return should be to the same taxable person.

(iii) **Time period:** The Section provides for timelines for both, purchase and purchase returns.

(a) **Purchase:** It should have taken place not earlier than 6 months from the date of introduction of GST.

(b) **Purchase return:** It should be within 6 months from the date of introduction of GST.

Note: This implies that the difference between the date of purchase and the return thereto cannot exceed 1 year.

(iv) **Non-compliance with the above timelines:** If the above conditions on timelines are not satisfied, on return of goods by the purchaser to the taxable person (original supplier), the said exemption would not be available. It would mean that the return of the goods would then qualify as 'supply' in the hands of the person returning the goods and would accordingly be liable to GST.

(v) **Taking of credit by the taxable person receiving the goods:** As indicated above, the taxable person receiving the said goods under the GST regime would be eligible to claim the credit of tax / duty paid at the time of removal / sale under the old law.

Eg 1: A manufacturer had removed goods for sale worth ₹ 5,00,000 on 1st November, 2016after paying the necessary duty under Central Excise law. These goods are also taxable under GST. GST is assumed to be applicable from 1st April, 2017. On 10th June, 2017, goods worth ₹ 1,00,000 is returned by the buyer. Since, the goods are returned within 6 months from the date of applicability of GST, no tax will be payable.

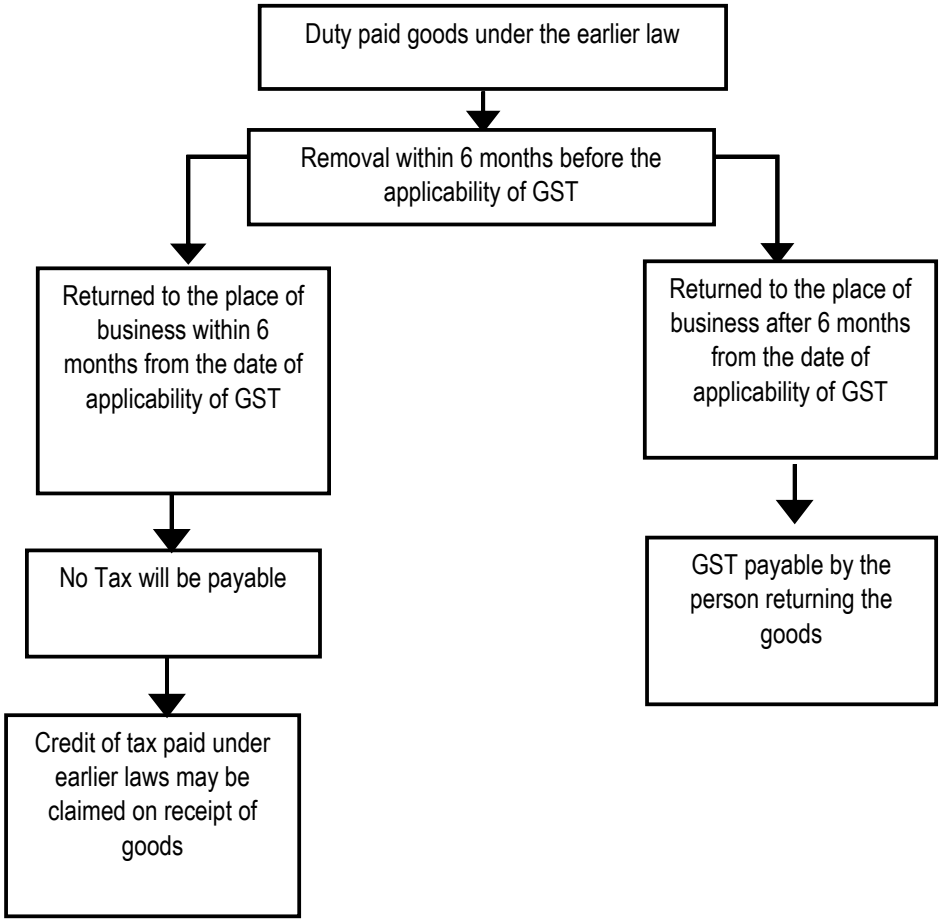
Eg 2: In example 1 above, if the goods had been returned on 10th October, 2017, then

the tax will have to be paid by the buyer who returned the goods on the value of ₹ 1,00,000 because 6 months elapses from the date of applicability of GST.

174.3 Related provisions

Section	Description	Remarks
Section 173	Exempted goods returned to the place of business on or after the appointed day	While section 173 deals with exempted goods, section 174 refers to duty paid goods, which are returned to the place of business on or after the appointed day.

This transitional provision can be explained by the following flowchart:



175. Inputs removed for job work and returned on or after the appointed day

Statutory Provision:

(1) Where any inputs received in a factory 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 earlier law prior to the appointed day and such inputs, are returned to the said factory 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 factory within six months from the appointed day:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding two months:

PROVIDED FURTHER that if such inputs are not returned within a period of six months or the extended period , as the case may be, from the appointed day the input tax credit shall be liable to be recovered in terms of section 184.

(2) The provisions of sub-section (1) shall apply only if the manufacturer and the job worker declare the details of the inputs 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.

(CGST Law)

(1) Where any inputs received at a place of business had been despatched as such or despatched after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of earlier law prior to the appointed day and such inputs, are returned to the said place of business 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 of business within six months from the appointed day:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding two months:

PROVIDED FURTHER that if such inputs are not returned within a period of six months or the extended period, as the case may be, from the appointed day, the input tax credit shall be liable to be recovered in terms of section 184.

(2) The provisions of sub-section (1) shall apply only if the person dispatching the inputs and the job worker declare the details of the goods held in stock by the job worker on behalf of the said person on the appointed day in such form and manner and within such time as may be prescribed.

(SGST Law)

175.1 Introduction

This transition provision is with respect to inputs removed as such or after partial processing from a factory or dispatched 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.

175.2 Analysis

- Any inputs received in a factory is 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 earlier law prior to the appointed day and such inputs, are returned to the said factory 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 factory within six months from the appointed day.
- The period of 6 months may be extended by competent authority for a period not extending 2 months.
- If such inputs are not returned within 6 months or extended period, from the appointed day, the input tax credit shall be liable to be recovered.
- Effecting this would mean collection of taxes from two persons if the goods are not returned within prescribed time period.

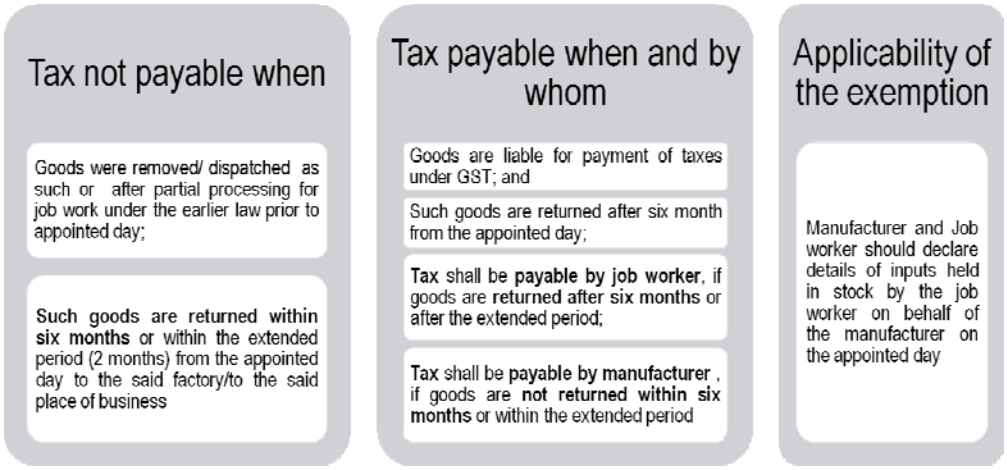
(CGST Law)

- The provisions contained under the SGST Law are similar to the CGST Law.

Eg 1: A manufacturer had removed inputs worth ₹ 5,00,000 on 1st November, 2016 for job work. GST is assumed to be applicable from 1st April, 2017. On 10th June, 2017, the inputs is 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.

Eg2: 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 30th September, 2017, then the input tax credit shall be liable to be recovered in terms of section 184.

Inputs removed for Job work and returned on or after the appointed day



175.3 Related provisions

Section	Description
Section 2(61)	Definition of 'Job work'
Section 2(63)	Definition of 'Manufacturer'
Section 2(74)	Definition of 'Place of Business'
Section 184	Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings the

176. Semi-finished goods removed for job work and returned on or after the appointed day

Statutory Provision

(1) Where any semi-finished goods had been removed from the factory to any other premises for carrying out certain manufacturing processes in accordance with the provisions of earlier law prior to the appointed day and such goods (herein after referred to as "the said goods") are returned to the said factory 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 factory within six months from the appointed day:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding two months:

PROVIDED FURTHER that if the said goods are not returned within a period of six months or the extended period, as the case may be, from the appointed day, the input tax credit shall be liable to be recovered in terms of section 184:

PROVIDED also that the manufacturer may, in accordance with the provisions of the earlier law, transfer the said goods to the premises of any registered taxable person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

(2) The provisions of sub-section (1) shall apply only if the manufacturer and the job-worker declare the details of the 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.

(CGST Law)

(1) Where any semi-finished goods had been despatched from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of earlier law prior to the appointed day and such goods (herein after referred to as the "said goods") are returned to the said place of business on or after the appointed day, no tax shall be payable if the said goods , after undergoing manufacturing processes or otherwise, are returned to such place within six months from the appointed day:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding two months:

PROVIDED FURTHER that if the said goods are not returned to him within a period of six months or the extended period, as the case may be, from the appointed day, the input tax credit shall be liable to be recovered in terms of section 184:

PROVIDED also that the person despatching the goods may, in accordance with the provisions of the earlier law, transfer the said goods to the premises of any registered taxable person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

(2) The provisions of sub-section (1) shall apply only if the person dispatching the goods and the job worker declare the details of the goods held in stock by the job worker on behalf of the said person on the appointed day in such form and manner and within such time as may be prescribed.

(SGST Law)

176.1 Introduction

This transitional provision is with respect to semi-finished goods which were removed from a factory or 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.

176.2 Analysis

- If any semi-finished goods which had been removed from the factory to any premises for carrying out certain manufacturing processes in accordance with the earlier law prior to the appointed day and are returned to the said factory on or after the appointed day, then **no tax** shall be payable if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said factory within 6 months from the appointed day.
- The period of 6 months may be extended by competent authority for a further period not exceeding 2 months.
- If the said goods are not returned within a period of 6 months or extended period, from the appointed day, the input tax credit shall be liable to be recovered.

(CGST Law)

Similar provisions as given in CGST Law are also applicable in SGST Law.

Eg 1: A manufacturer had removed semi-finished goods worth ₹ 5,00,000 on 1st November, 2016 for further processing. GST is assumed to be applicable from 1st April, 2017. On 10th June, 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.

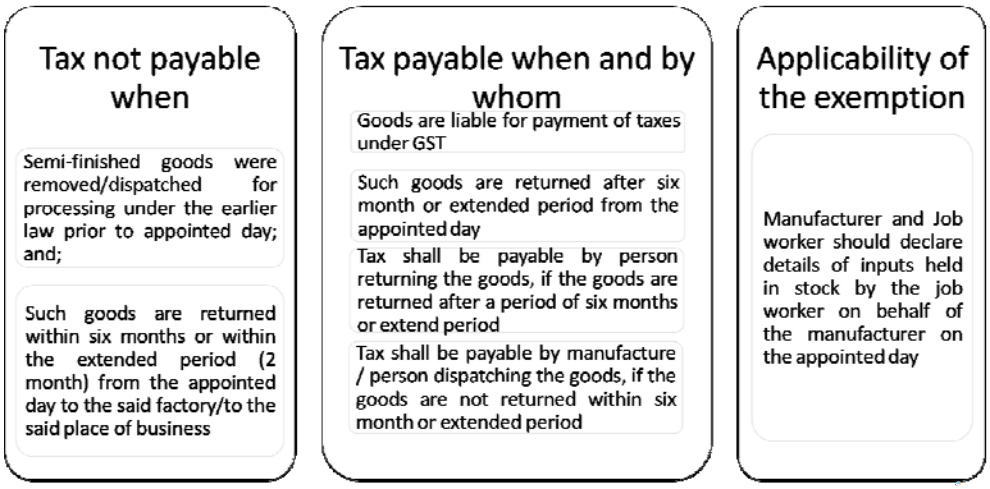
Eg 2: In Eg 1 above, if the goods are not returned by the job worker within the period of 6 months from the applicability of GST i.e. till 30th September, 2017, then the tax will have to be paid by the manufacturer.

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 30th September, 2017. In this

case, tax will be payable under GST if the goods therefrom 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



176.3 Related provisions

Section	Description
Section 2(61)	Definition of 'Job work'
Section 2(63)	Definition of 'Manufacturer'
Section 2(74)	Definition of 'Place of Business'
Section 184	Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings

177. Finished goods removed for carrying out certain processes and returned on or after the appointed day

Statutory Provisions

Where any excisable goods manufactured in a factory 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 earlier law prior to the appointed day and such goods, (herein after referred to as the "said goods") are returned to the said factory 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 factory within six months from the appointed day:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period of two months:

PROVIDED FURTHER that if the said goods are not returned within a period of six months or the extended period, as the case may be, from the appointed day, the input tax credit shall be liable to be recovered in terms of section 184:

PROVIDED also that the manufacturer may, in accordance with the provisions of the earlier law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

(CGST Law)

Where any goods had been dispatched from the place of business without payment of tax for carrying out tests or any other process, to any other premises, whether registered or not, in accordance with the provisions of earlier law prior to the appointed day and such goods (herein after referred to as the "said goods") are returned to the said place of business 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 such place within six months from the appointed day:

PROVIDED that the aforesaid period of six months may, on sufficient cause being shown, be extended by the competent authority for a further period not exceeding two months:

PROVIDED FURTHER that if the said goods are not returned within a period of six months or the extended period, as the case may be, from the appointed day, the input tax credit shall be liable to be recovered in terms of section 184:

PROVIDED ALSO that the person dispatching the goods may, in accordance with the provisions of the earlier law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within six months or the extended period, as the case may be, from the appointed day.

(SGST Law)

177.1 Introduction

This transition provision is with respect to excisable goods manufactured and removed from a factory without payment of duty or dispatched from a place of business for the purposes of carrying out any tests or any other process and which are returned / returnable after the date of implementation of GST.

177.2 Analysis

- Any excisable goods manufactured in a factory which 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 terms of the earlier law prior to the appointed day and such goods, are returned to the said factory 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 factory within 6 months from the appointed day.
- The period of 6 months may be extended by the competent authority for a further period not exceeding 2 months.
- If the said goods are not returned within 6 months or extended period, the input tax credit shall be liable to be recovered.
- The manufacturer may, in terms of the provisions of the earlier law, transfer the said goods from the said premises on payment of tax in India or without payment of tax for exports within 6 months or the extended period.

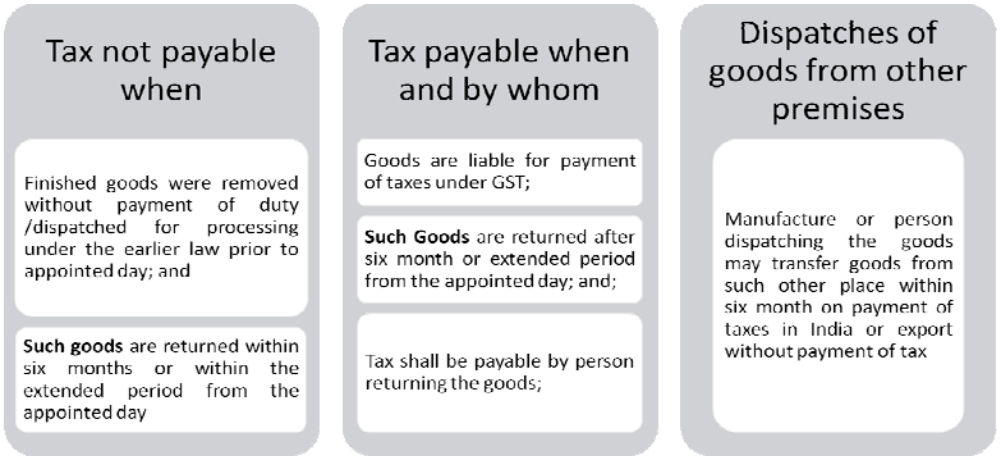
(CGST Law)

- Similar provisions are contained in the SGST Law.

Eg 1: A manufacturer had removed finished goods worth ₹ 5,00,000 on 1st November, 2016 for testing. GST is assumed to be applicable from 1st April, 2017. On 10th June, 2017, these goods are returned by the person 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 returned directly from the premises of the tester within 6 months from the applicability of GST i.e. till 30th September, 2017. In this case, input tax credit shall be liable to be recovered in terms of section 184.

Finished goods removed for carrying out certain processes and retuned on or after the appointed day



177.3 Related provisions

Statute	Section	Description
IGST	Section 7	Place of supply of goods

178. Issue of supplementary invoices, debit or credit notes where price is revised in pursuance of a contract

Statutory Provisions

(1) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods and/or services is revised upwards on or after the appointed day, the registered taxable person who had removed / provided such goods and/or services 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.

(CGST Law)

(1) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods is revised upwards on or after the appointed day, the registered taxable person who had sold such goods 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.

(SGST Law)

(2) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods and/or services is revised downwards on or after the appointed day, the registered taxable person who had removed / provided such goods and/or services 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 said invoice or credit note only if the recipient of the invoice or credit note has reduced his input tax credit corresponding to such reduction of tax liability.

(CGST Law)

(2) Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods is revised downwards on or after the appointed day, the registered taxable person who had sold such goods 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 said invoice or credit note only if the recipient of the invoice or credit note has reduced his input tax credit corresponding to such reduction of tax liability.

(SGST Law)

178.1 Introduction

This is a transitional provision with respect to **goods and / or services** 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.

178.2 Analysis

In cases where there is a price revision, either upward or downward, the GST Act provides that the amount to the extent of such revision is deemed to be an outward supply under the GST Act. Consequently, all the GST 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 Central Excise, Service tax as well as VAT, viz., 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 GST Act (SGST or CGST, as applicable).

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 GST Act.

Eg 1: A contract for supply of manpower was entered on 10th March, 2017 for ₹ 5,00,000. Due to certain renegotiations, this price was escalated to ₹ 550,000 on 15th April, 2017. Assuming applicability of GST from 1st April, 2017, the supplier should issue a supplementary invoice/debit note for ₹ 50,000 within 30 days of 15th April, 2017 i.e. 15th May, 2017. This supplementary invoice/debit note will be assumed to be for outward supply of ₹ 50,000.

(ii) **For downward revisions:** The taxable person shall issue a supplementary invoice or a credit note within 30 days from the date of such revision.

In terms of the supplementary invoice / credit note, the supplier of goods would be allowed to reduce the tax liability as if the adjustment is under the GST Act (SGST or CGST, as applicable)

It would be deemed to be a supply (adjustment) in the month in which the supplementary invoice / 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 invoice / credit note also reduces his input credit correspondingly.

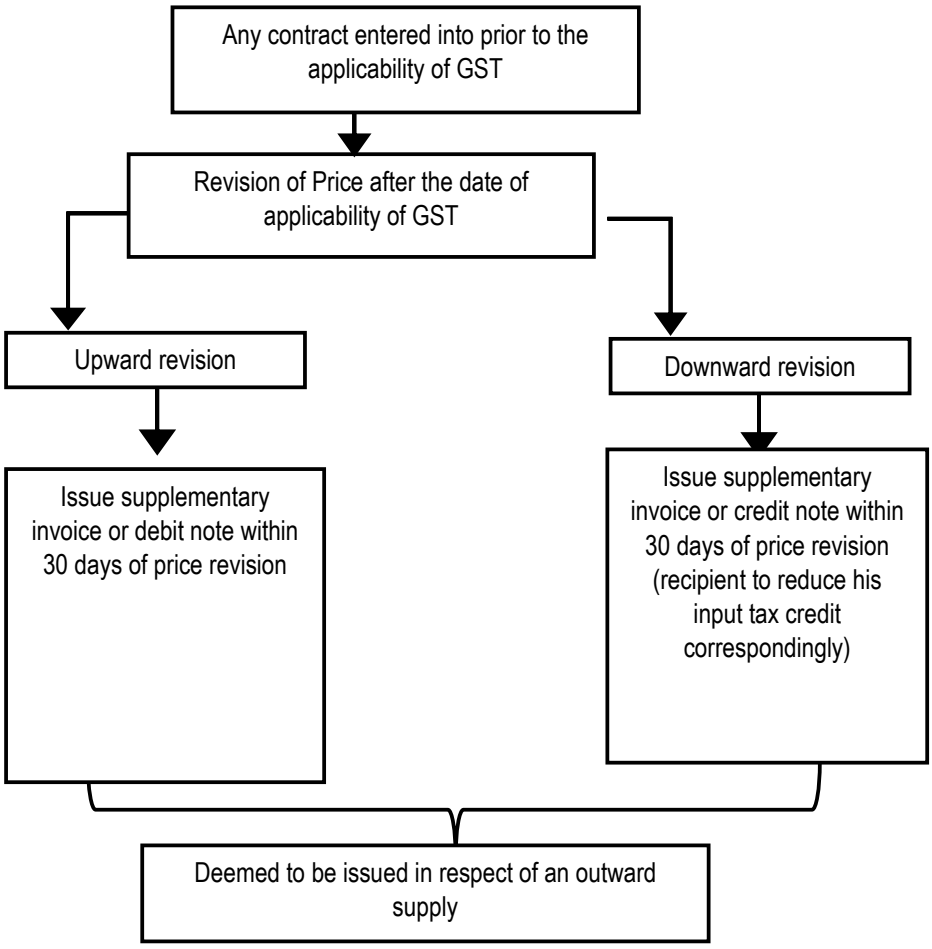
The supplementary invoice / credit note would have to comply with the requirements as prescribed under the GST Act.

Eg 2: A contract for supply of manpower was entered on 10th March, 2017 for ₹ 5,00,000. Due to certain renegotiations, this price was revised downwards to ₹ 4,00,000 on 15th April, 2017. Assuming applicability of GST from 1st April, 2017, the supplier should issue a supplementary invoice/credit note for ₹ 100,000 within 30 days of 15th April, 2017 i.e. 15th May, 2017. This supplementary invoice/credit note will be assumed to be for outward supply of ₹ 1,00,000 and accordingly the tax liability would be reduced

178.3 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 renegotiated 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.

Flowchart of this transition provision can be presented as follows:



179. Pending refund claims to be disposed of under earlier law

Statutory Provision

Every claim for refund filed by any person before or after the appointed day, for refund of any amount of cenvat credit, duty, tax or interest paid before the appointed day, shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of earlier law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 (1 of 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.

(CGST Law)

Every claim for refund filed by any person before or after the appointed day, for refund of any amount of input tax credit, tax and interest paid before the appointed day, shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing to him shall be refunded to him in accordance with the provisions of the said law:

PROVIDED that where any claim for refund of amount of input tax 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 input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(SGST Law)

179.1 Introduction

This provision is with respect to refund claims / applications under the earlier law. It provides that the claim for such refund should be processed as prescribed under the relevant earlier law.

179.2 Analysis

The section provides that where any person has made an application for refund under the Central Excise or Service tax or VAT / CST or such other laws, the same would have to be processed in terms of the provisions contained in the respective laws. The provisions of GST laws would have no bearing on the same.

It also provides the following:

(i) The refund if allowed would accrue in cash under the earlier law, viz., and would not be credited to the electronic credit ledger or electronic cash ledger

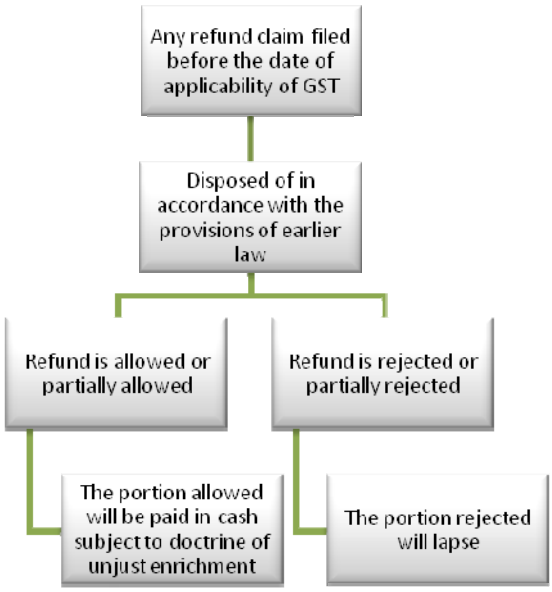
(ii) The refund if rejected, fully or partially would lapse.

(iii) No refund claim shall be allowed of any amount of Cenvat credit / input tax 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 ₹ 5,00,000 on 15th March, 2017. Assume applicability of GST from 1st April, 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.

Analysis of this transition provision can be presented through a flowchart as under:



180. Refund claims filed after the appointed day for goods cleared or services provided before the appointed day and exported before or after the appointed day to be disposed of under earlier law

Statutory provision

Every claim for refund of any duty or tax paid under earlier 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 earlier 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.

(CGST Law)

180.1 Introduction

This transitional provision is with respect to refund claims under the earlier law 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 earlier law.

180.2 Analysis

The section provides that every claim for refund of any duty or tax paid under earlier 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 earlier 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.

181. Refund claims filed after the appointed day for payments received and tax deposited before the appointed day in respect of services not provided

Statutory provision

Every claim for refund of tax deposited under the earlier law in respect of services not provided, filed after the appointed day, shall be disposed of in accordance with the provisions of earlier law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of earlier law other than the provisions of subsection (2) of section 11B of the Central Excise Act, 1944 (1 of 1944).

(CGST Law)

181.1 Introduction

This transitional provision is with respect to refund claims in respect of services not provided, filed after the appointed day.

181.2 Analysis

The section provides that every claim for refund of any tax deposited under the earlier law in respect of services not provided, filed after the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and any amount eventually accruing to him shall be paid in case, notwithstanding anything to the contrary contained under the provisions of earlier law other than the provisions of section 11B(2) of the Central Excise Act, 1944.

181.3 Related provisions

Statute	Section	Description
Central Excise Act, 1944	Section 11B (2)	Provision for unjust enrichment

182. Claim of cenvat credit to be disposed of under the earlier law

Statutory provision

(1) Every proceeding of appeal, revision, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day, under the earlier law shall be disposed of in accordance with the provisions of earlier 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 earlier law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and shall not be admissible as input tax credit under this Act:

PROVIDED 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.

(2) Every proceeding of appeal, revision, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day, under the earlier law shall be disposed of in accordance with the provisions of earlier law, and if any amount of credit becomes recoverable as a result of appeal, revision, review or reference, the same shall 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.

(CGST Law)

(1) Every proceeding of appeal, revision, review or reference relating to a claim for input tax credit initiated whether before, on or after the appointed day, under the earlier law shall be disposed of in accordance with the provisions of earlier law, and any amount of credit found to be admissible to the claimant shall be refunded to him in accordance with the provisions of the earlier law and shall not be admissible as input tax credit under this Act:

PROVIDED FURTHER that no refund claim shall be allowed of any amount of input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

(2) Every proceeding of appeal, revision, review or reference relating to recovery of input tax credit initiated whether before, on or after the appointed day, under the earlier law shall be disposed of in accordance with the provisions of earlier law, and if any amount of credit becomes recoverable as a result of appeal, revision, review or reference, the same shall 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.

(SGST Law)

182.1 Introduction

This transition provision is with respect to claim of input credit and disposal of appeals, revisions, reviews or reference proceedings.

182.2 Analysis

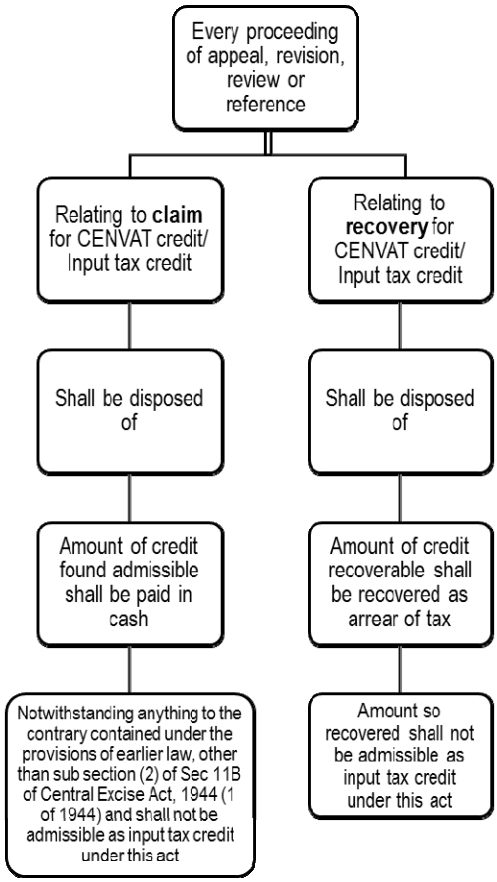
The Section applies where any matter in respect of input credit is pending in an appeal or revision or review or reference under any of the earlier laws.

It provides that the provisions of GST would have no bearing on the same and should be dealt with in accordance with the provisions of earlier laws as follows:

- **If the input credit are finally allowed:** A refund would accrue in cash.
- **If the input credit is disallowed:** It would become recoverable as an arrear of tax under the GST Act, viz., SGST or CGST, as applicable (CGST in respect of Central laws; and SGST in respect of State laws). The amount so recovered would not be allowed as input tax credit under the GST laws.

The provisions of earlier central laws that are to be subsumed under GST would be categorized under CGST and VAT / CST under SGST.

Analysis of this transitional provision can be presented as a flowchart as under:



183. Finalization of proceedings relating to output duty or tax liability

Statutory Provisions

(1) Every proceeding of appeal, revision, 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 earlier law, and if any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall 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, revision, 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 earlier 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 earlier law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944and shall not be admissible as input tax credit under this Act.

(CGST Law)

(1) Every proceeding of appeal, revision, review or reference relating to any output tax liability initiated whether before, on or after the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and if any amount becomes recoverable as a result of such appeal, revision, review or reference, the same shall be recovered as an arrear of tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.

(2) Every proceeding of appeal, revision, review or reference relating to any output tax liability initiated whether before, on or after the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and any amount found to be admissible to the claimant shall be refunded to him in accordance with the provisions of the earlier law and shall not be admissible as input tax credit under this Act.

(SGST Law)

183.1 Introduction

This transitional provision is with respect to output tax / duty liabilities pending in appeal, review, revision or reference proceedings under any of the earlier law.

183.2 Analysis

The section applies where any matter in respect of output tax / duty liabilities are pending in appeal, review, revision or reference proceedings under any of the earlier law.

It provides as follows:

— **If the output liability is finally payable:** It should be recovered as an arrear of tax under relevant GST Act. (CGST in respect of Central laws; and SGST in respect of State laws).

The amount so recovered would not be allowed as input tax credit under the GST laws.

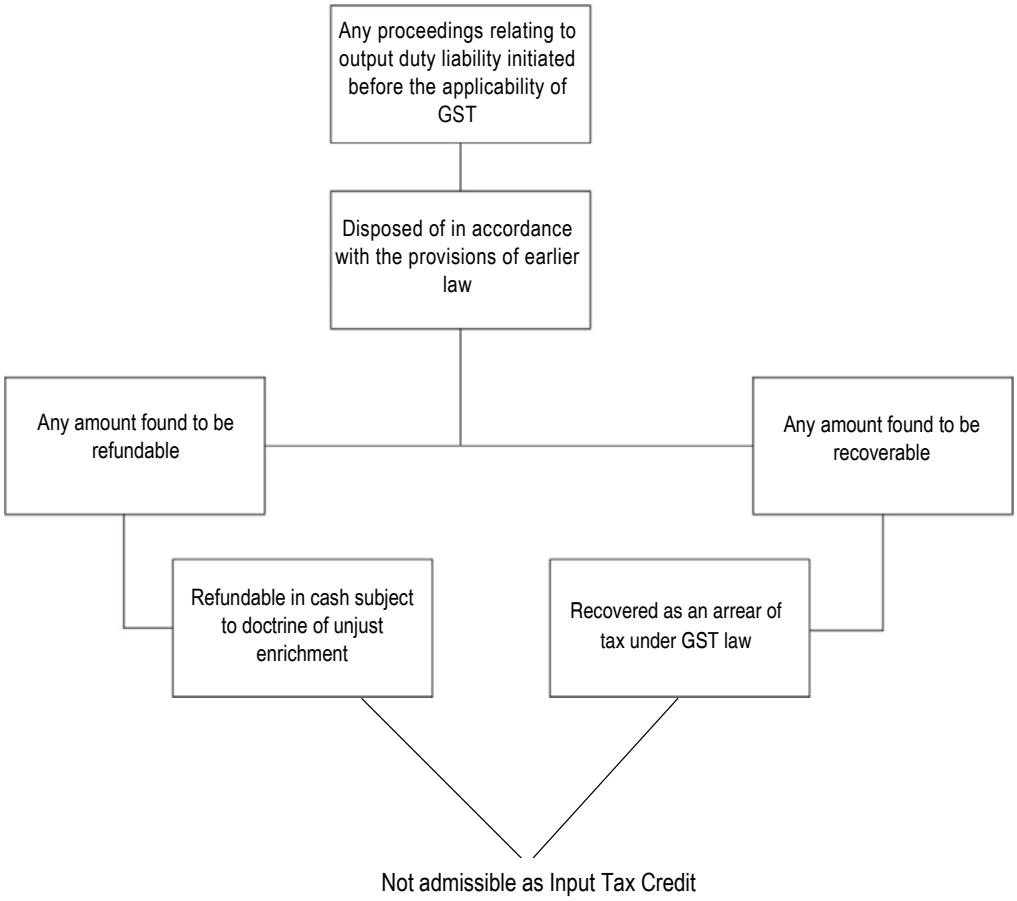
— **If the output liability is finally allowable to the claimant:** It would accrue to the claimant as refund in cash under the earlier law.

The provisions of earlier central laws that are to be subsumed under GST would be categorized under CGST and VAT / CST under SGST.

183.3 Related provisions

Section	Description
Section 2(71)	Definition of output tax
Section 184	Treatment of amount reversed or refunded due to assessment or appeal, review, revision or reference proceedings

Analysis of this transition provision can be presented in the following flowchart



184. Treatment of the amount recovered or refunded in pursuance of assessment or adjudication proceedings

Statutory Provisions

(1) Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the earlier law, any amount of tax, interest, fine or penalty becomes recoverable from the taxable person after the appointed day, the same shall 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.

(CGST Law)

(1) Where in pursuance of an assessment proceedings instituted, whether before, on or after the appointed day, under the earlier law, any amount of tax, interest, fine or penalty becomes recoverable from the taxable person after the appointed day, the same shall 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.

(SGST Law)

(2) Where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the earlier 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 earlier 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.

(CGST Law)

(2) Where in pursuance of an assessment proceeding instituted, whether before, on or after the appointed day, under the earlier law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in accordance with the provisions of earlier law.

(SGST Law)

184.1 Introduction

This Transitional Provision is with respect to tax, interest, fine or penalty which becomes either recoverable from or payable to a taxable person in pursuance of any assessment or adjudicating proceedings under the earlier law.

184.2 Analysis

The Section applies to a situation where any amount (tax, interest, fine or penalty) becomes recoverable from or payable to a taxable person in respect of any assessment or adjudication proceedings, which are initiated under the earlier laws.

It provides as follows:

— **If the amount is recoverable:** It will be recovered as an arrear of tax under the GST laws. The amount so recovered would not be allowed as input tax credit under the GST laws.

— **If the amount is allowable as refund:** It would accrue to the claimant as refund under the earlier law.

It is to be understood that the provisions of earlier central laws that are to be subsumed under GST would be categorized under CGST and VAT / CST under SGST.

184.3. Comparative review

Under the purview of service tax**, i**f service tax is paid in excess of the actual liability, the assessee is required to claim refund of excess amount of service tax paid. He cannot adjust excess tax paid against subsequent payment of tax. However, there is an exception which says that self-adjustment of service tax is permissible if service tax has been paid in advance under rule 6 (1A) and 6(4A) of Service tax Rules.

184.4 Related provisions

Section	Description
Section 183	Finalization of proceedings relating to output tax / duty liability

185. Treatment of the amount recovered or refunded pursuant to revision of returns

Statutory Provisions

(1) Where any return, furnished under the earlier 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 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.

(CGST Law)

(1) Where any return, furnished under the earlier law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of input tax credit is found to be inadmissible, the same shall 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.

(SGST Law)

(2) Where any return, furnished under the earlier law, is revised after the appointed day but within the time limit specified for such revision under the earlier 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 earlier 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.

(CGST Law)

(2) Where any return, furnished under the earlier law, is revised after the appointed day but within the time limit specified for such revision under the earlier law and if, pursuant to such revision, any amount is found to be refundable or input tax credit is found to be admissible to any taxable person, the amount shall be refunded to the said person in accordance with the provisions of the earlier law.

(SGST Law)

185.1 Introduction

This transitional provision deals with a situation where tax becomes payable or refundable by virtue of revision of returns under earlier law.

185.2 Analysis

The Section applies where any return is revised under the earlier 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:

(i) Short payment of output tax liability (payable);

(ii) Excess payment of output tax liability (refundable);

(iii) Short claim of input credit (refundable);

(iv) Excess claim of input credit (payable);

The Section specifies that:

— **If any amount is recoverable:** It should be recovered as an arrear of tax under relevant GST Act. The amount so recovered would not be allowed as input tax credit.

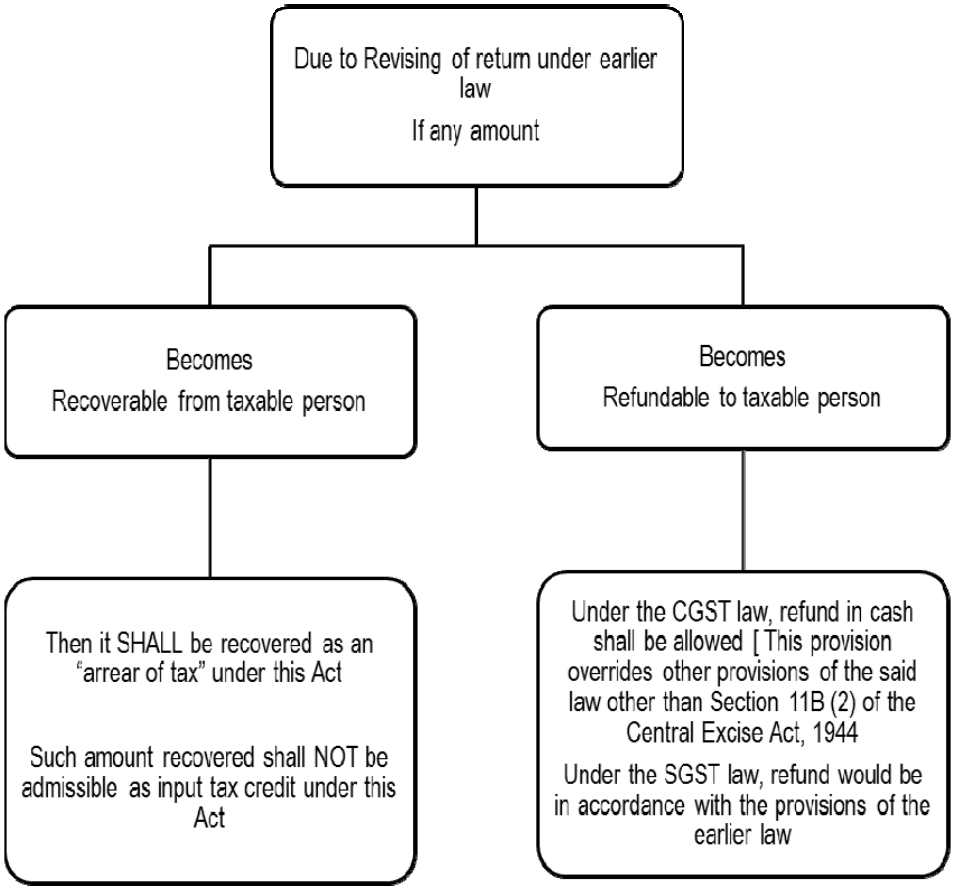
— **If the amount is allowable as refund:** It would accrue to the claimant as cash refund under the earlier law.

It is to be understood that the provisions of earlier central laws that are to be subsumed under GST would be categorized under CGST and VAT / CST under SGST.

185.3 Related provisions

Section	Description
Section 2(86)	Definition of Return

Analysis of this transitional provision can be presented in the following flowchart:



186. Treatment of long term construction or works contracts

Statutory Provisions

The goods and/or services 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.

(CGST Law)

The goods and/or services 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.

(SGST Law)

186.1 Introduction

This transitional provision deals with long terms construction or works contracts.

186.2 Analysis

It provides that in respect of a contract entered into prior to GST regime, the goods and / or services which are supplied on or after the introduction of GST would be liable to tax under the GST Act (SGST or CGST, as applicable).

It would not matter even if the construction contract or works contract is entered into prior to the date of introduction of GST.

Eg 1: A contract for a painting job was entered on 19th March, 2017. Assume the applicability of GST from 1st April, 2017. The job is performed from 10th April, 2017 to 30th April, 2017. The said supply will be taxable under GST law.

It is understood that the provisions of earlier central laws that are to be subsumed under GST would be categorized under CGST and VAT / CST under SGST.

187. Progressive or periodic supply of goods or services

Statutory Provisions

Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the supply of goods and/or services made on or after the appointed day where the consideration, whether in full or in part, for the said supply has been received prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law.

(CGST Law)

Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the supply of goods and/or services made on or after the appointed day for the said supply has been received prior to the appointed day and the duty or tax payable thereon has already been paid under the earlier law.

(SGST Law)

187.1 Introduction

This transitional provision deals with transactions which have suffered tax on the ground that consideration is received under the earlier law, whereas the supply is made after the date of introduction of GST.

187.2 Analysis

This section applies in the following cases:

(i) where the consideration was received prior to the introduction of GST; and

(ii) supply of goods and / or services is effected after the introduction of GST.

The provisions of this Section would apply, notwithstanding the provisions of Sections 12 and 13 of the GST Act (time of supply of goods and services).

(i) This Section provides that no tax would once again be payable under the GST Act, simply for the reason that supply takes place after introduction of GST.

It is understood that the provisions of the central laws that are to be subsumed under GST would be categorized under CGST and VAT / CST under SGST.

187.3 Related provisions

Section	Description
Section 2(28)	Definition of consideration
Section 12	Time of supply of goods
Section 13	Time of supply of services

188. Taxability of supply of services in certain cases

Statutory Provisions

Notwithstanding anything contained in section 13 or 14, the tax in respect of the taxable services shall be payable under the earlier law to the extent the point of taxation in respect of such services arose before the appointed day.

Explanation: Where the portion of the supply of services is not covered by this section, such portion shall be liable to tax under this Act.

(CGST Law)

Notwithstanding anything contained in section 13 or 14, the tax in respect of the taxable services shall be payable under the earlier law to the extent the point of taxation in respect of such services arose before the appointed day.

Explanation: Where the portion of the supply of services is not covered by this section, such portion shall be liable to tax under this Act.

(SGST Law)

188.1 Introduction

This transitional provision relates to the transaction in respect of taxable services where the point of taxation arose before the appointed day. It may be noted that this section overrides the principles contained in sections 13 and 14 relating to time of supply of services and change in rate of tax respectively.

188.2 Analysis

This Section applies in the situations where the point of taxation in respect of taxable services arose before the appointed day. In such cases, the tax in respect of such transactions shall be payable under the earlier law to the extent the point of taxation in respect of such services arose before the appointed day. In other cases, tax shall be payable under GST.

The point of taxation in respect of services is presently determined in terms of the Point of Taxation Rules, 2011.

A parallel provision has been made in the SGST law too, as States will also be levying tax on services in the GST regime.

188.3 Related provisions

Section	Description
Section 13	Time of supply of services
Section 14	Change in rate of tax

189. Taxability of supply of goods in certain cases

Statutory Provisions

Notwithstanding anything contained in section 12 or 14, the tax in respect of the taxable goods shall be payable under the earlier law to the extent the point of taxation in respect of such goods arose before the appointed day.

Explanation: Where the portion of the supply of goods is not covered by this section, such portion shall be liable to tax under this Act.

(CGST Law)

Notwithstanding anything contained in section 12 or 14, the tax in respect of the taxable goods shall be payable under the earlier law to the extent the point of taxation in respect of such goods arose before the appointed day.

Explanation: Where the portion of the supply of goods is not covered by this section, such portion shall be liable to tax under this Act.

(SGST Law)

189.1 Introduction

This transitional provision relates to the transaction in respect of taxable goods where the point of taxation arose before the appointed day. It may be noted that this section overrides the principles contained in sections 12 and 14 relating to time of supply of goods and change in rate of tax respectively.

189.2 Analysis

This Section applies in the situations where the point of taxation in respect of taxable goods arose before the appointed day. In such cases, the tax in respect of such transactions shall be payable under the earlier law to the extent the point of taxation in respect of such services arose before the appointed day. In other cases, tax shall be payable under GST.

The point of taxation shall be determined in terms of the Central Excise Law or respective State VAT Law, whichever is relevant.

189.3 Related provisions

Section	Description
Section 13	Time of supply of services
Section 14	Change in rate of tax

190. Credit distribution of service tax by ISD

Statutory provisions

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 invoice(s) relating to such services is received on or after the appointed day.

(CGST Law)

190.1 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.

(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.

190.2 Analysis

Input Service Distributor: This term has been defined under Section 2(54) of the GST Law to mean an office of the supplier of goods and / or services which receives tax invoices issued under section 28 towards receipt of input services and issues tax invoice or such other document as prescribed for the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST paid on the said services to a supplier of taxable goods and / or services having same PAN as that of the office referred to above.

Explanation.- For the purposes of distributing the credit of CGST (SGST in State Acts) and / or IGST, Input Service Distributor shall be deemed to be a supplier of services.

Services: This term has been defined under Section 2(92) of the GST law to mean anything other than goods. As per the explanation inserted, it also includes transactions in money but does not include money and securities.

It does not include transaction in money other than an activity 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

(b) or after the date of applicability of GST

This section seeks to cover both the cases.

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
- 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 21 of the GST 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 CENVAT Credit under the old law and carry forward this credit as CGST on the date of applicability of GST under section 167 of the GST law. If he distributes the credit after the applicability of GST, he can take it as CGST or IGST depending on the 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 supply being intra State or inter-state respectively.
- 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

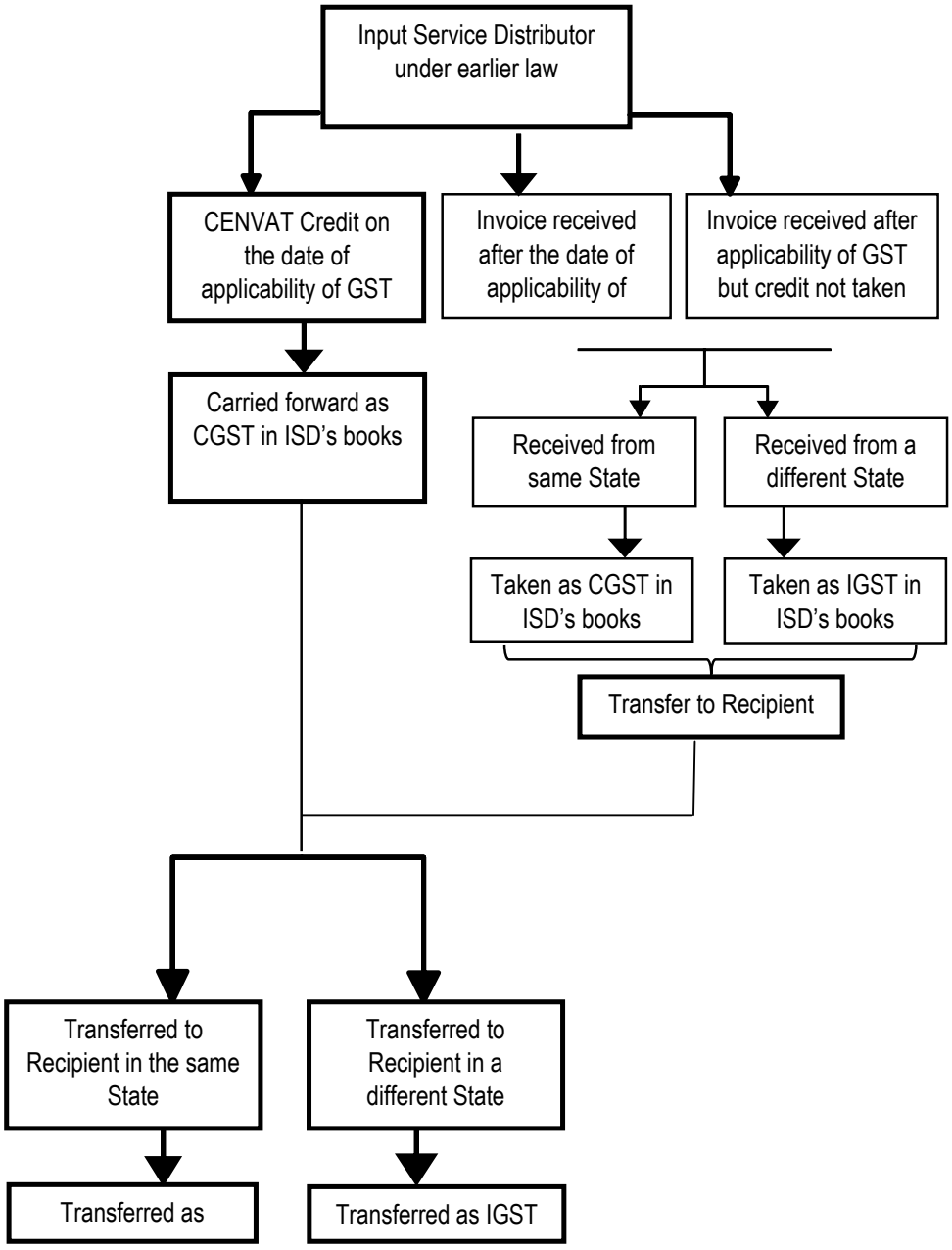
190.3 Comparative Review

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.

190.4 Related provisions

Section	Description	Remarks
2(54)	Definition of Input Service Distributor	To know the meaning of Input Service Distributor under the GST law
2(92)	Definition of Service	It is imperative to know the meaning of service to determine as to what will be distributed under the GST law
21	Manner of distribution of Input Tax Credit by ISD	Section 21 acts as an extension of section 162. The eligibility of the credit is discussed as per Section 162 whereas the manner of distribution is under section 21

Analysis of this transitional provision can be presented in the following flowchart:



191. Provision for transfer of unutilized Cenvat Credit by taxable person having centralized registration under the earlier law

Where a taxable person having centralized registration under the earlier 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 earlier 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 taxable person files his return for the period ending with the day immediately preceding the appointed day within 3 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 taxable person shall not be allowed to take credit unless the said amount admissible as input tax credit under this Act:

PROVIDED ALSO that such credit may be transferred to any of the registered taxable persons having the same PAN for which the centralized registration was obtained under the earlier law.

191.1 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

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.

192. Tax paid on goods lying with agents to be allowed as credit

Statutory Provisions

Where any goods belonging to the principal are lying at the premises of the agent on the appointed day, the agent shall be entitled to take credit of the tax paid on such goods subject to fulfilment of the following conditions:

(i) the agent is a registered taxable person under this Act;

(ii) both the principal and the agent declare the details of stock of goods lying with such agent on the date immediately preceding the appointed day in such form and manner and within such time as may be prescribed in this behalf;

(iii) the invoices for such goods had been issued not earlier than twelve months immediately preceding the appointed day; and

(iv) the principal has either reversed or not availed of the input tax credit in respect of such goods.

(Only in SGST Law)

192.1 Introduction

This transitional provision enables availment of credit for goods of any taxable person lying at the premises of an agent.

192.2 Analysis

In respect of principal-agent arrangements, where any goods of the principal is lying in stock at the premises of the agent, the law provides that the agent should take the transitional credit of the tax paid on such goods.

The transitional credit for the agent would be subject to the following conditions:

(i) The agent is a registered taxable person under the GST Act. The law is unclear on the aspect as to whether the agent should have been a registered person under the earlier law *(VAT only since this provision would be relevant only under the SGST law)*.

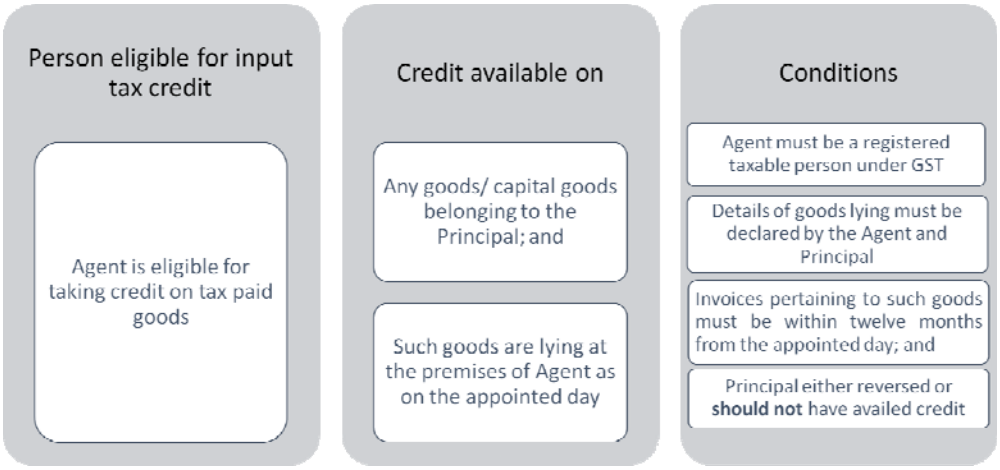
(ii) The details of such stocks should be declared by both, the principal and the agent as part of the transitional provisions. The format and the timelines are yet to be prescribed.

(iii) The invoices for procurement of such goods (under the VAT law) should not be more than one year old from the date of introduction of GST.

(iv) The principal should not have claimed any input tax credit of VAT paid on such goods under the relevant VAT law at the time of purchase. Alternatively, where the credit was claimed by the principal, it should have to be reversed at this stage to enable the claim of credit under this Section by the agent.

It is understood that the provisions of earlier State (VAT / CST) laws that are to be subsumed under GST would be categorized under SGST.

Tax paid on goods/ capital goods lying with agent to be allowed as credit (SGST)



192.3 Related provisions

Section	Description
Section 2(5)	Definition of agent
Section 193	Tax paid on capital goods lying in stock with the agents

193. Tax paid on capital goods lying with agents to be allowed as credit

Statutory Provisions

Where any capital goods belonging to the principal are lying at the premises of the agent on the appointed day, the agent shall be entitled to take credit of the tax paid on such capital goods subject to fulfilment of the following conditions:

(i) the agent is a registered taxable person under this Act;

(ii) both the principal and the agent declare the details of the stock of capital goods lying with such agent on the date immediately preceding the appointed day in such form and manner and within such time as may be prescribed in this behalf;

(iii) the invoices for such capital goods had been issued not earlier than twelve months immediately preceding the appointed day; and

(iv) the principal has either not availed of the input tax credit in respect of such capital goods or, having availed of such credit, has reversed the said credit, to the extent availed of by him.

(Only in SGST Law)

193.1 Introduction

This transitional provision relates to enabling availment of credit for capital goods of any taxable person lying at the premises of an agent, is comparable to the provisions contained in Section 192 with respect to goods lying with agents. While Section 192 is in respect of goods, this Section is in respect of capital goods lying at the premises of the agent.

193.2 Analysis

In respect of principal-agent arrangements, where any capital goods of the principal are lying in stock at the premises of the agent, the law provides that the agent should take the transitional credit of the tax paid on such capital goods.

The transitional credit in the hands of the agent would be allowed subject to the following conditions:

(i) The agent is a registered taxable person under the GST Act. The law is unclear on the aspect as to whether the agent should have been a registered person under the earlier law *(State laws - VAT / CST only since this provision would be relevant only under the SGST law)*.

(ii) The details of such capital goods lying with the agents should be declared by both, the principal and the agent in the prescribed form.

(iii) The invoices for procurement of such capital goods by the principal (under the VAT law) should not be more than one year old from the date of introduction of GST.

(iv) The principal should not have claimed any input tax credit of VAT paid on such capital

goods under the relevant VAT law at the time of purchase. Alternatively, where the credit was claimed by the principal, it would have to be reversed at this stage to enable the claim of credit under this Section by the agent.

Section 168 of the GST Act provides for taking credit of unavailed portion of input tax paid on capital goods by any taxable person. This Section is different in operation from Section 168. While Section 168 enables a tax payer to claim unavailed portion of input credit on capital goods this Section is in respect of claim of transitional credit by an agent in respect of capital goods belonging to a principal. As indicated in condition no. (iv) above, it follows that the principal should not have claimed any input credit in respect of such capital goods, either in any of the earlier year/s or as part of the transitional credit.

It is understood that the provisions of earlier State (VAT / CST) laws that are to be subsumed under GST would be categorized under SGST.

193.3 Related provisions

Section	Description
Section 2(5)	Definition of agent
Section 192	Tax paid on goods lying in stock with the agents
Section 168	Unavailed CENVAT credit on capital goods, not carried forward in a return to be allowed

194. Treatment of branch transfers

Statutory Provisions

Notwithstanding anything to the contrary contained in this Act, any amount of input tax credit reversed prior to the appointed day shall not be admissible as credit of input tax under this Act.

(Only in SGST Law)

194.1 Introduction

This transitional provision restricts the claim of input tax credit in respect of stock transfers under the SGST law, effected under the earlier law.

194.2 Analysis

Under the State VAT laws, in respect of inter-State stock transfers (outwards), input credit attributable to such stock transfers are required to be reversed partially or fully in terms of the computation mechanism as prescribed thereunder. It may be noted that in most of the States, a percentage of the input tax credit is reversed by applying the ratio of the value of such stock transfers to the value of total taxable transactions.

Under this Section, the SGST law prohibits the claim of input credit in respect of such transfers. It provides that the amount so reversed, cannot be claimed as input credit under the SGST law.

It is understood that the provisions of earlier State (VAT / CST) laws that are to be subsumed under GST would be categorized under SGST.

195. Goods sent on approval basis returned on or after the appointed day

Statutory Provision

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 aforesaid period of six months may, on sufficient case being shown, be extended by the competent authority 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 of six months or the extended period, as the case may be, from the appointed day:

PROVIDED ALSO that tax shall be payable by the person who has sent the good son approval basis if such goods are liable to tax under this Act, and are not returned within a period of six months or the extended period, as the case may be, from the appointed day.

(SGST Law)

195.1 Introduction

When goods are sent on approval basis and such goods are returned within a period of 6 months from the appointed day or extended period then no tax is payable. The operation of this provision is similar to the transitional provision under sections 175 and 176 in respect of return of goods by the job worker.

195.2 Analysis

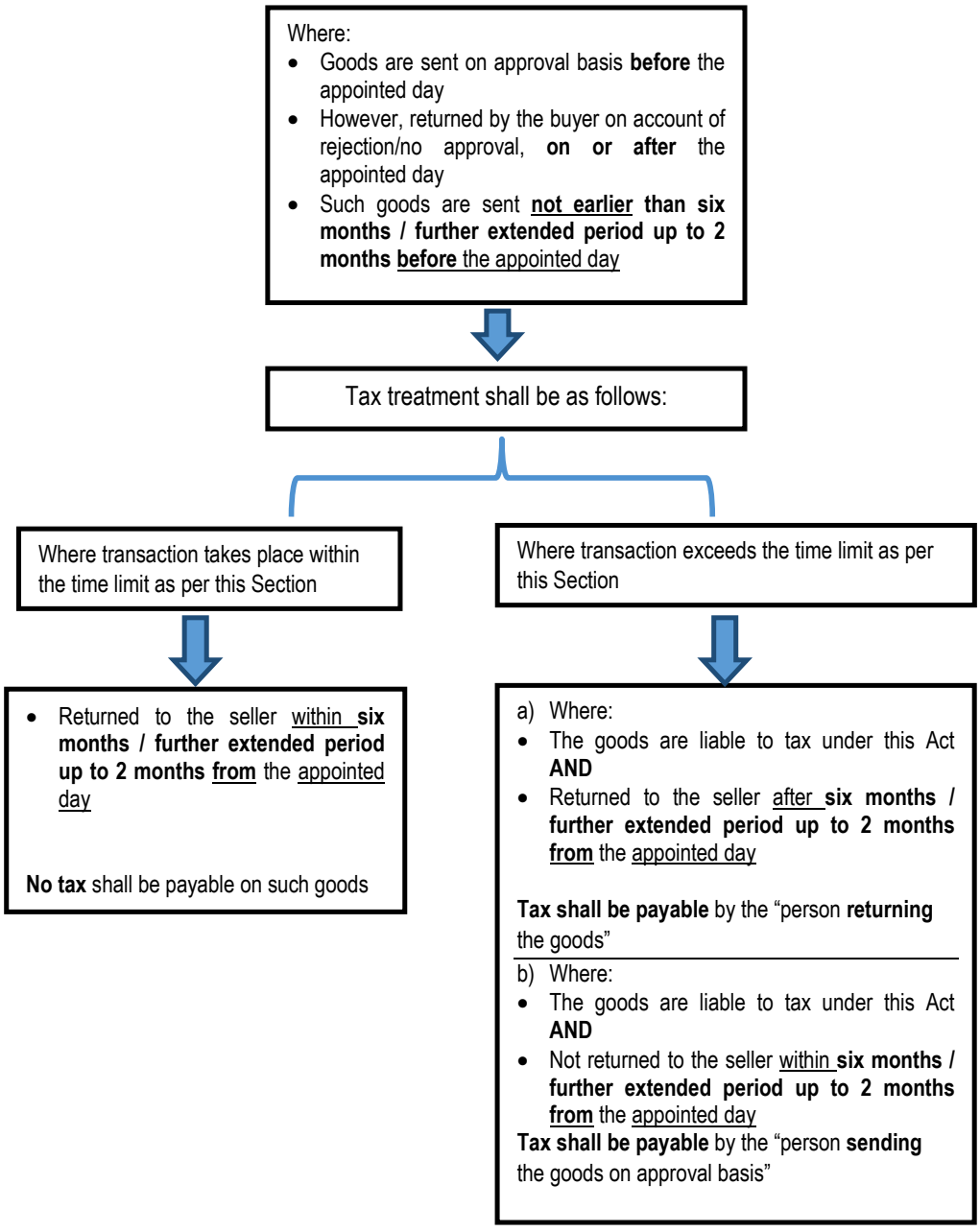
No tax shall be payable in case where any goods are rejected or not approved by the buyer and are returned within the period of six months. However tax shall be payable by the person returning the goods and sending the goods if the goods are returned after the period of six months and such goods are liable to tax under the GST Law.

Exceptions – When the above exemption is not available:

If the goods sent by the seller on approval basis are returned by the buyer after a period of 6 months or such extended period (can be extended by the competent authority by upto 2 months): The buyer returning such goods (goods sent on approval basis) would be liable to pay SGST, as applicable.

If the goods sent by seller on approval basis are not returned within a period of 6 months or such extended period (can be extended by the competent authority by upto 2 months): The seller would be liable to SGST.

Flowchart analysing the transitional provisions in Section 195



196. Deduction of tax at source

Statutory Provisions

Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under the earlier law and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 46 shall be made by the deduct or under the said section where payment to the said supplier is made on or after the appointed day.

196.1 Introduction

This transition provision is in respect of TDS under Section 46. It is a transitional provision to ensure that there is no double deduction of tax at source due to introduction of GST.

196.2 Analysis

This Section would apply in the following circumstances:

(i) The supplier had sold any goods under the earlier law; and

(ii) TDS applies on such transactions; and

(iii) The supplier had issued the invoice before the introduction of GST

(iv) Payment is made to the supplier after the date of introduction of GST

It provides that merely because payment is made to the supplier after the date of introduction of GST, the TDS provisions under Section 46 of the GST Act will not apply. In other words, no tax would be deductible at the time of making payment to the supplier.

It is understood that the provisions of central laws that are to be subsumed under GST would be categorized under CGST and VAT / CST under SGST.

196.3 Related provisions

Statute	Section	Description
CGST	Section 46	Tax deduction at source

197. Transitional provisions for availing Cenvat credit in certain cases

Statutory Provisions

Where any Cenvat credit availed for the input services provided under the earlier law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed provided that the taxable person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

(CGST Act)

197.1 Introduction

This transitional provision has been introduced with the 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.

197.2 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.

No parallel provision has been made in the SGST law, as the Cenvat Credit Rules, 2004 are applicable to the central levies of Service Tax and Central Excise.

Transfer of unutilised Cenvat credit by a person having centralised registration

For the period ending with the day immediately preceding the appointed day

- If the taxable person files an original/ revised return within 3 months of the appointed day
- Credit will be allowed if credit amount is reduced from that claimed earlier

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 earlier law

SCHEDULE I

MATTERS TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

[IN TERMS OF CLAUSE (c) OF SUBSECTION (1) OF SECTION 3]

1. Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.

2. Supply of goods or services between related persons, or between distinct persons as specified in section 10, when made in the course or furtherance of business.

3. Supply of goods—

   (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or

   (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

4. Importation 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.

***

SCHEDULE II

MATTERS TO BE TREATED AS SUPPLY OF GOODS OR SERVICES

1. Transfer

(a) Any transfer of the title in goods is a supply of goods.

(b) Any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services.

(c) Any transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed, is a supply of goods.

2. Land and Building

(a) Any lease, tenancy, easement, licence to occupy land is a supply of services.

(b) Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

(a) Any treatment or process which is being applied to another person's goods is a supply of services.

4. Transfer of business assets

(a) Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.

(b) Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.

(c) Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

  (i) the business is transferred as a going concern to another person; or

  (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. The following shall be treated as "supply of service"

(a) renting of immovable property;

(b) construction of a complex, building, civil structure or a part thereof, including a complex or

building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier.

Explanation.- For the purposes of this clause-

(1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:–

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure*;*

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;

(f) works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(g) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; and

(h) supply, by way of or as part of any service or 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), where such supply or service is for cash, deferred payment or other valuable consideration.

6. The following shall be treated as supply of goods

(a) supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

SCHEDULE III

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.

2. Services by any Court or Tribunal established under any law for the time being in force.

3. (a) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

   (b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

   (c) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

4. Services by a foreign diplomatic mission located in India.

5. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

SCHEDULE IV

ACTIVITIES OR TRANSACTIONS UNDERTAKEN BY THE CENTRAL GOVERNMENT, A STATE GOVERNMENT OR ANY LOCAL AUTHORITY WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services provided by a Government or local authority to another Government or local authority excluding the following services:
   (i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services;
   (ii) services in relation to an aircraft or a vessel , inside or outside the precincts of a port or an aircraft; or
   (iii) transport of goods or passengers.
2. Services provided by a Government or local authority to individuals in discharge of its statutory powers or functions such as-
   (i) issuance of passport, visa, driving licence, birth certificate or death certificate; and
   (ii) assignment of right to use natural resources to an individual farmer for the purpose of agriculture.
3. Services provided by a Government or local authority or a governmental authority by way of:
   (i) any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution;
   (ii) any activity in relation to any function entrusted to a Panchayat under article 243 G of the Constitution;
   (iii) health care; and
   (iv) education.
4. Services provided by Government towards-
   (i) diplomatic or consular activities;
   (ii) citizenship, naturalization and aliens;
   (iii) admission into , and emigration and expulsion from India; (iv) currency , coinage and legal tender , foreign exchange;
   (v) trade and commerce with foreign countries , import and export across customs frontiers, interstate trade and commerce; or
   (vi) maintenance of public order.
5. Any services provided by a Government or a local authority in the course of discharging any liability on account of any tax levied by such Government or authority.

6. Services provided by a Government or a local authority by way of –

   (i) tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; or

   (ii) assignment of right to use any natural resource where such right to use was assigned by the Government r the local authority before the 1st April, 2016:

   PROVIDED that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource:

7. Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import or export of cargo on payment of Merchant Overtime Charges (MOT).

8. Services provided by Government or a local authority by way of-

   (i) registration required under any law for the time being in force; or

   (ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force.

Definitions:

1. Governmental Authority means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W or a Panchayat under article 243G of the Constitution.

2. Health care services means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

3. Education services means services by way of—

   (i) pre-school education and education up to higher secondary school or equivalent;

   (ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; or

   (iii) education as a part of an approved vocational education course.

SCHEDULE V

PERSONS LIABLE TO BE REGISTERED

1. Every supplier shall be liable to be registered under this Act in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds twenty lakh rupees:

   PROVIDED that where such person makes taxable supplies of goods and/or services from any of the States specified in sub-clause (g) of clause (4) of Article 279A of the Constitution, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

(Other than Special Category States)

2. Every supplier shall be liable to be registered under this Act in the State from where he makes a taxable supply of goods and/or services if his aggregate turnover in a financial year exceeds ten lakh rupees:

(Special Category States)

Explanation 1.- The aggregate turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals.

Explanation 2.- The supply of goods, after completion of job-work, by a registered job-worker shall be treated as the supply of goods by the "principal" referred to in section 55, and the value of such goods shall not be included in the aggregate turnover of the registered job worker.

2. The following persons shall not be liable to registration –

   (a) any person engaged exclusively in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax under this Act;

   (b) an agriculturist, for the purpose of agriculture.

3. Subject to the provisions of paragraph 1, 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.

4. 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.

5. Notwithstanding anything contained in paragraph 1 and 3 above, 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, where required, 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.

6. Notwithstanding anything contained in paragraph 1 and 3 above, the following categories of persons shall be required to be registered under this Act:

(i) persons making any inter-State taxable supply, irrespective of the threshold specified under paragraph 1;

(ii) casual taxable persons, irrespective of the threshold specified under paragraph 1;

(iii) persons who are required to pay tax under reverse charge, irrespective of the threshold specified under paragraph 1;

(iv) persons who are required to pay tax under sub-section (4) of section 8, irrespective of the threshold specified under paragraph 1;

(v) non-resident taxable persons, irrespective of the threshold specified under paragraph 1;

(vi) persons who are required to deduct tax under section 46, whether or not separately registered under this Act;

(vii) persons who are required to collect tax under 56, whether or not separately registered under the Act;

(viii) persons who supply goods and/or services on behalf of other taxable persons whether as an agent or otherwise, irrespective of the threshold specified under paragraph 1;

(ix) input service distributor, whether or not separately registered under the Act;

(x) persons who supply goods and/or services, other than supplies specified under sub-section (4) of section 8 , through such electronic commerce operator who is required to collect tax at source under section 56, irrespective of the threshold specified in paragraph 1;

(xi) every electronic commerce operator, irrespective of the threshold specified in paragraph 1;

(xii) 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

(xiii) such other person or class of persons as may be notified by the Central Government or a State Government on the recommendation of the Council.

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IGST LAW

Chapter I
Preliminary

1. Short title, extent and commencement

(1) This Act may be called the Integrated Goods and Services Tax Act, 2016.

(2) It extends to the whole of India.

(3) 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.

2. Definitions

In this Act, unless the context otherwise requires, -

(1) "account" means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;

(2) "appropriate State", in relation to a taxable person, means that State where he is registered or liable to be registered under section 23 of the Central Goods and Services Tax Act, 2016.

Explanation: For the purpose of this Act, "State" includes Union Territory with Legislature;

(3) "banking company" has the meaning assigned to it in clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);

(4) "customs frontiers of India" means the limits of the area of a customs station as defined in section 2 of the Customs Act, 1962 (52 of 1962) in which imported goods are ordinarily kept before clearance by customs authorities;

This will be important to note in the context of sale of goods held in bonded warehouse or in the case of sales in international waters. Please refer to Chapter III regarding inter-State supplies where 'till' the goods cross the customs frontier of India.

(5) "export of goods" with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

No reference is made here regarding the currency in which payment is to be made to qualify as export of goods.

(6) "export of services" means the supply of any service when

(a) the supplier of service is located in India,

(b) the recipient of service is located outside India,

(c) the place of supply of service is outside India,

(d) the payment for such service has been received by the supplier of service in convertible foreign exchange, and

(e) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 5;

Although overseas establishment of a person in India is treated as a distinct person for purposes of levy of IGST in section 5, 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. Further, currency in which the payment is realized is made a relevant factor for export of services.

(7) "financial institution" has the meaning assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);

Please refer to the deliberate inclusion of only clause (c) is for importance while examining activities of such financial institutions in taxable of GST.

(8) "fixed establishment" means a place other than the 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;

This is a repetition of the definition in section 2(47) of CGST Act. Please refer comments in CGST Act.

(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;

Here too, movement of goods alone is important and not the location of the supplier and recipient. Also, merchanting trade transactions which do not involve entry of goods into India will not come within the operation of GST.

(11) "import of service" means the supply of any service, where

(a) the supplier of service is located outside India,

(b) the recipient of service is located in India, and

(c) the place of supply of service is in India;

Compared to the 5 conditions in the definition of 'export of services' it is noticeable that import of service has a broader applicability by having only 3 conditions in its definition.

(12) "India" means, -

(a) the territory of the Union as referred to in clauses (2) and (3) of Article 1 of the Constitution;

(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 (80 of 1976);

(c) the seabed and the subsoil underlying the territorial waters;

(d) the air space above its territory and territorial waters; and

(e) the installations, structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

This thoughtful definition of India requires careful consideration while dealing with offshore transaction.

(13) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of a service (hereinafter called the 'main' service) or the supply of goods, between two or more persons, but does not include a person who supplies the main service or supplies the goods on his account;

Agency is 'delegated authority' and 'detached consequences' as long as the activity is within the scope of lawful authority of the principal. It is not justifiable to vivisect the activities of the activities performed pursuant to agency.

(14) "Integrated Goods and Services Tax" (IGST) means tax levied under this Act on the supply of any goods and/or services in the course of inter-State trade or commerce;

(15) "input tax" in relation to a taxable person, means the Integrated Goods and Services Tax, including that on import of goods, Central Goods and Services Tax or State Goods and Services Tax, as the case may be, charged on any supply of goods and/or services to him and includes the tax payable under sub-section (2) of section 5, but does not include the tax paid under section 9 of the CGST/SGST Act;

(16) "input tax credit" means credit of 'input tax' as defined in sub-section (15);

(17) "location of the recipient of services" means:

(a) where a supply is received at a place of business for which 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, that is to say, 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;

(18) "location of the supplier of services" means:

(a) where a supply is made from a place of business for which 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, that is to say, 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;

(19) "non-banking financial company" means-

(a) a financial institution which is a company;

(b) 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

(c) 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;

(20) "non-taxable online recipient" means Government, a local authority, a governmental authority, an individual or any person not registered under section 23 of the CGST Act, 2016 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, "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;

*(*21*)* *"*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, -

(a) advertising on the internet;

(b) providing cloud services;

(c) provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet;

(d) providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;

(e) online supplies of digital content (movies, television shows, music, etc.);

(f) digital data storage; and

(g) online gaming;

The various activities covered by this definition are services in the digital economy that are themselves in development and therefore understanding the granular activities that are included in each of the services listed.

(22) "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, provides or receives goods and/or services;

(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;

Place of business is not the project site where delivery takes place but the premises where the decision to supply takes place. Place of supply is appointed by the law but the place of business is to be examined by observing the 'seat of management' of the business.

(23) "special economic zone'' shall have the meaning assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);

(24) "SEZ developer" means a person who, or a State Government which, has been granted by the Central Government a letter of approval under sub-section (10) of section 3 of the Special Economic Zones Act, 2005 (28 of 2005) and includes an Authority and a Co-Developer as defined under section 2 of the Special Economic Zones Act, 2005 (28 of 2005);

(25) "State" means------

(26) "supply" has the same meaning as assigned to it in section 3 of the CGST Act, 2016;

(27) "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;

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

(29) "zero-rated supply" shall have the meaning assigned to it under section 15; and

The reference here should be to section 16 of IGST Act and not section 15.

(30) Words and expressions not defined in this Act shall have the meaning assigned to them in the Central Goods and Service Tax Act, 2016.

Chapter II

Principles for Determining Supply of Goods and/ or Services in the Course of Inter-State Trade or Commerce

Section 3 – Supplies of goods and/or services in the course of inter-State trade or commerce

Statutory provision:

(1) Subject to the provisions of section 7, supply of goods in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States.

(2) Subject to the provisions of section 9, supply of services in the course of inter-State trade or commerce means any supply where the location of the supplier and the place of supply are in different States.

(3) Supply of goods in the course of import into the territory of India till they cross the customs frontiers of India shall be deemed to be a supply of goods in the course of inter-State trade or commerce.

(4) Supply of services in the course of import into the territory of India shall be deemed to be a supply of services in the course of inter-State trade or commerce.

(5) Supply of goods and/or services, when the supplier is located in India and the place of supply is outside India, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

(6) Supply of goods and/ or services to or by a SEZ developer or an SEZ unit, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

(7) Any supply of goods and/or services in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

3.1 Introduction

This Section enables determination of supplies of goods and / or services in the course of inter-State trade or commerce. It must be noted that only such supplies will be liable to IGST.

3.2 Analysis

This section is subservient to the Sections 7, 8, 9 and 10 of the IGST Act, which deal with provisions for determining the place of supply of goods and place of supply of services. The

term 'inter-State' would ordinarily mean, from one State to another, or between different States.

While sub-section (1) deals with goods, sub-section (2) deals with services. In respect of 'goods' a supply would be considered as effected in the course of inter-State trade or commerce if the location of the supplier and the place of supply are in different States.

Note: Please refer to the discussion and illustrations given in Chapter IV, in the context of Sections 7 and 8.

Similarly, in respect of 'service', a supply would be considered as effected in the course of inter-State trade or commerce if the location of the supplier and the place of supply are in different States.

Note: Please refer to the discussion and illustrations given in Chapter IV, in the context of Sections 9 and 10.

Supplies in the course of import

Supplies in the course of import would also be deemed to be inter-State supplies as under:

(a) For goods: Until such goods reach the customs frontier

(b) For services: The act of importation of service itself

In respect of goods, such supplies are comparable to section 5(2) of the CST Act. Essentially, the provisions of section 3(3) of the CST Act can be analysed in two parts – a supply in the course of import and a supply where a transfer of documents of title takes place during import. In the former case, the importer in India who receives the supplies from an overseas exporter would be liable to pay IGST. In the later case, since the documents of title to the goods would be transferred before the goods cross the customs frontiers of India, the question of any liability to tax in the hands of the importer does not arise. However, any supplies by such importer to any other person which passes after the goods cross the customs frontiers of India would be liable to tax depending on the nature of the supply. Currently, such transactions are classified by some dealers as in-bond sales. In the GST regime, the test that one needs to apply would be as stated above.

In respect of services, the recipient of services would be liable to IGST.

Export supplies will be inter-State supplies

Where the place of supply as determined under Section 7, 8, 9 or 10 happens to be outside India, and the location of the supplier is in India, this would broadly qualify as an export. Though such supplies would be zero-rated supplies, the same would be deemed to be inter-State supplies.

Supplies to SEZs

All supplies to (or by) a unit in SEZ / an SEZ developer would be treated as if they were supplies made to (or from) a place located outside India, and would therefore be treated as inter-State supplies.

Some experts are of the view that the supply by a taxable person (in DTA) to a SEZ developer or to a SEZ unit would be liable to pay IGST. And such SEZ developer or unit is entitled to claim refund of such IGST as per section 16(4) of the IGST Act. Many States, currently, provide exemption from payment of VAT on supply to SEZ. It is important that this anomaly is addressed once and for all when the final statute is framed to ensure uniformity.

Others

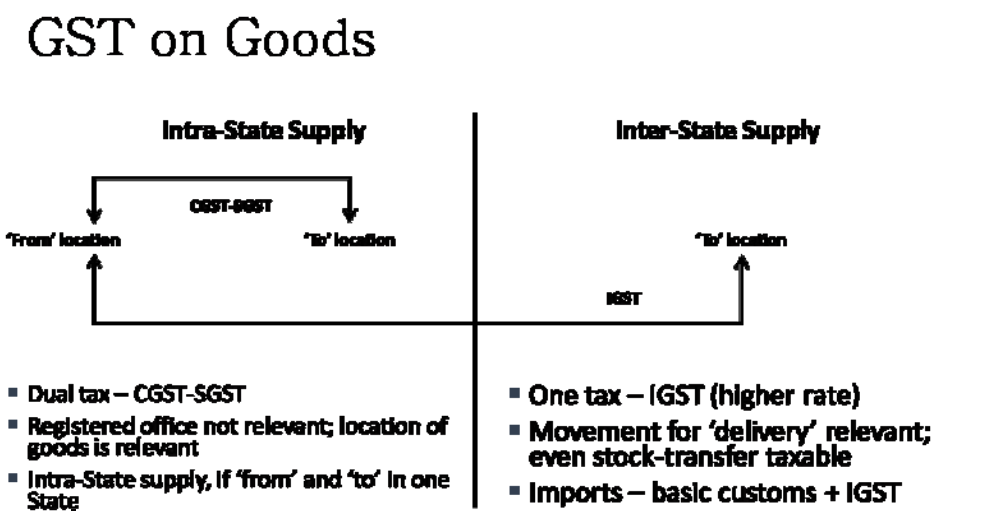
Any other types of supply which do not fall into the above categories, and also do not qualify as intra-State supplies (refer discussion in Section 4 below), would also be deemed to be inter-State supplies.

Section 3 of IGST Act, 2016 – Principles to determine a supply as an inter-State Supply

Determination of supply of goods and/ or services as Inter-State supply

- **CRITICAL factors: Where the below 2 are in DIFFERENT STATES**
  - a) **Location of the supplier** and
  - b) **Place of supply** determined u/s 7,8, 9 or 10 of IGST Act
- Specific **INCLUSIONS**:
  - Supply of **goods in the course of import**, till they cross the customs frontiers of India
  - Supply of **services in the course of import**
  - Supply when **place of supply is outside India** but supplier is in India
  - Supply to or by a **SEZ** developer or an SEZ unit
  - **Residuary supply**: Any supply in the taxable territory and which is **not an intra-State supply**

    (E.g.: Supply of goods from within a Union Territory ("UT") without Legislature)



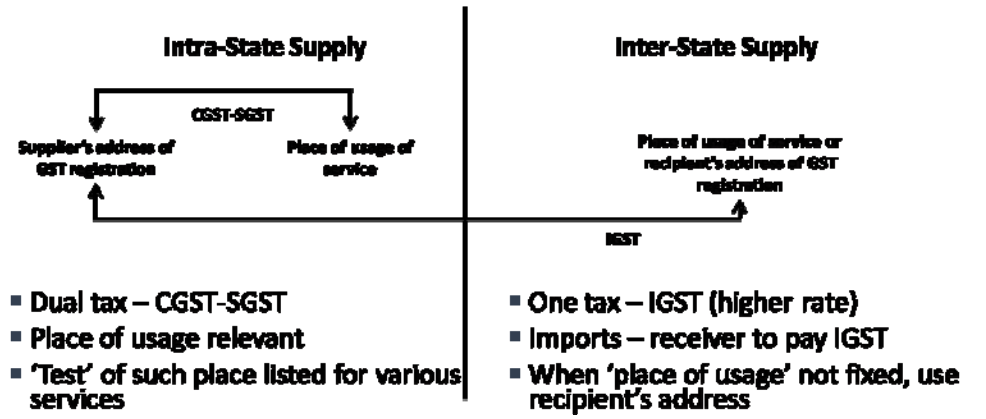


Illustration for Section 3 of IGST Law

Section	Nature of supply	Location of the Supplier	Place of Supply	Remarks
3	Goods	Karnataka	Bihar	Inter-State transaction - IGST Act
3	Services	Delhi	Haryana	Inter-State transaction - IGST Act

3.3 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 3 has to be read alongside Sections 7, 8, 9 and 10 and whenever a conflict arises between the said provisions, Section 3 has to make way for the provisions of such Sections, which is signified by usage of the words "subject to the provisions of Section 7/9".

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.

3.4 Related provisions

Statute	Section	Description
IGST	Section 4	Meaning of intra-State supplies
IGST	Section 5	Levy and collection of IGST
CGST	Section 8	Levy and collection of CGST / SGST

3.5 FAQs

Q1. Under what circumstances would a supply be treated as having taken place in the course of inter-State trade or commerce?

Ans. When a supply falls under any of the categories mentioned in Section 3 of the IGST Act, a supply is said to have taken place in the course of inter-State trade or commerce.

3.6 MCQs

Q1. A supply would be considered as inter-State trade or commerce _____

(a) if the location of the supplier and location of the recipient are in different States

(b) if the location of the supplier and place of supply are in different States

(c) if the location of the supplier and usage of the goods or services are in different States

(d) if the location of the supplier and recipient are in same State.

Ans. (b) if the location of the supplier and place of supply are in different States

Section 4 – Supplies of goods and/or services in the course of intra-State trade or commerce

Statutory provision:

(1) Subject to the provisions of section 7, intra-State supply of goods means any supply of goods where the location of the supplier and the place of supply are in the same State:

PROVIDED that the intra-State supply of goods shall not include:

(i) supply of goods to or by a SEZ developer or to or by an SEZ unit;

(ii) supply of goods brought into India in the course of import till they cross the customs frontiers of India.

(2) Subject to the provisions of section 9, intra-State supply of services means any supply of services where the location of the supplier and the place of supply are in the same State:

PROVIDED that the intra-State supply of services shall not include supply of services to or by a SEZ developer or to or by an SEZ unit.

4.1 Introduction

This section provides for determination of when a supply of goods and / or services will be a supply in the course of intra-State trade or commerce.

4.2 Analysis:

(a) Although this Section is a part of the IGST Act, it is essential in determining the liability under CGST/ SGST Act, as it deals with intra-State supply.

(b) The term 'intra-State' would mean within the State.

(c) This Section is subservient to the Sections 7 and 9 of the IGST Act, which deal with provisions for determining the place of supply of goods and/or services.

(d) While sub-section (1) deals with goods, sub-section (2) deals with services.

(e) In respect of 'goods', a supply would be considered as effected in the course of intra-State trade or commerce if the location of the supplier and the place of supply as determined under Section 7 are in the same State.

Note: Please refer to the discussion and illustrations given in Chapter IV, in the context of Sections 7 and 8.

(f) Similarly, in respect of 'services', a supply would be considered as effected in the course of intra-State trade or commerce if the location of the supplier and the place of supply as determined under Section 9 are in the same State.

Note: Please refer to the discussion and illustrations given in Chapter IV, in the context of Sections 9 and 10.

(g) Intra-State supplies to or from a unit in SEZ or an SEZ developer would not be treated as intra-State supplies. (viz., in case a region qualifies as an SEZ, although the location of the supplier and the place of supply are within the same State, if either of the two are in such SEZ, the supply will not be treated as an intra-State supply; rather, it would be treated as if it were an inter-State supply.)

Section 4 of IGST Act, 2016 – Principles to determine a supply as an intra-State Supply

Determination of supply of goods and/ or services as Intra-State supply

- **CRITICAL factors: Where the below 2 are in the SAME STATE**
  - a) Location of the supplier and
  - b) Place of supply determined u/s 7,8, 9 or 10 of IGST Act
- **Specific EXCLUSIONS:**
  - Supplies to or by a SEZ developer/ SEZ unit;
  - Importation of goods till they cross the customs frontiers of India.

Illustrations

Supply	Supplier	Place of Supply	Result
Goods	Karnataka	Tamil Nadu	Inter-State (IGST)
Services	Pondicherry	Kerala	Inter-State (IGST)
Goods	Chandigarh*	Chandigarh*	Inter-State (IGST)
Services	Chandigarh*	Punjab	Inter-State (IGST)
Goods	Punjab	Chandigarh*	Inter-State (IGST)
Goods	Delhi	Delhi	Intra-State (CGST/SGST)
Services	Rajasthan	Rajasthan	Intra-State (CGST/SGST)

Note: Chandigarh is a UT without Legislature;

Explanation to Section 2(2) provides that the term "State" includes a UT with Legislature (Of the 7 UTs, Delhi and Pondicherry are the only 2 UTs with Legislature)

4.3 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. Section 4 has to be read alongside Sections 7 and 9 and whenever a conflict arises between the said provisions, Section 4 has to make way for Section 7/9, which is signified by usage of the words "subject to the provisions of Sections 7/9".

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.

4.4 Related provisions

Statute	Section	Description
IGST	Section 3	Meaning of inter-State supplies
IGST	Section 5	Levy and collection of IGST
CGST	Section 8	Levy and collection of CGST / SGST

4.5 MCQs

Q1. A supply would be considered as intra-State trade or commerce _____

(a) if the location of the supplier and location of the recipient are in different States

(b) if the location of the supplier and place of supply are in same State

(c) if the location of the supplier and usage of the goods or services are in different States

(d) if the location of the supplier and recipient are in same State.

Ans. (b) if the location of the supplier and place of supply are in same State

Chapter III
Levy and Collection of Tax

5. Levy and collection of Integrated Goods and Services tax

Statutory provision

(1) There shall be levied a tax called the Integrated Goods and Services Tax on all supplies of goods and/or services made in the course of inter-State trade or commerce on the value determined under section 15 of CGST Act, 2016 and at such rates as may be notified by the Central Government in this behalf, but not exceeding twenty eight percent, on the recommendation of Council and collected in such manner as may be prescribed and shall be paid by every taxable person in accordance with the provisions of this Act.

PROVIDED that the Integrated Goods and Services 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 (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 as determined under the first mentioned Act.

(2) The Central Government may, on recommendation of the Council, by notification, specify categories of supply of goods and/or services the tax on which is payable on reverse charge basis and the tax thereon shall be paid by the recipient of such goods and/or services 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 and/or services.

(3) The Central Government may, on the recommendation of the Council, by notification, specify categories of services the tax on 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 person 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.

Explanation1: For the purposes of this Act, -

(i) an establishment of a person in India and any of his other establishments outside India, or

(ii) an establishment of a person in a State and any of his other establishments outside that State, 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.

5.1 Introduction

This is the charging provision of the IGST Act. It provides that all inter-State supplies would be liable to IGST. The provisions of this section are comparable to the provisions under Section 8 (Levy) of the CGST Act.

The levy of tax on supply of goods and / or services is in two parts - (i) in the hands of the supplier and (ii) in the hands of the recipient of goods / services under reverse charge mechanism.

5.2 Analysis

In terms of Section 2(30) 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.

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 3 of this Act. However, the meaning of 'supply' and 'taxable person' should be borrowed from the CGST Act.

Levy of tax: Every inter-State supply will be liable to tax, if:

(i) Supply should involve goods and / or services – viz., 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) The supply is an inter-State supply – viz. ordinarily, the location of the supplier and the place of supply is in different States. (Refer Section 3 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 10 read with Schedule V of the CGST Act.

Supply: Refer discussion under Section 8 of 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 a 'taxable person': The tax shall be payable by a 'taxable person' as defined under Section 10 read with Schedule V 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 Section 10 of the CGST Act for a thorough understanding of this concept.

Tax payable: Every inter-State supply falling under Section 3 of the IGST Act will attract IGST.

Rate and value of tax: The rate of tax will be notified separately, but shall not exceed 28%, 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 8 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.

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 supplier of such goods and / or services – viz., for the limited purpose of such transactions, the recipient would be deemed to be the 'supplier'.

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:

- Market-place – the question of supply by the e-commerce operator does not arise. For this reason, they are liable for TCS under section 56.
- 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.
- 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.
- Agency – this is employed by few business involving supply of industrial inputs. The *modus operandii* 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.

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 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'. Eg: 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.

5.4 Related provisions

Statute	Section	Description
IGST	Section 3	Meaning of inter-State supplies
CGST	Section 8	Levy and collection of CGST /SGST
CGST	Section 3 read with Schedule I II, III and IV	Definition of 'supply'
CGST	Section 10 read with Schedule V	Meaning of 'taxable person'

5.5 FAQ

Q1. Will sale of business as a whole be liable to tax?

Ans. Yes, Schedule II specifies the limited number of instances when it will not be taxable. As such all other instances will attract the levy of tax.

Q2. Is the reverse charge mechanism applicable only to services?

Ans. No, Section 8(3) of the CGST Law 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 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 there articles are being cleared up and not necessarily as the main object of the business)

Q7. What are activities which the Government or local authority undertake as public authorities?

Ans. Refer Schedule-IV (there are other activities too but the activities listed in schedule IV which may meet the requirements of levy of tax but are specifically excluded)

Q8. 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.

Q9. Will sale of immovable property be liable to tax?

Ans. No, although services is defined in a broad manner, immovable property is expected to be excluded in a suitable manner. GST does not subsume stamp duty and therefore transactions involving immovable property

Q10. 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)

Q11. Will an Insurance company be a taxable person for sale of repossessed goods?

Ans. Yes (all though not the principal source of income, sale of repossessed goods is key aspect of insurance business)

Q12. Will a "not for profit entity" be liable to tax on any sales effected by it – eg: 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).

6. Power to grant exemption from tax

Statutory provision

(1) Any exemption granted by the Central Government on the recommendation of the Council, under section 11 of the CGST Act in respect of intra-State supply of goods and/or services of any specified description, shall apply *mutatis mutandis* to inter-State supply of goods and/or services of the said description unless specifically provided otherwise.

(2) If the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, inter-State supply of goods and/or services of any specified description from the whole or any part of the tax leviable thereon.

Explanation: Where an exemption in respect of any goods and/or services from the whole of the tax leviable thereon has been granted absolutely, the taxable person providing such goods and/or services shall not pay the tax on such goods and/or services.

(3) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council, by special order in each case, exempt from payment of tax, under circumstances of an exceptional nature to be stated in such order, any goods and/or services on which tax is leviable.

(4) 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.

(5) Every notification issued under sub-section (1) or sub-section (3) and every order issued under sub-section (2) shall

(a) come into force on the date of its issue by the Central Government for publication in the Official Gazette or from any date subsequent to the date of its issue as may be specified therein; and

(b) be made available on the official website of the department of the Central Government.

6.1 Introduction

This provision states that the exemptions granted under Section 11 of the CGST Law will equally apply for inter-State supplies as well. Additionally, it provides that the Central Government may also grant separate exemptions for inter-State supply of goods and / or services.

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 water. A conditional exemption could be supply of goods to canteen stores department.

Exemption by way of special order is where the exemption is issued for a specific purpose. E.g: it is well known that one sports personality of India was awarded a car by an international car brand and when this car reached India, an exemption by way of special order was issued to exempt payment of import duty. This is because the car brand had recognized the contribution made by this person to world sport and recognized his contribution to sportsmanship.

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 abates 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 (3), 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.

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 and / or services 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.

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

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
Place of Supply of Goods and Services

7. Place of supply of goods other than supply of goods imported into, or exported from India

Statutory Provisions

(1) The provisions of this section shall apply to determine the place of supply of goods other than supply of goods imported into, or exported from India.

(2) Where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

(3) 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.

(4) 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.

(5) Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

(6) Where the goods are supplied on board a conveyance, such as 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.

(7) Where the place of supply of goods cannot be determined in terms of sub-section (2), (3), (4), (5) or (6), the same shall be determined in a manner prescribed by the Central Government on the recommendation of the Council.

7.1 Analysis

Place of supply is an important ingredient so that the type of tax that is to be applied may be correctly determined. 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 is to be applied. And when they are in the same State, then it will be an intra-State supply and CGST-SGST is to be applied. 'Place of supply' is not a phrase of common understanding, it is a legal term and as in all such cases, their common understanding must not be applied and the meaning assigned in the law prevails. Place of supply, as in the case of 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.

(a) Place of Supply – Supplies within India

Place of supply of goods where the supplier and the recipient are both located within India (other than SEZs) will be determined in accordance with section 7 of the IGST Act. The phrase 'location of supplier of goods' has not been defined in the IGST Act and this must be 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;
- 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.

Particulars	Location of supplier (location of goods ready for supply)	Termination of movement for delivery	'Place of supply'
Movement of goods by the supplier / recipient / or any other person	Orissa	West Bengal	IGST - West Bengal
	Orissa	Orissa	IGST will not apply; CGST / SGST Act will apply
	West Bengal	Assam	IGST - Assam

Illustration 1:

When mobile phones are purchased in a showroom, the supply is complete in the showroom itself by delivery to the customer. In this scenario, the transaction will be an intra-State sale and will therefore be governed by the CGST-SGST Act.

Illustration 2:

Ready-mix concrete supplied to a contractor is required to be delivered in a special vehicle – transit mixer – which the supplier owns and operates. Though it is necessary that the goods are delivered by the supplier himself, since movement of goods is required in this case, the site of discharge would be the place where the movement 'terminates'. Accordingly, it is liable to IGST if the site of discharge is in another State.

(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 will be the principal place of business of such third party and not of the 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 of the third party to issue instructions to the supplier regarding its delivery. Even though the definition in section 2(81) 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.

(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 by 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.

Illustration:

Location of the supplier (regd. office of supplier)	**Location of the recipient (regd. office of the customer)**	**Location of goods**	**'Place of supply'**
Delhi	Gujarat	Uttar Pradesh	Uttar Pradesh – CGST / SGST Act
Gujarat	Delhi	Bihar	Bihar– CGST / SGST Act

(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 there are two supplies in this case too – supply from the place of their origin to the site 'for' assembly or installation and then the supply to the recipient by virtue of such assembly or installation. This provision appoints the place of supply only in respect of the second limb of supply and not the first. The first limb would be determined by the earlier provisions of this section and not entirely under this sub-section. Further, it is important to note that in the case of assembly or installation, this is a supply that is not 'works contract' (as understood under the VAT law). This is because works contracts, in GST, are treated as supply of service and the provisions of this section cannot apply to works contracts.

Particulars	Location of the supplier (goods taken on board)	Journey	Place of supply
Where the goods are supplied on board a conveyance	Delhi	Delhi to Hyderabad	Delhi

(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 provided for by the earlier sub-section here.

Illustration:

When three parties are involved in respect of a single transaction of supply, the law introduces a fiction to determine the place of supply. This situation can be visualized in the following manner i.e., there is a supplier, a buyer who is not the recipient of goods (referred as 'third person' in the sub-Section 3 to Section 7) and the recipient who actually receives the goods on the directions of the buyer.

In the above scenario, although the recipient (not being a buyer) receives the goods on the direction of a third person (being the buyer or his agent), the GST law subjects such transactions to tax either under the IGST or CGST / SGST laws by way of a fiction. This fiction envisages that the transaction of supply is completed at the instance of the third person directing the supplier to deliver the goods to the actual recipient of goods and determines the place of supply to be the principal place of business (as defined u/s 2(77) of the CGST/ SGST Act, 2016) of the said third person (buyer):

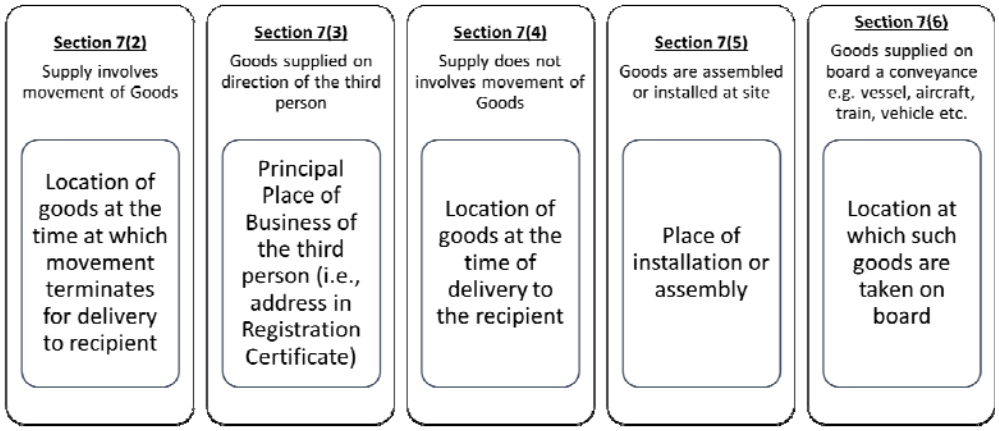
- *If the documents of title to the goods are transferred before the movement of goods to any person; or*
- *If the documents of title to the goods are transferred during movement of goods to any person*

This situation can be better understood by the following examples:

Location of the supplier	Location of the third party (buyer)	Place of delivery of goods (recipient)	'Place of supply' *
Bangalore IGST →	Chennai →	Hyderabad	Tamil Nadu
Bangalore IGST →	Chennai →	Bangalore	Tamil Nadu
Bangalore IGST →	Chennai →	Chennai	Tamil Nadu
Bangalore CGST →	Bangalore →	Hyderabad	Karnataka

* The place of supply specified supra determines the incidence of taxability w.r.t the transaction between the supplier and the third person. The transaction between such third person and the actual recipient of goods needs to be separately examined as to its place of supply (under this Section).

Sec 7 IGST-Place of Supply of Goods – (other than goods imported/ exported) Pictorial Presentation in a summarised form are as follows :



Where none of the above rules apply, place of supply would be determined in the manner to be prescribed

8. Place of supply of goods imported into, or exported from India

Statutory Provisions

(1) The place of supply of goods imported into India shall be the location of the importer.

(2) The place of supply of goods exported from India shall be the location outside India.

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 of 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. 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. It is understood that the Government may be evaluating ways to impose tax on high sea sales. Re-import of exported 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.

9. Place of supply *of services where the location of supplier of service and the location of the recipient of service is in India

Statutory Provisions

(1) The provisions of this section shall apply to determine the place of supply of services where the location of supplier of service and the location of the recipient of service is in India.

(2) The place of supply of services, except the services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15), made to a registered person shall be the location of such person.

(3) The place of supply of services, except the services specified in subsections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15), made to any person other than a registered person shall be

(a) the location of the recipient where the address on record exists, and

(b) the location of the supplier of services in other cases.

(4) 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, homestay, 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 therewith, 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 clause (a), (b) and (c), shall be the location at which the immovable property or boat or vessel 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, the supply of service shall be treated as made in each of the States 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 reasonable basis as may be prescribed in this behalf.

(5) 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.

(6) 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.

(7) The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, or 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.

(8) 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 service in relation to a conference, fair, exhibition, celebration or similar events, or

(b) services ancillary to organization of any of the above events or services, or assigning of sponsorship of any of the above events, to

(i) a registered person, shall be the location of such person;

(ii) a person other than a registered person, shall be the place where the event is actually held:

PROVIDED that 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 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 the each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(9) 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.

(10) 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 the manner specified in sub-sections (2) or (3), as the case may be.

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.

(11) The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

(12) 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 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 prepayment through a voucher or any other means,

(i) through selling agent or a re-seller or a distributor of SIM card or re-charge voucher, shall be 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 shall be the location where such pre-payment is received or such vouchers are sold;

(d) in other cases not covered in (b) and (c) above, shall be the address of the recipient as per records of the supplier of the service:

PROVIDED that where address of the recipient as per records of the supplier of service is not available, the place of supply shall be location of the supplier of service:

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 record of the supplier of services shall be the place of supply of such service.

Explanation: Where the leased circuit is installed in more than one State 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 States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(13) 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 the recipient of services is not on the records of the supplier, the place of supply shall be location of the supplier of services.

(14) 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.

(15) The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for identifiable States, shall be taken as located in each of such States and the value of such supplies specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States 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 reasonable basis as may be prescribed in this behalf.

9.1 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 9 of the IGST Act.

(i) General provision regarding place of supply will be as follows:

- Services supplied to a recipient who is registered, will be the location of such person
- Services supplied to a recipient who is not registered, will be the address-on-record of such person and where such address is not available, 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

- 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 come within the scope of this provision. E.g: Personal grooming can include facial, pedicure, colouring, etc. here a number of individual activities are included in the service described as a collective noun.
- 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'.

  E.g: Staff of a CA firm are sent for training, the recipient of the services here is the CA firm and not the staff all though the staff improve their skills from this training.
- 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 receiver 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 in mind and recollected that identifying the place of supply is for the purposes of determining whether it is an inter-State supply or an intra-State supply. After much resistance to let go of the experience from current tax

laws, it would dawn upon each 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) States only instead of multi-State registration that may be necessitated under current tax laws. E.g: a company who has property let-out in many States need not be registered in each State but remain registered in the home State and effect IGST supply of renting of properties located in all other States.

Summary: Place of supply of services where location of supplier of service and location of the recipient of service is in India

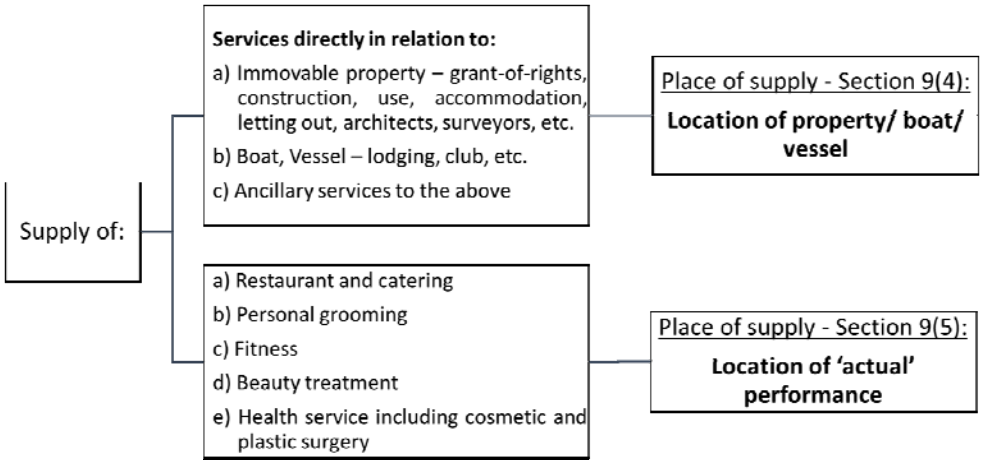
Categories	Place of supply
General Rule – Business to Business ("B2B") and Business to Consumer ("B2C")	B2B supplies: location of recipient B2C supplies: location of recipient where address on record exists, If not, then the location of supplier of services
Further, specific provisions for identified situations & different treatment for certain B2B and B2C transactions of specified services has also been provided in respect of the following specified services:	
Services directly related to immovable property	▪ Location of immovable property Where property/boat/vessel located in more than one State → proportionate allocation amongst States as per the contract or on reasonable basis Where location of the immovable property/boat/vessel is located or intended to be located outside India → Place of supply shall be the location of the recipient
Specific services such as supply of restaurant and catering services, health service etc.	▪ Place of actual performance
Services in relation to training and performance appraisal	B2B supply: location of recipient B2C supply: place of performance
Admission to a cultural, artistic, sporting etc., events, amusement parks etc. and services ancillary thereto	Place where event held or where the park/ other place is located

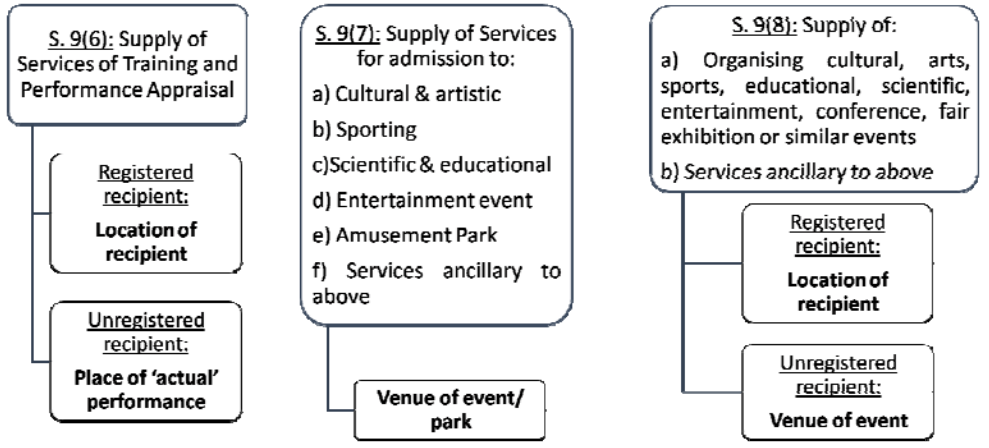
Organization of event and services in relation to such event and ancillary services or assigning of sponsorship	B2B supply: location of recipient B2C supply: where event is held Where the event is held in more than one state and a consolidated amount is charged →Proportionate value of services to be considered Where event is held outside India → Place of supply shall be the location of the recipient
Goods transportation services	B2B supply: location of recipient B2C supply: location at which such goods are handed over for their transportation
Passenger transportation services	B2B supply: location of recipient B2C supply: Place where the passenger embarks on the conveyance for a continuous journey
Services on board a conveyance such as vessel, aircraft, train or motor vehicle	Location of the first scheduled point of departure of that conveyance for the journey
Telecommunication services including data transfer, broadcasting, cable and DTH services	Fixed line/ leased circuit, internet based circuit, cable or dish antenna → Place of installation of the fixed line/leased circuit etc. Mobile connection and internet services – Post-paid→ Billing address of the recipient on record of the supplier Mobile connection, internet services, DTH – Pre paid (through physical voucher etc.)→ ▪ Through selling agent/re-seller/distributor: address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply ▪ By any person to the final subscriber: location where such pre-payment is received or such vouchers are sold In any other case →Address of the recipient as per record of the supplier Where address of the recipient as per records of the supplier is not available → Place of supply shall be location of the supplier of service Where pre-paid service is availed or recharge is made

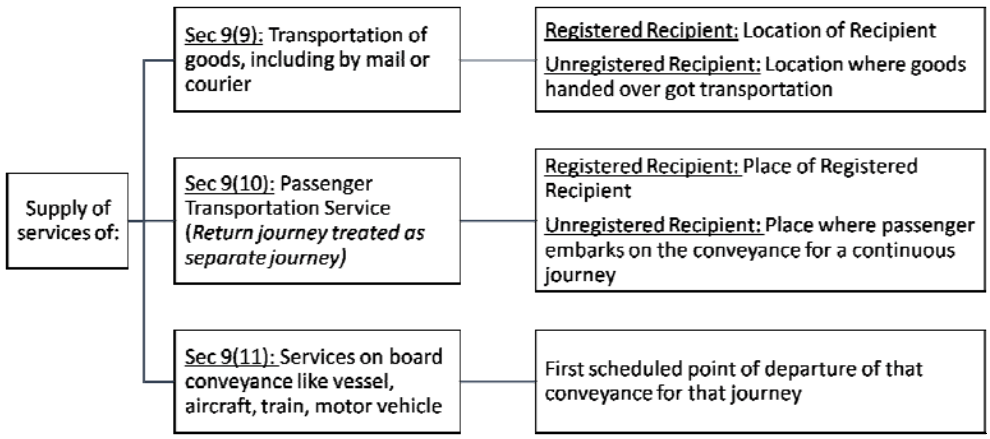
	through electronic mode → Place of supply shall be location of the recipient as per record of the supplier Where the leased circuit is installed in more than one State and a consolidated amount is charged →proportionate allocation amongst States as per the contract or on reasonable basis
Similarly, separate provisions have been provided for the following: • Banking and other financial services • Insurance services • Advertisement services to the Central Government, a State Government, a statutory body or a local authority	

The analysis of above provisions in a pictorial form are summarised as follows:

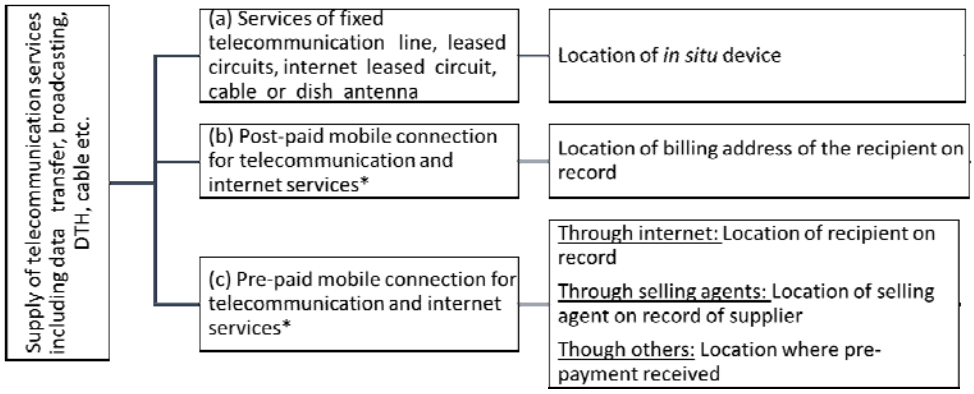
Place of Supply Services — Sec 9 IGST (where supplier & recipient are in India)

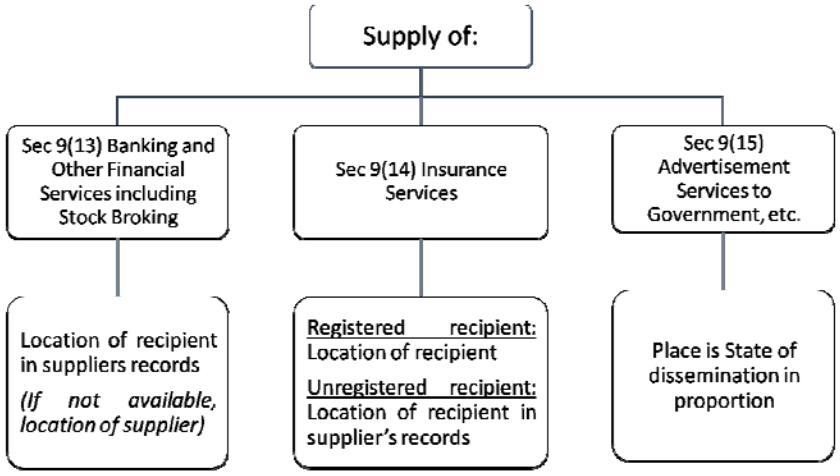


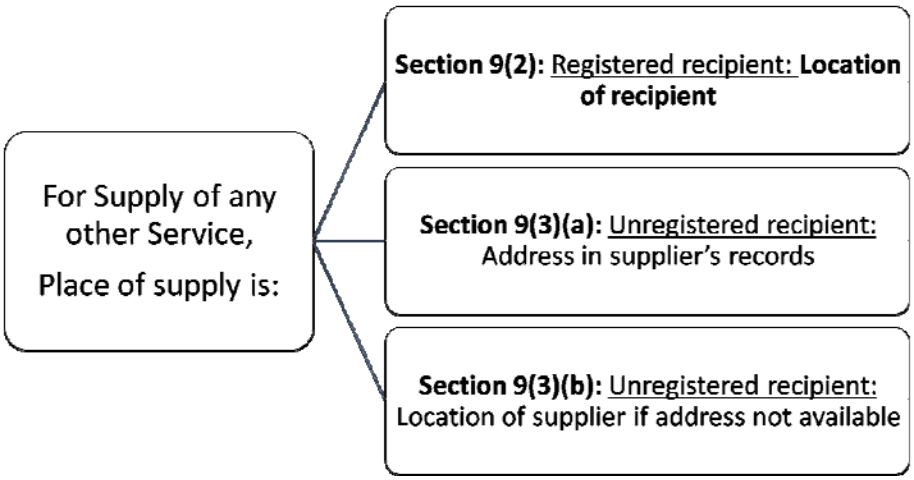

S. 9(6): Supply of Services of Training and Performance Appraisal
Registered recipient:
Location of recipient
Unregistered recipient:
Place of 'actual' performance
S. 9(7): Supply of Services for admission to:
a) Cultural & artistic
b) Sporting
c)Scientific & educational
d) Entertainment event
e) Amusement Park
f) Services ancillary to above
Venue of event/ park
S. 9(8): Supply of:
a) Organising cultural, arts, sports, educational, scientific, entertainment, conference, fair exhibition or similar events
b) Services ancillary to above
Registered recipient:
Location of recipient
Unregistered recipient:
Venue of event


Supply of services of:
Sec 9(9): Transportation of goods, including by mail or courier
Registered Recipient: Location of Recipient
Unregistered Recipient: Location where goods handed over got transportation
Sec 9(10): Passenger Transportation Service (Return journey treated as separate journey)
Registered Recipient: Place of Registered Recipient
Unregistered Recipient: Place where passenger embarks on the conveyance for a continuous journey
Sec 9(11): Services on board conveyance like vessel, aircraft, train, motor vehicle
First scheduled point of departure of that conveyance for that journey

Place of Supply Services — Sec 9(12) IGST (where supplier & recipient are in India)






For Supply of any other Service,
Place of supply is:
Section 9(2): Registered recipient: Location of recipient
Section 9(3)(a): Unregistered recipient: Address in supplier's records
Section 9(3)(b): Unregistered recipient: Location of supplier if address not available

10. Place of supply of services where the location of the supplier or the location of the recipient is outside India

Statutory Provisions

(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of service or the location of the recipient of service is outside India.

(2) The place of supply of services except the services specified in sub-sections (3), (4), (5), (6), (7), (8), (9), (10), (11), (12) and (13) shall be the location of the recipient of service: PROVIDED that in case the location of the recipient of service is not available in the ordinary course of business, the place of supply shall be the location of the supplier of service.

(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 that are required to be made physically available by the recipient of service to the supplier of service, or to a person acting on behalf of the supplier of service in order to provide the service:

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 service:

PROVIDED FURTHER that this clause shall not apply in the case of a service supplied in respect of goods that are temporarily imported into India for repairs and are exported after repairs without being put to any use in India, other than that which is required for such repairs;

(b) services supplied to an individual, represented either as the recipient of service or a person acting on behalf of the recipient, which require the physical presence of the receiver or the person acting on behalf of the recipient, with the supplier for the supply of the service.

(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 hotel 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 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, shall be the place where the event is actually held.

(6) Where any service referred to in sub-sections (3), (4), or (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 where the greatest proportion of the service is provided.

(7) Where the services referred to in sub-sections (3), (4), (5) or (6) are supplied in more than one State, the place of supply of such services shall be taken as being in each of the States in proportion to the value of services so provided in each State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

(8) The place of supply of following services shall be the location of the supplier of service: -

(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 other than aircrafts and vessels except yachts, upto a period of one month.

Explanation. - For the purpose of this section, the expression "goods" shall include 'securities' as defined in sub-section (90) of section 2 of the CGST Act, 2016.

(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 the goods.

(10) The place of supply in respect of a passenger transportation service shall be the place where the passenger embarks on the conveyance for a continuous journey.

(11) 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) (a) The place of supply of the "online information and database access or retrieval services" services shall be location of recipient of service.

(b) 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: -

(i) the location of address presented by the recipient of service via internet is in taxable territory;

(ii) 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 service settles payment has been issued in the taxable territory;

(iii) the billing address of recipient of service is in the taxable territory;

(iv) the internet protocol address of the device used by the recipient of service is in the taxable territory;

(v) the bank of recipient of service in which the account used for payment is maintained is in the taxable territory;

(vi) the country code of the subscriber identity module (SIM) card used by the recipient of service is of taxable territory;

(vii) the location of the fixed land line through which the service is received by the recipient is in 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 Central Government shall have the power to notify any description of service or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

10.1 Analysis

Place of supply of services where either the supplier or the recipient are located outside India will be determined in accordance with section 10 of the IGST Act. In other words, this provision applies for the determination of export of services as well as for import of services.

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 ambiguous, but that is the correct approach because location of recipient outside India and payment in foreign currency are crude tests that GST does not appreciate. In this

2(6) "export of services" means the supply of any service when

(a) the supplier of service is located in India,

(b) the recipient of service is located outside India,

(c) the place of supply of service is outside India,

(d) the payment for such service has been received by the supplier of service in convertible foreign exchange, and

(e) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 5;

2(11) "import of service" means the supply of any service, where (a) the supplier of service is located outside India, (b) the recipient of service is located in India, and (c) the place of supply of service is in India

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(81) 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 or '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 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. Further, rule of proportion is to be applied in case the services are carried out in different States
- 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. Such recipient will be considered as situated in taxable territory if two 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, the Central Government is empowered to notify the place of supply with respect to service of any specific description.

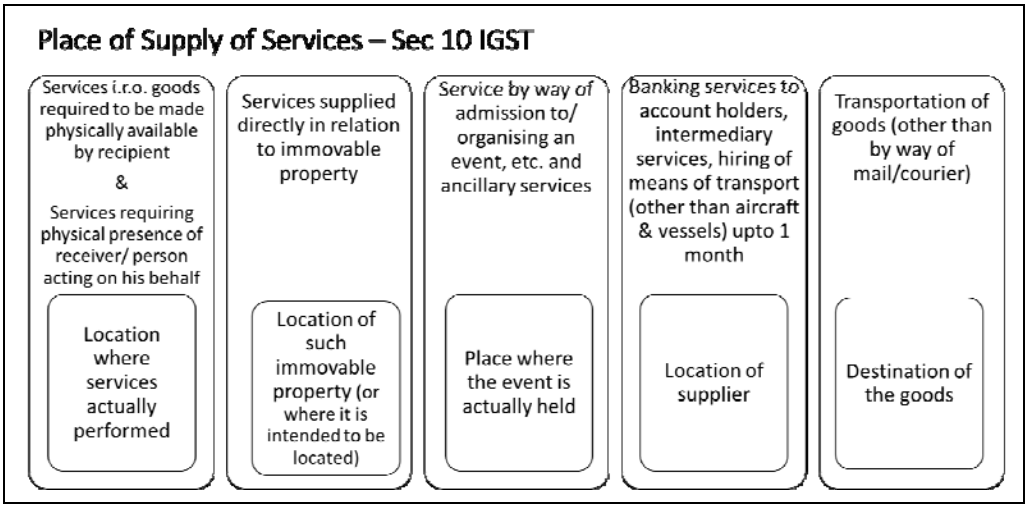
Principles of place of supply of services when the location of supplier or the location of recipient is outside India, has been drawn on similar pattern as existing in the Place of

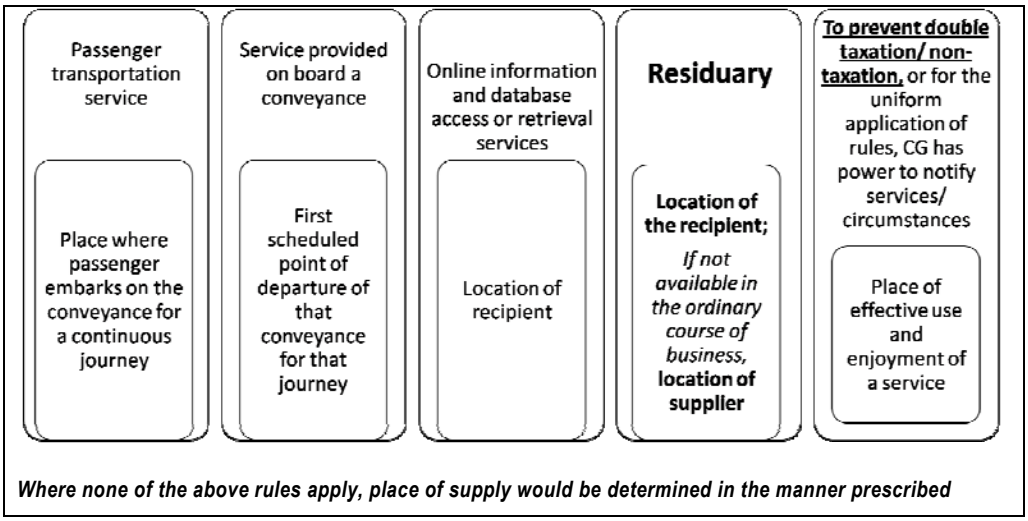
Provision of Services Rules, 2012 ("POPS") for determining export/import of services from India/into India, with new inclusion of provision in case of 'online information and database access or retrieval ("OIDAR") services, wherein place of supply shall be the location of recipient.

It is further provided that in order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

The place of supply principles have been expanded to provide separate set of principles for import/export transactions. Place of supply provisions for services are drawn on similar line as the existing POPS with certain modifications.

The analysis of above provisions in a pictorial form are summarized as follows:




Passenger transportation service
Place where passenger embarks on the conveyance for a continuous journey
Service provided on board a conveyance
First scheduled point of departure of that conveyance for that journey
Online information and database access or retrieval services
Location of recipient
Residuary
Location of the recipient;
If not available in the ordinary course of business, location of supplier
To prevent double taxation/ non-taxation, or for the uniform application of rules, CG has power to notify services/ circumstances
Place of effective use and enjoyment of a service
Where none of the above rules apply, place of supply would be determined in the manner prescribed

Chapter V
Payment of Tax

11. Payment of Tax, Interest, penalty and other amounts

Statutory Provision

(1) Every deposit made towards tax, interest, penalty, fee or any other amount by a taxable person by internet banking or by using credit/debit cards or National

Electronic Fund Transfer or Real Time Gross Settlement or by any other mode, subject to such conditions and restrictions as may be prescribed in this behalf, shall be credited to the electronic cash ledger of such person to be maintained in the manner as may be prescribed.

Explanation: The date of credit to the account of the appropriate Government in the authorized bank shall be deemed to be the date of deposit in the electronic cash ledger.

(2) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger, in accordance with section 36 of the CGST Act, 2016 to be maintained in the 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 there under 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 payable under the provisions of the Act or the rules made there under in such manner and subject to such conditions and within such time as may be prescribed.

(5) (a) The amount of input tax credit on account of IGST available in the electronic credit ledger shall first be utilized towards payment of IGST and the amount remaining, if any, may be utilized towards the payment of CGST and SGST, in that order

(b) The amount of input tax credit on account of CGST available in the electronic credit ledger shall first be utilized towards payment of CGST and the amount remaining, if any, may be utilized towards the payment of IGST.

(c) The amount of input tax credit on account of SGST available in the electronic credit ledger shall first be utilized towards payment of SGST and the amount remaining, if any, may be utilized towards the payment of IGST.

(6) The balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount payable under the Act or the rules made there under maybe refunded in accordance with the provisions of Section 48 of the CGST Act,2016 and the amount collected as IGST shall stand reduced to that extent.

(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 there under in the following order:

(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 the current tax period;

(c) any other amount payable under the Act or the rules made there under including the demand determined under Section 66 and 67 of the CGST Act, 2016.

(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 and/or services.

Explanation: For the purposes of this section, the expression "tax dues" means the tax payable under this Act and does not include interest, fee and penalty.

11.1 Introduction

GST regime is proposed to be a self-assessment regime, where payment of tax including interest, penalty and any other amounts play pivotal role. In addition to determining the levy, place/time of supply, it is also important to make timely payment of the taxes.

Payment of tax is required as a matter of compliance and in addition it is important to understand that the customer of the tax payer shall not be eligible to take the credit in his electronic credit ledger until the payment is made by the supplier of goods and/or services to the credit of the Government.

The mode of payment of IGST could be under the following methods:

— Payment through electronic cash ledger

— Payment through electronic credit ledger

For ease of payment and compliance, and to ensure transparency, responsiveness and simplicity to the taxable person and for the tax administration, payment system under GST has been developed based on Information Technology Platform which can handle both receipt and payment process.

11.2 Analysis

(a) Payment through electronic cash ledger

Every deposit into electronic cash ledger can be made through the following modes.

— Internet banking

— Debit/credit cards

— National Electronic Fund Transfer (NEFT)

— Real time Gross Settlement (RTGS)

— Or any other mode, subject to prescribed conditions and restrictions, in the manner as may be prescribed.

1. The date of credit to the account of the appropriate Government in the authorized bank is the date of deposit in electronic cash ledger.

2. The amount available in the electronic cash ledger may be used for making the payments as under:

— Payment of tax

— Interest

— Penalty

— Fees

— Or any other amount payable under the provisions of the Act or the Rules.

3. Balance in the electronic cash or credit ledger can be claimed as refund in accordance with the provisions of Section 48 of CGST Act,2016 and correspondingly the amount collected as IGST should be reduced to that extent.

(b) Payment through Electronic Credit Ledger

(i) Input Tax Credit would be credited to the Electronic Credit Ledger. Balance in Electronic Credit Ledger can only be utilized towards making payment of tax but not for making payment of interest, fee & penalties.

(ii) The Electronic Credit Ledger shall be maintained in the manner to be prescribed. 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 change basis

The above list is illustrative and not exhaustive.

(iii) 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

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 and vice versa.

(iv) If any amount of IGST is wrongly paid on any transaction considering it as an inter-State supply but subsequently realizes that the transaction is an intra-State supply, then in such case after making payment of CGST and SGST to the Appropriate Government, refund of IGST can be claimed.

A. TAX LIABILITY LEDGER:

Tax Liability Ledger is required to be maintained electronically for all liabilities of a taxable person. This ledger may include the following amounts (illustrative and not exhaustive)

1. The amount of liability based on self-assessment of returns.
2. Liability arising out of any demand notice or adjudication proceedings requiring payment of tax or penalty or reversal of ITC or interest.
3. Liability arising out of compounding proceedings.
4. The available credit utilized as against the available amounts in the cash register or the credit register.

Order of discharge of tax and other dues

Sub-section (8) prescribes the chronological order in which the liability of a taxable person has to be discharged:

1. Self-assessed tax and other dues arising out of returns for previous tax periods have to 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).

(v) For a detailed discussion on payment of tax one may also refer to the BGM to Section 44 of the CGST / SGST Acts.

(vi) Every person paying tax on goods/services under this Act shall be considered to have passed the full incidence of tax to the recipient of such goods/services unless he proves with necessary documents otherwise.

11.3 Comparative Review

Payment of tax is part and parcel of Acts, which has been subsumed under GST laws.

However, there are some provisions, which deviate or differ from the present practice of payment of taxes.

- The various modes of payment as provided under Rule 6(1A), Rule 6 (3) and Rule 6 (4A) of the Service Tax Rules, 1994 is not found in the GST law For instance, adjustment of excess payment of service tax or adjustment of service tax on account of change in contract or agreement (Rule 6(3) of STR 1994) is available under service tax law, whereas, similar sort of adjustment has not been specified under the IGST law. Though the business process relating to refund specifies for adjustment of excess payment, there is no specific provision in GST Model law 2016.
- Further, under service tax laws, if there is no payment of service tax on input service within 3 months, credit reversal is required. However, there are no such conditions for credit on inputs, capital goods. Even under Central Excise, credit can be availed on receipt of invoice subject to possession of goods and invoice, but under IGST invariably it requires payment of tax to avail credit, otherwise credit would not be available.
- Further, either under Central Excise or Service Tax, there is no specific provision or procedure dealing with failure of payments made through electronic mode. However, under GST laws such transactions would be taken care by GSTN using the Banking system.

11.4 Related Provisions

Statute	Section	Description
IGST	Section 5	Levy and collection of IGST
CGST	Section 2(40)	Definition of 'electronic cash ledger'
CGST	Section 2(43)	Definition of 'electronic credit ledger'
CGST	Section 2(96)	Definition of 'tax'
CGST	Section 44	Payment of tax
CGST	Section 48 and 49	Refund of tax
CGST	Section 50	Interest on delayed refunds

11.5 FAQs

Q1. Whether Input Tax Credit would be available only on payment?

Ans. Yes, under GST, credit would be available only on making payment of taxes. Otherwise, credit would be not be available.

Q2. What if a transaction fails while making payment under e-mode?

Ans. GSTIN using a re-ping system with bank obtains a response on payment from the authorized bank and checks the status of transaction. In a scenario, where the payment transaction is successful, but connection drops before it comes back to GSTN portal, the re-ping facility will help in finding the status of such transactions. After receiving the

status from Bank regarding successful completion of transaction, a copy of challan with requisite information will be provided to taxpayer.

Q3. Can an unregistered person make payment using GSTIN?

Ans. Yes. An unregistered person on behalf of taxpayer can make a payment as per the direction of tax authority using the GSTIN. In this method, GSTIN would provide for a validation check (like CAPTCHA) so that a challan can be created by a person and not by a machine.

Q4. Can the taxes be paid using Credit Card?

Ans. Yes, payment through credit card is possible. Under GST, tax payer need to pre-register his credit card from which the tax payment is intended to be made with the GSTN system.

Q5. Whether Cross utilization of input tax credit between CGST and SGST is available?

Ans. No. The input tax credit on account of SGST shall not be utilized towards payment of CGST and vice versa.

Q6. What are the various modes of payment of tax, interest, penalty, fees etc.?

Ans. The payment of tax, interest, penalty, fees or any other amount can be made through internet banking, debit/credit cards, National Electronic Fund Transfer (NEFT), Real Time Gross Settlement (RTGS) or by any other mode.

Q7. What are the other modes of payment available other than internet banking, credit/debit card or NEFT or RTGS?

Ans. As per Business process on payment issued by Joint Committee on Business Process for GST, every tax payer (only for paying tax upto ₹ 10,000/-) can avail the facility of over the counter facility and make payment through cheque or DD or cash payment.

Q8. Whether payment of taxes in instalment is possible?

Ans. Yes, by making an application to Commissioner/ Chief Commissioner he may make payment of any amount due under the Act other than the tax liability self-assessed in any return, can make payments in instalments subject to such conditions as may be prescribed.

11.6 MCQs:

Q1. When Input credit can be availed?

(a) On receipt of invoice

(b) On payment

(c) On supply of good/services

(d) After accounting in books of accounts

Ans. (b) On payment

Q2. As per Business process on payment issued by Joint Committee on Business Process for GST, payment of taxes through cheque should be made if the amount is

(a) More than ₹ 1 lakh

(b) More than ₹ 5 Lakhs

(c) Upto ₹ 10,000/-

(d) More than ₹ 10,000/-

Ans. (c) Upto ₹ 10,000/-

Q3. Input Credit of IGST can be utilized against payment of?

(a) IGST

(b) CGST

(c) SGST

(d) all the above

Ans. (d) all the above

Q4. Option of payment of taxes on instalment basis is available?

(a) Only if the amount is self-assessed

(b) On other than self-assessed amount

(c) No restriction

(d) Payment on instalment basis cannot be availed.

Ans. (b) On other than self-assessed amount

12. Special provision for payment of tax by a supplier of online information and database access or retrieval services located outside India to specified person in the taxable territory

Statutory provision

(1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by non-taxable online recipient the supplier of service located in a non-taxable territory shall be the person liable for paying IGST:

PROVIDED that in case the supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates provision of such service, shall be deemed to be receiving such services from the service provider in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies all 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 authorise the charge to the customer or take part in its charge i.e. intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-assesse online recipient and the supplier of such services;

(c) the intermediary involved in the supply does not authorise delivery;

(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the service provider.

(2) The supplier of online information and database access or retrieval services referred in sub-section (1) shall, for payment of IGST, take a single registration under a Simplified Registration Scheme as may be prescribed:

PROVIDED that any person located in taxable territory representing such supplier for any purpose in the taxable territory shall take a registration and pay IGST 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 IGST and such person shall be liable for paying IGST.

12.1 Introduction

The place of supply in case of online information and database access or retrieval services (international transactions) is the place where the recipient is located. Accordingly, in case of

supply of such services to business entity in taxable territory, tax will be paid by the receiver of such services.

In case of such services provided to non-business entity, a separate mechanism is created in section which provides for a special procedure to levy IGST on online information and database access or retrieval services which is provided by a supplier in non-taxable territory to specified person in the taxable territory. Thus, these services are essentially delivered over the electronic network or internet.

Meaning of online information and database access or retrieval services, Section 2(21)**:** 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**, -

(a) advertising on the internet;

(b) providing cloud services;

(c) provision of e-books, movie, music, software and other intangibles via telecommunication networks or internet;

(d) providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;

(e) online supplies of digital content (movies, television shows, music, etc.);

(f) digital data storage; and

(g) online gaming;

Meaning of "non-taxable online recipient", is given in **Section-2(20)-IGST Act to** mean –

(a) Government,

(b) a local authority,

(c) a governmental authority,

(d) an individual or any person not registered under section 23 of the CGST Act, 2016

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;

12.2. Analysis

1. This section provides for the mechanism of levy of IGST on online information and database access or retrieval services by person located in non-taxable territory received by a person located in the taxable territory.

2. It is provided that in cases where the online information and database access or retrieval services are supplied by a person located outside the taxable territory (India), and the recipient being a non-taxable online recipient, the supplier is liable to pay tax.

3. However, if such services are through an intermediary located in non-taxable territory, it is deemed that such intermediary receives services and further supplies to the non-taxable online recipient and such intermediary is made liable to pay IGST. However, the exception is created on satisfying all the conditions as set out below.

   (a) 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

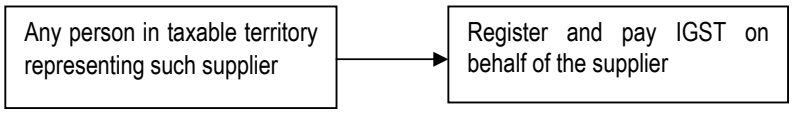
   (b) The intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-assesse online recipient and the supplier of such services;

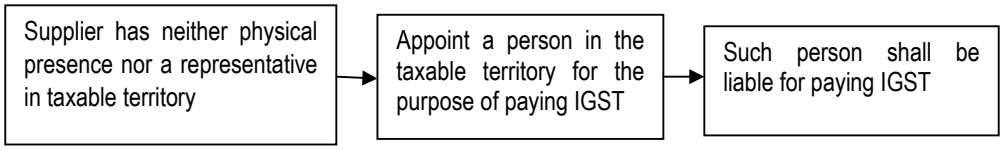
   (c) The intermediary involved in the supply does not authorise delivery;

   (d) The general terms and conditions of the supply are not set by the intermediary involved in the supply but by the service provider

4. This section permits a single registration under a Simplified Registration Scheme (yet to be provided) to be taken for the supplier of online information and database access or retrieval services.

5. Where a representative is liable for IGST:





12.3 Comparative review

In Service Tax present law similar provision was added w.e.f. 1st December 2016.

12.4 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 10(12a)-IGST Act:** The place of supply of the "online information and database access or retrieval services" services shall be location of recipient of service.

12.5 FAQs

Q1. Who would be liable to pay IGST, on supply of online information and data base access or retrieval services by any person located in a non-taxable territory and received by non-taxable online recipient?

Ans. The supplier of service located in non-taxable territory shall be the person liable for paying IGST.

Q2. What will be the implication if the intermediary located in non-taxable territory facilitates or arranges such online information and data base access or retrieval services of service provider located in non-taxable territory?

Ans. Such intermediary will be treated as supplier of such services to non-taxable online recipient. However, if such intermediary fulfils with all the 4 conditions set out the provision, intermediary will not be treated as supplier of services.

Q3. What if such supplier located in non-taxable territory does not have a physical presence or representative for any purpose in the taxable territory?

Ans. He may appoint a person in the taxable territory for the purpose of paying IGST and such person shall be liable for paying IGST.

12.6 MCQs

Q1. On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by non-taxable online recipient of the supplier of service located in non-taxable territory, shall be the person liable to pay

(a) CGST

(b) SGST

(c) IGST

(d) Not liable to pay

Ans. (c) IGST

Chapter VI
Input Tax Credit

13. Claim of input tax credit, provisional acceptance, matching, reversal and reclaim of input tax credit or reduction in output tax liability

Statutory Provision

(1) Every registered taxable person shall, subject to such conditions and restrictions as may be prescribed in this behalf, be entitled to take credit of input tax, as self assessed, in his return and such amount shall be credited, on a provisional basis, to his electronic credit ledger to be maintained in the manner as may be prescribed.

(2) The credit referred to in sub-section (1) shall be utilized only for payment of self-assessed output tax liability as per the return referred to in sub-section (1).

(3) The provisions of Section 37 and 38 of the CGST Act, 2016 relating to matching, reversal and reclaim of input tax credit shall apply *mutatis mutandis* to the matching, reversal and reclaim of input tax credit under this section.

13.1 Introduction

This section discusses about the claim of input tax credit**,** provisional acceptance, matching, reversal and reclaim of input tax credit or reduction in output tax liability by registered taxable person under IGST Act. This is similar to section 36, 37, 38 of the CGST Act.

13.2 Analysis

(a) Every registered taxable person shall be eligible to avail credit of self-assessed input tax in his return.

(b) Such amount shall be credited, on a provisional basis, to his electronic credit ledger maintained in the prescribed manner.

(c) Such credit shall be availed subject to conditions and restrictions to be prescribed.

(d) The provision relating to matching, reversal and re-claim of input tax credit under CGST Act shall also be applicable to the input tax credit under IGST.

(e) The credit shall be utilized only for payment of self-assessed output tax liability as per the return.

(f) Section 37 and 38 of the CGST Act, 2016 regarding the matching, reversal and reclaim of input tax credit shall apply to the matching, reversal and reclaim of input tax credit under this section.

One may refer to the BGM on section 36, 37 and 38 of the CGST Act for a detailed discussion.

13.3 Comparative review

Under CENVAT credit rules, the assessee is entitled to credit immediately on receipt of inputs into the factory of manufacturer and on receipt of invoice in case of input services. The credit to be availed in excise/service tax returns. The credit can be utilised for payment of excise duty on final products or service tax liability on output service.

In GST law, registered taxable person shall, avail credit of input tax in return and such amount shall be credited, provisionally to electronic credit ledger. The credit shall be utilized only for payment of self-assessed output tax liability as per the return.

13.4 Related provisions

Statute	Section	Description	Remarks
CGST	2(43)	Definition of Electronic credit ledger	The input tax credit ledger in electronic form maintained at the common portal for each registered taxable person in the manner as may be prescribed in this behalf. Input tax credit as self-assessed in return of taxable person shall be credited in electronic credit ledger, to be maintained in prescriber manner
CGST	36	Claim of input tax credit and provisional acceptance thereof	
CGST	37	Matching, reversal and reclaim of input tax credit	Manner in which input credit is matched, reversed and reclaimed.
CGST	38	Matching, reversal and reclaim of reduction in output tax liability	

13.5 FAQs

Q1. Whether registered taxable person is entitled to input tax credit?

Ans: Yes. The registered taxable person is entitled to input tax credit.

Q2. Where should the input tax credit be availed and credited by registered taxable person?

Ans: The registered taxable person can claim the input tax credit in his return provisionally, based on the credit in the electronic credit ledger maintained by him.

Q3. Whether manner of matching, reversal and reclaim of input tax credit under CGST Act apply to IGST Act?

Ans. The manner of matching, reversal and reclaim of input tax credit under CGST Act applies to IGST Act.

13.6 MCQs

Q1. Person entitled to input tax credit_____

(a) Every person

(b) Every registered taxable person

(c) Only casual taxable person

(d) Non-taxable person.

Ans. (b) Every registered taxable person

Q2. Input tax credit will be credited to____

(a) Electronic cash ledger

(b) Books of accounts of registered person

(c) Electronic credit ledger

(d) Any of the above.

Ans. (c) Electronic credit ledger

14. Transfer of input tax credit

Statutory Provision:

(1) On utilization of input tax credit availed under this Act for payment of tax dues under the CGST Act as per sub-Section (5) of Section 11, the amount collected as IGST 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 IGST account to the CGST account in the manner and time as may be prescribed.

(2) On utilization of input tax credit availed under this Act for payment of tax dues under the SGST Act as per sub-Section (5) of Section 11, the amount collected as IGST 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 apportioned to the account of the appropriate State Government in the manner and time as may be prescribed.

14.1 Introduction

This Section deals with transfer of taxes in the following cases:

- The transfer of input tax credit used to pay tax dues under CGST, from IGST account to CGST account.
- The transfer of input tax credit used to pay tax dues under SGST, from IGST account to SGST account.

This is applicable to, and relevant for, transfer of taxes between the Central Government and State Government, and is similar to Section 47 of the CGST Act.

14.2 Analysis

(a) If IGST credit is used for payment of tax dues under CGST, the amount used for such payment gets reduced from IGST. The Central Government will transfer such credit used for payment of CGST from IGST account to CGST account in the prescribed manner and time.

Illustration: X Ltd has ₹ 1 Lakh credit of IGST. It uses ₹ 40,000/- for payment of tax dues under CGST. The amount ₹ 40,000/- used for the payment of CGST is reduced from IGST account. The Central Government will transfer ₹ 40,000/- from IGST account to CGST account, in its records.

(b) If IGST credit availed is used for payment of tax dues under SGST, the amount utilized to pay SGST will get reduced from IGST. The Central Government will transfer such credit utilized for payment of SGST from IGST account to SGST account of the appropriate State Government in the prescribed manner and time.

Illustration: If Y Ltd, uses ₹ 30,000/- for payment of tax dues under SGST of Karnataka State, such amount of ₹ 30,000/- is reduced from IGST account. The Central

Government will transfer ₹ 30,000/- from IGST account to SGST account of Karnataka State.

14.3 Comparative review

None

14.4 Related provisions

Statute	Section	Description	Remarks
IGST	Section 11	Payment of tax, interest, penalty and other amounts	Order in which IGST, CGST and SGST credit available to be utilized
CGST	Section 47	Transfer of input tax credit	Similar provision under CGST / SGST Act

14.5 FAQs

Q1. What are the implications when IGST credit is used to pay CGST tax dues?

Ans. If IGST credit is used to pay tax dues of CGST, the amount used for payment of CGST is reduced from IGST account. Central Government will transfer the amount used to pay CGST tax dues to CGST account from IGST account.

Q2. What are the implications when IGST credit is used to pay SGST tax dues?

Ans. If IGST credit is used to pay tax dues of SGST, the amount used for payment of SGST is reduced from IGST account. Central Government will transfer the amount used to pay SGST tax dues to SGST account of respective State from IGST account of the Central Government.

14.6 MCQs

Q1. IGST credit used for payment of CGST tax dues is_____

(a) Reduced from CGST account

(b) Reduced from SGST account

(c) Reduced from IGST account

(d) None of the above

Ans. (c) Reduced from IGST account

Q2. The IGST credit used for payment of CGST tax dues is transferred by Central Government_____

(a) From CGST account to SGST account

(b) From IGST account to CGST account

(c) From IGST account to SGST account

(d) None of the above

Ans. (b) From IGST account to CGST account

Q3. The IGST credit used for payment of SGST tax dues is transferred by Central Government_____

(a) From CGST account to SGST account

(b) From IGST account to CGST account

(c) From IGST account to SGST account

(d) None of the above.

Ans. (c) From IGST account to SGST account

Chapter VII

Apportionment of Tax and Settlement of Funds

15. Apportionment of tax collected under the Act and settlement of funds

Statutory provision:

(1) Out of the IGST paid to the Central Government in respect of inter-State supply of goods and/or services to an unregistered person or to a taxable person paying tax under section 9 of the CGST Act, 2016 the amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

(2) Out of the IGST paid to the Central Government in respect of inter-State supply of goods and/or services where such taxable person is not eligible for input tax credit, the amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

(3) Out of the IGST paid to the Central Government in respect of inter-State supply of goods and/or services made in a year to a registered taxable person, where he does not avail of the said credit within the specified period and thus remains in the IGST account after expiry of the due date for filing of annual return for such year in which the supply was made, the amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

(4) Out of the IGST paid to the Central Government in respect of import of goods and / or services by an unregistered person or by a taxable person paying tax under section 9 of the CGST Act, 2016 the amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

(5) Out of the IGST paid to the Central Government in respect of import of goods and / or services, where the such taxable person is not eligible for input tax credit, the amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

(6) Out of the IGST paid to the Central Government in respect of import of goods and / or services made in a year by a registered taxable person, where he does not avail of the said credit within the specified period and thus remains in the IGST account after expiry of the due date for filing of annual return for such year in which the supply was received, the amount of tax calculated at the rate equivalent to the CGST on similar intra-State supply shall be apportioned to the Central Government.

(7) The balance amount of tax remaining in the IGST account in respect of the supply for which an apportionment to the Central Government has been done under subsection (1), (2), (3), (4), (5) or (6) shall be apportioned to the State where such supply takes place as per sections 7, 8, 9 or 10:

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 each of the States to which such taxable person has made supplies during the financial year in the proportion of the total supplies made to each of such States:

PROVIDED FURTHER that where the taxable person making such supplies cannot be determined, the said balance amount shall be apportioned to all States as per the order made by the President under clause (2) of Article 270.

(8) The provisions of sub-sections (1), (2), (3), (4), (5), (6) and (7) relating to apportionment of tax shall *mutatis mutandis* apply to the apportionment of interest, penalty and compounding amount realized in connection with the tax so apportioned.

(9) Where an amount has been apportioned to the Central Government or a State Government under sub-sections (1), (2), (3), (4), (5), (6), (7) and (8) the amount collected as IGST shall stand reduced by an amount equal to the amount so apportioned and the Central Government shall transfer to the CGST account an amount equal to an amount apportioned to the Central Government and shall transfer to the SGST account of the State an amount equal to an amount apportioned to that State, in the manner and time as may be prescribed.

(10) Any IGST amount apportioned to a State, if subsequently found refundable to any person and refunded to such person, shall be reduced from the amount apportioned to such State under this section or otherwise, in the manner and time as may be prescribed.

15.1 Introduction

This provision relates to apportionment / transfer of taxes between the Central and the State Governments. Specifically, this is in respect of IGST paid on supplies which are not eligible / claimed as credits in the supply chain.

The need for transfer of the tax by the Central Government to the State Government arises due to the breakage / discontinuance of the credit chain.

15.2 Analysis

This section details the method of apportionment and transfer of IGST (paid on inter-State supplies) by the Central Government to the respective State Governments, in the following situations:

1. IGST paid on supplies to/ imports by: o Unregistered persons or o Persons registered under composition scheme o Registered taxable persons where such persons are not eligible to claim the credit	Credit chain is broken since the **recipient is not eligible to claim any credits**

2. Where no credit is claimed within the allowed time period (within the expiry of the due date for filing of annual return) in case of IGST paid on: o Inter-State supplies to registered taxable persons o Imports by a registered taxable person	Credit chain is broken since the **recipient has not claimed the input credit**

In the above circumstances, the apportionment and consequential transfer of the tax by the Central Government to the State Government would be as follows:

Transfer to the Central Government	Transfer to the State Government
Amount of CGST payable on such supplies if such supply were to be an intra-State supply: Will be transferred from IGST to CGST Account of the Central Government.	Remaining balance *(total IGST on such supplies (-) the CGST which is transferred as per the previous column)* will be transferred from IGST account of the Central Government to the SGST Accounts of the relevant State Governments.

Note: The relevant State Government to which the amount would be transferred as per column 2 above, would be the State in which the supply has taken place. The State in which the supply is deemed to have taken place would be as provided under Section 7 / 8 / 9 / 10 of the IGST Act, as applicable (viz., provisions pertaining to determination of place of supply of goods and place of supply of services). Further, the law provides that specifically for the below cases:

- **Where place of supply cannot be determined separately:** Apportionment would be to each of the States to which the person would have made taxable supplies, during the year, based on the total supplies to such States.
- **Where the taxable person cannot be determined:** Apportionment would be to all States based on the Order issued by the President under Articles 270(2) of the Constitution.

The above mechanism of apportionment and transfer will equally apply for interest and penalty which is realized on such supplies.

The law also provides that any amount that has been apportioned to a State would stand reduced where such amount is subsequently found to be refundable.

15.3 FAQ

Q1. What are the types of supplies in respect of which the taxes will be transferred under Section 15?

Ans. IGST on specified supplies will be apportioned and transferred by the IGST Account of the Central Government to (i) CGST Account of the Central Government and (ii) SGST Account of the State Governments, as provided in Section 15.

Q2. What are the specific circumstances where the need for such transfer arises?

Ans. It arises specifically in circumstances where the IGST is paid on inter-State supplies and the same is not availed / not eligible to be availed as credit in the supply chain for the buyers / recipients of such goods and / or services.

Q3. What is the methodology for computation of the amounts to be so transferred?

Ans. Firstly, in case of specified circumstances, the tax to be transferred from IGST to CGST is computed by applying the CGST rate on such supplies, assuming that such supplies were intra-State supplies. The remaining balance in the IGST will be transferred to the SGST Account of the relevant State Government.

Q4. To which State Government will the transfer be made?

Ans. The relevant State Government which would receive the transfer from IGST Account of the Central Government would be the State in which the supply has taken place. Such State should be determined in terms of the provisions contained in Section 7, 8, 9 and 10 of the IGST Act, as applicable (viz., place of supply of goods and place of supply of services).

Chapter VIII
Zero Rated Supply

16. Zero rated supply

Statutory provision:

(1) "zero rated supply" means any of the following taxable supply of goods and/or services, namely -

(a) export of goods and/or services; or

(b) supply of goods and/or services to a SEZ developer or an SEZ unit.

(2) Subject to provisions of sub-section (3) of section 17 of the CGST Act, 2016, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered taxable person exporting goods or services shall be eligible to claim refund under one of the following two options, namely -

(a) a registered taxable person may export goods or services under bond, subject to such conditions, safeguards and procedure as may be prescribed in this regard, without payment of IGST and claim refund of unutilized input tax credit in accordance with provisions of section 48 of the CGST Act, 2016 read with rules made thereunder;

(b) a registered taxable person may export goods or services, subject to such conditions, safeguards and procedure as may be prescribed in this regard, on payment of IGST and claim refund of IGST paid on goods and services exported in accordance with provisions of section 48 of the CGST Act, 2016 read with rules made thereunder.

(4) The SEZ developer or SEZ unit receiving zero rated supply specified in clause (a) of sub-section (1) shall be eligible, subject to the conditions, safeguards and procedure as may be prescribed in this regard, to claim refund of IGST paid by the registered taxable person on such supply.

16.1. Introduction

This provision indicates the types of supply, which are considered as 'zero rated' and the possible refund options.

16.2. Analysis

(a) The following taxable supplies of goods and/or services are considered as 'zero rated supplies':

(i) Export of goods and services.

(ii) Export of goods or services.

(iii) Supply of goods and services to a SEZ developer or unit.

(iv) Supply of goods or services to a SEZ developer or unit.

(b) Input tax credit can be availed for making zero-rated supplies, although it may be an exempt supply. This would however be subject to section 17(3)[1] of the CGST Act.

(c) Section 17(2) of the CGST Act, provides that if the goods/services are used by the registered taxable person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, 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. As per the explanation to the said sub-section, even tax paid on reverse charge basis by a service recipient is treated as exempt supply.

(d) A taxable person either exporting goods or services would be eligible for refund under the following two options:

(i) Export under bond (subject to conditions etc to be prescribed in the Rules) without payment of IGST and claim refund of unutilised ITC in terms of section 48 of the CGST Act read with relevant rules.

(ii) Export on payment of IGST (subject to conditions etc to be prescribed in the Rules), which can be claimed as refund in terms of section 48 of the CGST Act read with relevant rules.

(e) As regards a SEZ developer/unit receiving zero rated supply, they shall be eligible for refund of IGST paid by the registered taxable person, subject to conditions etc to be prescribed.

(f) Interestingly, although section 16(1)(b) treats it as a 'zero rated supply' in which case the rate should be obviously 'zero', section 16(4) contemplates refund claim by a SEZ developer/unit. It needs to be seen whether it would be in the nature of an *ab initio* exemption to the supplier or IGST payment by the supplier and refund claim by the SEZ developer/unit. This apparent contradiction needs to be resolved.

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.

[1] Although section 16(2) refers to section 17(3) of the CGST Act. It should actually refer to section 17(2) of the CGST Act, which deals with restrictions on credit relating to zero rated supplies.

16.4. Related provisions

Statute	Section	Description	Remark
CGST	17(2)	Apportionment of credit and blocked credits	Restrictions on credit attributable to exempt supplies.
CGST	2(111)	Zero-rated supply	Adopts the provisions of section 16 IGST Act

16.5. FAQs

Q1. What is a 'zero rated supply'?

Ans. Section 2(111) of the CGST Act defines the said expression to mean supply of any goods and/or services as per section 16 of the IGST Act, which in turn refers to exports of goods/services and supply of goods/services to SEZ developer/unit.

Q2. What is the benefit available to a registered taxable person exporting goods or services?

Ans. In terms of section 16(3) of the IGST Act, the following refund options are available subject to conditions, safeguards prescribed in the Rules:

(a) Export under bond without paying IGST and claim refund of unutilised ITC.

(b) Export on payment of IGST and claim refund of such tax paid.

Q3. What happens to the IGST paid by the registered taxable person on supplies made to SEZ developer/unit?

Ans. The SEZ developer/unit can in terms of section 16(4) of IGST Act claim refund of IGST paid by the registered taxable person, by fulfilling conditions, safeguards to be prescribed in the Rules.

16.6. MCQs

Q1. Zero rated supply means _____

(a) Supply to DTA

(b) Export of goods and/or services

(c) Supplies by SEZ units

(d) Supply of goods to SEZ developer

Ans. (b) and (d). Export of goods and/or services and supply of goods to SEZ developer.

Q2. IGST paid by the registered taxable person towards supplies to SEZ units can be claimed as refund by _____

(a) Registered Taxable person

(b) Exporter

(c) SEZ unit

(d) None of the above

Ans. (c) SEZ unit.

Legend:

SEZ – Special Economic Zone

IGST – Integrated Goods and Services Tax.

ITC – Input Tax Credit

Chapter IX
Miscellaneous

17. Application of certain provisions of the CGST Act, 2016

Statutory Provisions

The provisions relating to registration, valuation, time of supply of goods, time of supply of services, change in rate of tax in respect of supply of goods or services, input tax credit and utilization thereof, distribution of input tax credit by an Input Service Distributor, job work, accounts and records, payment, tax deduction at source, return, tax collection at source, audit, assessment, adjudication, demands, refunds, interest, recovery of tax, offences and penalties, inspection, search and seizure, prosecution and power to arrest, appeals, review, advance ruling and compounding shall apply, so far as may be, in relation to the levy of tax under this Act as they apply in relation to levy of tax under the CGST Act, 2016.

Provided that in the case of tax deduction at source, the deductor shall deduct tax at the rate of two percent from the payment made or credited to the supplier.

Provided further that in case of tax collection at source, the operator shall collect tax at the rate of two percent of the value of net supplies.

18 Power to make rules

Statutory Provisions

(1) The Central Government may, on the recommendation of the Council, by notification, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may

(i) provide for settlement of cases in accordance with Chapter VIIA of this Act;

(ii) provide for all or any of the matters which under any provision of this Act are required to be prescribed or to be provided for by rules.

17.1/18.1 Introduction

(i) **Section 17:** Certain provisions of CGST Act in relation to levy of tax would be applicable to IGST Act also.

(ii) **Section 18:** Provides power to the Central Government to make Rules for purposes of IGST Act.

17.2/18.2 Analysis

(i) Section 17: The following provisions of CGST Act in relation to levy of tax shall apply under IGST Act.

- Registration
- Valuation
- Time of supply of goods
- Time of supply of services
- Change in rate of tax in respect of supply of goods or services
- Input tax credit and utilization thereof
- Distribution of input tax credit by an Input Service Distributor
- Job work
- Accounts and records
- Payment
- Tax deduction at source
- Return
- Tax collection at source
- Audit
- Assessment
- Adjudication
- Demands
- Refunds
- Interest
- Recovery of tax
- Offences and penalties
- Inspection
- Search and seizure
- Prosecution and power to arrest
- Appeals
- Review
- Advance ruling and compounding.

(ii) Section 18: 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.
- Such rules may provide for following:
  - For settlement of cases in accordance with this Act;
  - All or any of the matters which under any provision of this Act are required to be prescribed or to be provided for by rules.
- "Council" would mean the Goods and Services Tax Council established under Article 279A of the Constitution [Section 2(34) of CGST Act]

17.3/18.3 Comparative review

Under IGST Act	Corresponding section under present Central Sales Tax Act, 1956	Comparison
Section 17 providing CGST Act provisions in relation to levy of tax 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 17 of IGST
Section 18 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.	

17.4/18.4 FAQs:

Q1. What are the provisions under CGST which would be applicable to IGST also?

Ans: The provisions relating to registration, valuation, time of supply of goods, time of supply of services, change in rate of tax in respect of supply of goods or services, input tax credit and utilization thereof, distribution of input tax credit by an Input Service Distributor, job work, accounts and records, payment, tax deduction at source, return, tax collection at source, audit, assessment, adjudication, demands, refunds, interest, recovery of tax, offences and penalties, inspection, search and seizure, prosecution and power to arrest, appeals, review, advance ruling and compounding 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.

Q3. 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.

17.5/18.5 MCQs:

Q1. Under Section 18, 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

19. Tax wrongfully collected and deposited with the Central or a State Government

Statutory Provision

(1) A taxable person who has paid IGST on supply considered by him to be an inter-State supply, but which is subsequently found to be an intra-state supply, shall, be granted refund of the amount of IGST so paid in such manner and subject to such conditions as may be prescribed.

(2) A taxable person who has paid CGST/SGST on a transaction considered by him to be an intra-State supply, but which is subsequently found to be an inter-State supply, shall not be required to pay any interest on the amounts of IGST payable.

Introduction

This section provides for refund of IGST in case where a taxable person has paid IGST on a transaction by treating it to be an inter-State supply, but subsequently held to be an intra-State supply.

The said section also provides interest is not required to be paid on IGST payable in case where a taxable person has paid CGST/SGST on a transaction by treating it to be an intra-state supply, but subsequently held to be an inter-state supply

19.1 Analysis

When a taxable person has paid IGST on a transaction, by treating it as inter-State supply, but later, the transaction is held to be an intra-state supply, then the person who has made payment of CGST and SGST in the appropriate State, shall be allowed to take refund of the IGST amount paid. Interest is not required to be paid on IGST payable when CGST/SGST has been paid by treating the transaction as intra-state but later held to be inter-state supply.

19.2 Comparative Review

There is no equivalent provision at present. In case of sale or purchase of any declared goods inside the State where VAT is levied under the State law and the same commodity is subsequently sold in the course of interstate trade where CST is paid, then the tax paid within the State previously shall be refunded/reimbursed.

19.3 FAQs

Q1. Whether IGST wrongly paid on inter-state supply by treating as inter-state supply can be claimed as refund?

Ans. If a taxable person has paid IGST by treating transaction as inter-state supply but later held to be intra-state supply. Then upon payment of CGST and SGST in the appropriate State, such person would be allowed to take the amount of IGST so paid as refund.

Q2. Is interest required to be paid on IGST payable where CGST/SGST has been paid instead of IGST by treating the transaction to be intra-state?

Ans. Interest is not required to be paid. As per section 19(2) when CGST/SGST has been paid instead of IGST by treating the transaction to be intra-state instead of interstate interest is not required to be paid on IGST payable on such inter-state transaction.

19.4 MCQs

Q1. In which situation is a taxable person eligible for refund in case of IGST payment made on intra-state supply instead of inter-State supply?

(a) On payment CGST and SGST

(b) On payment of CGST

(c) On payment of SGST

(d) None of the above

Ans: (a) On payment CGST and SGST

20. Refund of IGST paid on supply of goods to outbound tourist

Statutory Provision

(1) The IGST paid on any supply of goods to outbound tourist shall be refunded, in the manner and subject to such conditions and safeguards as may be prescribed, if such goods are taken out of India.

(2) The refund under sub-section (1) shall be allowed only on such supply of goods that is procured from a registered taxable person who satisfies the conditions and complies with the requirement, including relating to issue of invoice in the prescribed manner.

20.1 Introduction

This section provides for refund of IGST for supply of goods to outbound tourist, subject to conditions and safeguards as may be prescribed. However, such goods should be taken outside India.

The refund shall be allowed only when the goods so supplied are procured from a registered taxable person. Such registered taxable person should also satisfy the conditions and should comply with the requirement, including issue of invoice in the prescribed manner.

20.2 Analysis

IGST paid on supply of goods to outbound tourist (not defined in Act) shall be refunded subject to conditions and safeguards. Such goods should be taken out of India. Such goods supplied to outbound tourist should be purchased from a registered taxable person who also satisfy the conditions and comply with the prescribed requirements including issue of invoice

20.3 FAQs

Q1. Whether IGST paid on goods which are supplied to outbound tourists be refunded?

Ans. Yes, IGST paid on goods supplied to outbound tourist subject to following –

(i) IGST shall be refunded subject to conditions and safeguard.

(ii) Such goods are purchased from registered taxable person.

(iii) Such registered taxable person should satisfy the conditions and comply with the prescribed requirements including issue of invoice.

20.4 MCQs

Q1. Under which section refund of IGST paid for goods supplied to outbound tourists be given?

(a) Section 20

(b) Section 30

(c) Section 29

(d) Section 18

Ans. (a) Section 20

Chapter X
Transitional Provisions

21. Import of services or inter-state supply of goods and/or services made on or after the appointed day

Statutory provision

Notwithstanding anything contained in section 12 and 13 of the CGST Act, import of services or inter-state supply of goods and/or services made 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 or inter-state supply had been initiated before the appointed day:

Provided that if the tax on such import or inter-state supply had been paid in full under the earlier law, no tax shall be payable on such import or inter-state supply under this Act:

Provided further that if the tax on such import of services had been paid in part under the earlier law, balance amount of tax shall be payable on such import or inter-state supply under this Act.

Explanation. - For the purpose 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 transition provision deals with taxability of

(a) Import of services, or inter-state supply of goods and / or services regardless of whether such transactions are initiated before the appointed date;

(b) Import or inter-state supplies on which tax is paid under earlier laws;

(c) Import of services on which part of tax is paid under earlier laws; and

(d) Transactions deemed to have been initiated before the appointed day.

21.2 Analysis

(a) This section provides that no tax under IGST Act would be payable on import of service or inter-State supply of goods and / or services if the transaction was initiated before the date of implementation of GST, and tax on import or inter-state supply had been paid in full under the earlier law.

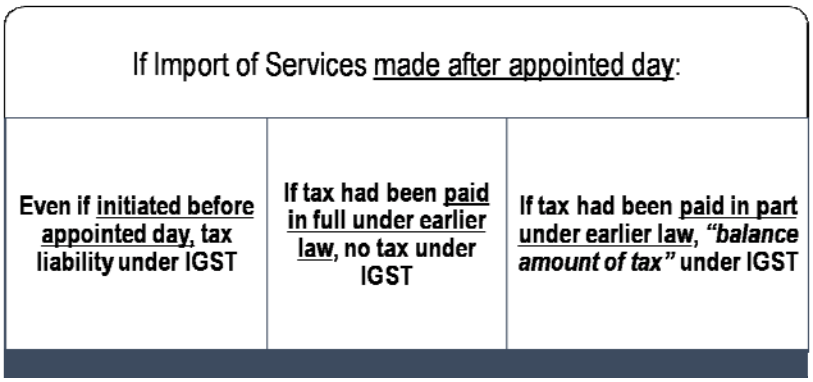
(b) If tax on import of services is partly paid under the earlier law (Service tax law), only the balance amount of tax (as payable under the IGST Act) would be payable on such import of services.

In this regard, it is provided that a transaction would be deemed to have been initiated before

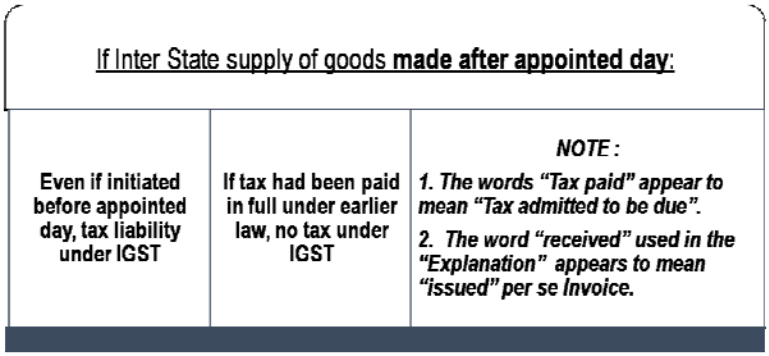
the date of GST if either the invoice was issued or payment was received (partly or wholly), before the date of implementation of GST. In all situations not covered by (a) and (b) supra, tax would be payable under GST laws, as applicable.

The analysis of above provision in a pictorial form is summarised as follows:

Inter State supply of goods made after appointed day-Sec 21



Inter State supply of goods made after appointed day- Sec 21



21.3 FAQ

Q1. Whether import of goods or inter-state supply of goods and / or services made after appointed day is liable to tax under this Act?

Ans. Yes. Any import of goods or inter-state supply of goods and / or services made after appointed day is liable to tax under this Act. However, the taxability is subject to the proviso (1) and Proviso (2) of section 21 of IGST Act

Q2. What would be the status of import of goods or inter-state supply of goods and / or 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, 2016, where the tax on import of goods or inter-state supply of goods and / or services is paid

in full under earlier laws, no tax under this Act would be made applicable though such import of goods or inter-state supply of goods or services takes place after the appointed day.

Q3. What would be the status of import of goods or inter-state supply of goods and or services, 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, 2016, where the tax is paid in part for import of goods or inter-state supply of goods and / or 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. On import of goods or inter-state supplies made after the appointed day, where such transaction is initiated before the appointed day, tax is payable under?

(a) Earlier laws

(b) IGST Act, 2016

Ans. (b) IGST Act, 2016

Q2. Where the tax is fully paid under earlier laws, amount of tax payable for import of goods or inter-state supply of goods and / or 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

Q3. Where the tax is paid in part under earlier laws, amount of tax payable for import of goods or inter-state supply of goods and / or services made after appointed day is?

(a) No tax payable under this Act

(b) Balance amount of tax payable on such import or inter-state supply of goods and/ or services

Ans. (b) Balance amount of tax payable on such import or inter-state supply of goods and/ or services

Chapter XI
Administration

22. Classes of officers under the Integrated Goods and Service Tax Act, 2016

Statutory Provision:

There shall be the following classes of officers under the Integrated Goods Services Tax Act, 2016 namely,

(a) Principal Chief Commissioner of IGST or Principal Directors General of IGST,

(b) Chief Commissioner of IGST or Directors General of IGST,

(c) Principal Commissioners of IGST or Principal Additional Directors General of IGST,

(d) Commissioners of IGST or Additional Directors General of IGST,

(e) Additional Commissioners of IGST or Additional Directors of IGST,

(f) Joint Commissioners of IGST or Joint Directors of IGST,

(g) Deputy Commissioners of IGST or Deputy Directors of IGST,

(h) Assistant Commissioner of IGST or Assistant Directors of IGST and

(i) Such other class of officers as may be appointed for the purposes of this Act.

22.1 Introduction

(a) This section specifies different ranks / class of officers from higher to lower levels for the administration of IGST law.

(b) There are 8 classes of officers as per IGST Act with 16 officers and a general class.

(c) Section 23 of the IGST Act empowers the 'Board' to appoint officers under the Act. Thus, the only authority which can appoint such officers is the Board. Officers below the rank of the Assistant Commissioner of IGST may be appointed by specified Officers, if authorized by the Board.

(d) The ranks of officers stated under section 22 are illustrative and the Board may appoint such other class of officers which are required for better administration.

22.2 Analysis

(a) Section 22 (1) prescribes different class of officers and their hierarchy thereof under the IGST Law. It starts with the Principal Chief Commissioners or Principal Director Generals of IGST as the top level officer who will be directly responsible to the Board.

(b) Each officer in the chain will have a different role to play and will be responsible to his immediate superior.

(c) The duties and responsibilities of such officers can be fixed either on functional basis or on the basis of territorial jurisdiction or a mixture of two.

22.3 Comparative Review

The administrative set up under this law is almost similar to the present set up under the Central Excise / Service Tax law.

22.4 FAQs

Q1. Whether there are any other classes of officer apart from those specifically listed in Section 22 of IGST Act?

Ans. Yes. There could be other classes of officers who may be appointed for the purpose of this Act.

22.5 MCQs

Q1. Which Section sets out the classes of officers who may be appointed for purpose of IGST Act, 2016?

(a) Section 26

(b) Section 24

(c) Section 22

(d) Section 21

Ans. (c) Section 22

23. Appointment of officers under the Integrated Goods and Services Tax Act, 2016

Statutory Provision:

1. The Board may appoint such persons as it may think fit to be officers under the Integrated Goods and Services Tax Act, 2016.
2. Without prejudice to the provisions of sub-section (1), the Board may authorize a Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax or a Principal Commissioner/ Commissioner of Central Goods and Services Tax or an Additional/ Joint or Deputy/Assistant Commissioner of Central Goods and Services Tax to appoint officers of Integrated Goods and Services Tax below the rank of Assistant Commissioner of Integrated Goods and Services Tax Act, 2016.

23.1 Introduction

This section specifies the powers for appointment of Officers under IGST law. Such power invariably vests in the "Board" under provisions of sub-section (1) of Section 23. The "**Board**" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 as defined under sub-Section (16) of section 2 of this Act.

In exercise of the powers under the said provision, the Board may authorize specified class of officers as under sub-section (2) of Section 23 for appointing certain class of officers of IGST.

23.2 Analysis

(i) The administrative set up under the IGST law shall be guided by this section along with section 22 of this law.

(ii) The Board is empowered to appoint the persons who are thought fit to be officers under the IGST Act.

23.3 Comparative Review

The provisions under the GST regime are similar to present regime under Customs law.

23.4 Related provisions

Statute	Section	Description
CGST	4	Classes of Officers
CGST	5	Appointment of Officers

23.5 FAQs

Q1. Who can appoint the officers under IGST?

Ans. Under IGST Act, 2016 the Board to appoint the persons who are thought fit to be officers under the IGST Act.

Q2. Whether Board could authorise specified officers of CGST to appoint officers of IGST?

Ans. The Board may authorize specified officers of CGST to appoint officers of IGST below the rank of Assistant Commissioner of IGST Act, 2016.

Q3. Which Board could authorize specified officers of CGST to appoint officers of IGST?

Ans. The Central Board of Excise and Customs may authorize specified officers of CGST to appoint officers of IGST below the rank of Assistant Commissioner of IGST Act, 2016.

23.6 MCQs

Q1. Which Section sets out the appointment of officers under IGST Act, 2016?

(a) Section 25

(b) Section 23

(c) Section 28

(d) Section21

Ans. (b) Section 23

24. Appointment of officers of SGST as proper officer in certain circumstances

Statutory Provision:

The officers appointed under the SGST Acts shall, to such extent and subject to such conditions, as may be prescribed in the rules made in this behalf, be the proper officers for the purpose of sections (……) of this Act.

Note: This is similar to section 7 of CGST Act, which is still not finalised by the Government.

Key Features of the GST Compensation Cess Act

Key Statutory Provisions

8. LEVY AND COLLECTION OF GST COMPENSATION CESS

There shall be levied and collected in accordance with the provisions of this Act, a cess to be called the GST Compensation Cess at such rate as may be notified, but not exceeding…. per cent, on the value determined under section 15 of the CGST Act, 2016, and on such supplies of goods and services, including imports of goods and services, and those supplies on which tax is payable on reverse charge basis under section 7(3) of the CGST Act, which 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 for a period of five years, w.e.f. the date from which the CGST Act is brought into force.

Provided that no such cess shall be leviable under this section on supplies made by a taxable person permitted to opt for composition levy under section 8 of the CGST Act, 2016. (1)

9. RETURNS, PAYMENTS AND REFUNDS

(1) Every taxable person registered under CGST Act, 2016, making a taxable supply of goods and/or services, shall furnish such returns in such formats, as may be prescribed, along with the returns to be filed under the Central Goods and Services Tax Act, 2016, shall pay the amount payable under the Act in the manner as may be prescribed and apply for refunds of cess paid and refundable in such form as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the format to be filed, the provisions of the Central Goods and Tax Act, 2016, 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 and/or services, as they apply in relation to the levy and collection of Central Goods and Services Tax on such supplies under the said Act or the rules made thereunder, as the case may be.

11. OTHER PROVISIONS RELATING TO CESS

(1) The provisions of the Central Goods and Tax Act, 2016, and the rules made thereafter, including those relating to assessment, input tax credit (subject to sub-section (3)), non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, apply mutatis mutandis 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 Goods and Services Tax on such intra-state supplies under the said Act or the rules made thereunder, as the case may be.

(2) The provisions of the Integrated Goods and Tax Act, 2016, and the rules made thereafter, including those relating to assessment, input tax credit (subject to sub-section (3)), non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, 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 and Services Tax on such inter-state supplies under the said Act or the rules made thereunder, as the case may be.

(3) Provided further that the input tax credit in respect of GST Compensation Cess on supply of goods and services leviable under section 8, shall be utilised only towards payment of GST Compensation Cess on supply of goods and services leviable under section 8

Key features

- GST Compensation Cess is levied under section 8 of the Goods and Services Tax (Compensation to the States for Loss of Revenue) Act, 2016
- The Act levies Cess under section 8 at rates to be notified
- Supplies liable to GST will also be liable to Cess by notifying the goods and / or services involved
- Cess, on notified goods and / or services, is applicable in addition to GST
- Cess paid on inward supplies, imports and reverse charge basis on notified goods and / or services
- Taxable supply means a supply chargeable to Cess
- Credit is allowed of Cess paid (section 2(9)
- Cess is not leviable on taxable persons who have opted for composition u/s 9 of CGST Act
- Returns are to be filed along with returns under CGST Act
- All provisions of CGST Act apply to Cess on intra-State supply and all provisions of IGST Act apply to Cess on inter-State supply particularly input tax credit (section 11 of Cess Act)
- Credit of Cess is to be utilized only for payment of Cess on outward supply
- Key definitions to note from section 2 of Cess Act are:

  (6) "Goods and Services Tax Compensation Cess" means the cess levied under section 8;

  (8) "input tax" in relation to a taxable person, means the Goods and Services Tax Compensation Cess charged on any supply of goods and/or services to him, Goods and Services Tax Compensation Cess charged on import of goods, and includes the Goods and Services Tax Compensation Cess payable on reverse charge basis;

  (9) "input tax credit" means credit of 'input tax' as defined in section 2(8);

Legal Maxims and Phrases

Introduction

A legal maxim or legal phrase elucidates or expounds a legal principle, proposition or concept. There are many legal maxims, which are commonly used. This chapter selectively seeks to explain some maxims/phrases, which are relevant to tax context. An attempt is made to not only state the legal principle signified by a maxim/phrase but its application in case laws is also stated to enable readers to apply it in appropriate situations in GST.

Alpha bet	Legal maxim/phrase	Legal principle/concept	Case law reference
A	*Ab initio*	From the beginning or inception. From from the first act.	Dilip Kumar Mukherjee Vs. Commercial Tax Officer &Ors, AIR 1965 Cal 498 : MANU/WB/0104/1965
	Actio Personalis Moritur Cum Persona	A personal right of action dies with the person	C.P. Kandaswamy & Ors Vs. Mariappa Stores &Ors., MANU/TN/0141/1974
	Actus Curiae Neminem Gravabit	An Act of the Court shall prejudice no man	1. Sree Balaji Nagar Residential Association vs. State of Tamil Nadu 2015 (3) SCC 353; MANU/SC/0794/2014. 2. Anil Rai Vs. State of Bihar, 2009 (233) ELT 13 (SC)
	Actus Non FacitReum Nisi Mens Sit Rea	The intent and act must both concur to constitute the crime	1. Commissioner, Trade Tax U.P., Lucknow Vs. Project Technologist Pvt. Ltd., MANU/UP/1335/2012 = 2012 (48) VST406(All). 2. UOI Vs. Ganesh Das Bhojraj 2000 (116) ELT 431 (SC)
	Ad hoc	For this. For this special purpose.	Addison & Co. Ltd., Madras Vs.Collector of Central Excise, Madras 1997 (91) ELT 532 (S.C.) = MANU/SC/1211/1997
	Ad valorem	To the value or based on value.	Ganesh Oil Mills Ltd. and Ors. Vs. State of J and K and Ors. MANU/JK/0275/2004
	Allegans Contraria	He is not be heard who	Sikkim Manipal University Vs.

	Non Est Audiendus	alleges things contradictory to each other.	State of Sikkim MANU/SI/0071/2014 = 2014 (369) ITR 567 (Sikkim).
	Audi Alterem Partem	No man shall be condemned unheard.	1. Hari Nivas Gupta Vs. The State of Bihar and Ors. MANU/BH/0314/2015 2. Shreematha Precision Components Vs. Commr. Of C. Ex., Bangalore 2015 (325) ELT 529 (Kar)
	Abundans cautela non nocet	Abundant or extreme caution does no harm.	George Vs. George, MANU/KE/0431/2010
	Actori incumbit onus probandi	The burden of proof lies on the plaintiff	Dr. Indra Raja and Dr. Paten Raja Vs. John Yesurethinamalias Durai, MANU/TN/4369/2011
	Actus Reus	A guilty deed or act	1. Additional Commissioner of Income Tax and Anr. Vs. Dargapandarinath Tuljayya & Co. MANU/AP/0176/1976. 2. Vinod Solanki vs. UOI, 2009 (233) ELT 157 (SC)
C	*Contemporanea Expositio Est Optima Et Fortissimo In Lege*	Contemporaneous exposition or interpretation is regarded in law as the best and strongest (most prevailing). The best and surest mode of construing an instrument is to read it in the sense which would have been applied when it was drawn up	Employees' State Insurance Corporation, Hyderabad Vs. Andhra Pradesh Paper Mills Ltd., Rajahmundry MANU/AP/0126/1978 = AIR 1978 AP 18.
	Cuilibet in Sua Arte Perito Est Credendum	Credence should be given to one skilled in his peculiar profession. Credit is to be given to any one skilled in his own art or profession.	-
	Cursus curiae estlex curiae	The practice of this Court is the law of the Court. The	Collector of Central Excise, Madras Vs. Standard Motor

		course of the Court (that is, the course of procedure or practice) is the law of the Court.	Products and Ors, MANU/SC/0114/1989 = AIR 1989 SC 1298 = 1989(41) ELT 617 (SC)
D	*De Facto*	Existing in actuality, especially when contrary to or not established by law.	Assistant Collector of Central Excise, Calcutta Division Vs. National Tobacco Co. of India Ltd. 1978 (2) ELT 416 (S.C.) = MANU/SC/0377/1972
	De Minimis Non Curat Lex	The law does not concern itself with trifles	1. State of Bihar and Ors. Vs. Harihar Prasad Debuka and Ors MANU/SC/0533/1989 = AIR 1989 SC 1119 = 1989 (73) STC 353 (SC) 2. Foods, Fats &Fertilisers Ltd.., Vs. Commissioner of C.Ex. Guntur, 2011 (22) STR 484 (TRI-Bang.)
	Delegatus non potest delegare	A delegate himself cannot delegate. A delegated power cannot be further delegated.	1. Gwalior Rayon Silk Mfg. (Wvg.) Co. Ltd. Vs. The Asstt. Commissioner of Sales Tax and Ors. MANU/SC/0361/1973 = AIR 1974 SC 1660 = 1974 (2) SCR 879 = 2002-TIOL-1420-SC-CT-LB. 2. Valvoline Cummins Limited Vs DCIT & Ors, 2008-TIOL-347-HC-DEL-IT.
E	*Ejusdem Generis*	Of the same class, or kind	1. The State of Karnataka Vs. Cognizant Technology Solutions India Private Limited MANU/KA/2399/2016. 2. Mega Enterprises Vs CCE&C, 2015-TIOL-1142-CESTAT-MUM
	Ex Post Facto	After the fact.	Durga Works Vs. Assistant Collector of Central Excise, MANU/KA/0270/1991

	Expressio Unius Est Exclusio Alterius	Express mention of one thing excludes others. The special mention of one thing operates as the exclusion of things differing from it.	1. Ramdev Food Products Pvt Ltd., Vs. State of Gujarat MANU/SC/0286/2015 = AIR 2015 SC 1742 = 2015 (6) SCC 439. 2. DHL Lemuir Logistics Pvt. Limited Vs CCE, 2012-TIOL-705-CESTAT-MUM
F	*Falsus in Uno Falsus in Omnibus*	False in one aspect is false in all respects. False in one thing, false in all.	1. Mohammed Razhur Rehaman and Ors. Vs. State of Karnataka MANU/KA/1470/2016 = 2016(5)Kar.LJ15 2. G. Sasikala Vs ITO, 2015-TIOL-823-ITAT-Mad.
G	*Generalia Specialibus non derogant*	General things do not derogate special things. General statements or provisions do not derogate from special statements or provisions.	1. Commissioner of Income Tax, Patiala & Ors. Vs. Shahzada Nand& Sons &Ors, MANU/SC/0113/1966= AIR 1966 SC 1342 = 1966 (60) ITR 392 (SC). 2. CTO Vs Binani Cements Ltd &Anr, 2014-TIOL-15-SC-CT.
H	*Habeas Corpus*	You have the body. A writ (court order) that commands an individual or a government official who has restrained another to produce the prisoner at a designated time and place so that the court can determine the legality of custody anddecide whether to order the prisoner's release.	1. Purshottam Govindji Halaivas. Shree B.M.Desai, Additional Collector of Bombay and Ors. AIR 1956 SC 20 = MANU/SC/0017/1955 2. UOI Vs. Paul Manickam, 2003 (162) ELT 6 (SC)
I	*Ignorantia Facti Excusat – Ignorantia Juris*	Ignorance of facts may be excused but not ignorance of law.	1. S.A. Qadir Vs. The Union of India and Ors., MANU/RH/0695/2000.

	Non Excusat		2. Ajai Kumar Agnihotri & Anr Vs CCE, 2013-TIOL-1049-CESTAT-DEL
	Impotentia Excusat Legem	Impossibility excuses the law. Inability excuses the non-observance of the law.	1. Narmada Bachao Andolan Vs. State of Madhya Pradesh and Anr. MANU/SC/0599/2011 = AIR2011SC1989 2. Steel Authority of India Ltd., Vs. Commissioner of C.EX., Coimbatore 2004 (177) ELT 1128 (TRI-Chennai)
	In absentia	"In absence," or more fully, in one's absence.	1. D. Velayutham Vs. State MANU/SC/0249/2015 2. Webel SL-Energy System Ltd., Vs. UOI 2010 (257) ELT 532 (CAL.)
	Ipse Dixit	He himself said it.	Kirloskar Brothers Ltd. Vs. Commissioner of Central Excise, Pune, 2005 (181) ELT 299 (S.C.) = MANU/SC/0182/2005
L	*Leges Posteriores Priores Contrarias Abrogant*	Later laws repeal earlier laws inconsistent therewith.	Commissioner of Income Tax Vs. Common Wealth Trust (I) Ltd., MANU/KE/0583/2004 = 2004 (189) CTR(Ker)393
	Lex Non Cogit Ad Impossiblia	The law does not compel a person to do that which he cannot possibly perform. The law does not compel the performance of what is impossible.	1. Industrial Finance Corporation of India Ltd. Vs. The Cannanore Spinning & Weaving Mills Ltd. and Ors. MANU/SC/0317/2002 = AIR 2002 SC 1841= [2002]2 SCR 1093. 2. Jindal Steel and Power Limited Vs CCE, 2015-TIOL-1162-CESTAT-DEL.
	Lex Posterior Derogat Priori	A later law repeals an earlier law. A later statute derogates	Central Warehousing Corporation Vs. Fortpoint Automotive Pvt. Ltd., MANU/MH/1493/2009 =

		from a prior.	2010(1)MhLJ658 = 2010(1)BomCR560
	Lexspecialis derogate legigenerali	Special law repeals general laws.	Radha Mohan Maheshwari Vs.D.C.I.T – ITAT Jaipur MANU/IJ/0092/2016
	Locus Standi	The right of a party to appear and be heard before a court.	1. BOC India Ltd. Vs. State of Jharkhand and Ors., 2009 (237) ELT 7 (SC) = MANU/SC/0351/2009 2. Oswal Chemicals & Fertilizers Ltd., Vs. Commissioner of C.Ex., Bolpur 2015 (318) ELT 617 (SC)
M	*Mandamus*	A writ or order that is issued from a court of superior jurisdiction that commands an inferior tribunal/court to perform, or refrain from performing, a particular act, the performance of which is required by law as an obligation.	Shenoy and Co., Bangalore and Ors. Vs. Commercial Tax Officer, Circle II, Bangalore and Ors. , AIR 1985 SC 621 = MANU/SC/0255/1985.
	Modus Operandi	Method of working.	Assistant Commercial Taxes Officer Vs.Kansai Nerolac Paints Ltd, 2015 (321) ELT 13 (S.C.) = MANU/SC/0259/2010
	Mutatis Mutandis	The necessary changes.	1. Eastern Electrics Vs. The State of Tamil Nadu, MANU/TN/1373/2008 2. Sodexo SVC India Pvt. Ltd., Vs. State of Maharashtra, 2016 (331) ELT 23 (SC)
N	*Nemo Debet Esse Judex in Propria Sua Causa*	No man can be judge in his own case. No one ought to be a judge in his own cause.	1. Rajesh Kumar and Ors. Vs. D. Commissioner of Income Tax and Ors. MANU/SC/4779/2006= AIR 2007 SC 181 = [2006] Supp (8) SCR 284

			2. Deo Ispat Alloys Limited Vs CCT, 2014-TIOL-1797-HC-ORRISA-VAT
	Nemo Debet BisVexari Pro Una Et Eadem Causa	A man shall not be vexed twice for one and the same cause	1. Omax Engineering Works Vs. State of Haryana and Ors., MANU/PH/0459/2016 2. Commr. Of C.E., Nagpur Vs. Shree Baidyanath Ayurved Bhawan Ltd., 2009 (237) ELT 225 (SC)
	Nemobis punitur poreo dem delicto	No one can be punished twice for the same crime or offence	Omax Engineering Works Vs. State of Haryana and Ors., MANU/PH/0459/2016
	Nemopunitur pro alieno delicto	No one is to be punished for the crime or wrong of another	The District Collector, Dharmapuri Vs. Tmt. T.V. Kasturi, MANU/TN/0658/2014
	Non Obstante	Notwithstanding (any statute to the contrary)	1. Union of India (UOI) and Ors. Vs. SICOM Ltd. and Anr., 2009 (233) ELT 433 (S.C.) = MANU/SC/8377/2008 2. Commissioner of C.Ex., Vs. Dalmia Cement (Bharat) Ltd., 2015 (323) ELT 647 (SC)
	Noscitur a Sociis	The meaning of a doubtful word may be ascertained by reference to the meaning of words associated with it.	M/s. Rohit Pulp and Paper Mills Ltd.Vs. Collector of Central Excise, Baroda, MANU/SC/0186/1991 = 1990 (47) ELT 491 (S.C.)= AIR 1991 SC 754
	Nova Constitutio Futuris Formam Imponere Debet, Non Praeteritis	A new law ought to be prospective and not retrospective, in operation.	1. Shanti Conductors (P) Ltd. and Ors. Vs. Assam State Electricity Board and Ors., MANU/SC/0972/2016 2. MRF Ltd., Vs. Assisstant Commissioner (Assessment) Sales Tax, 2006 (206) ELT 6 (SC)
	Nullus Commodum	No man can take advantage of his own	Naveen Kumar Sharma Vs. State of Haryana and Ors.

	Capere Potest De Injuria Sua Propria	wrong.	MANU/PH/3846/2015
O	*Obiter Dicta*	Remarks of a judge which are not necessary to reaching a decision, but are made as comments, illustrations or thoughts.	Naturalle Health Products (P) Ltd. Vs.Collector of Central Excise, 2003 (158) ELT 257 (S.C.) = MANU/SC/0912/2003
P	*Pari Materia*	Of the same matter; on the same subject	Collector of Central Excise Vs Re - Rolling Mills, 1997(94) ELT 8 (S.C.) = MANU/SC/1430/1998
	Per Incuriam	By Mistake	Commissioner of Central Excise Vs. Medico Labs and Anr., 2004 (173) ELT 117(Guj.) = MANU/GJ/0635/2004
Q	*Qui Facit Per Alium Facit Per Se*	He who acts by or through another, acts for himself. A person who does a thing through the instrumentality of another, is held as having done it himself.	1. Commissioner of Income Tax Vs.Amman Steel & Allied Industries, MANU/TN/2319/2015 = 2015 (377) ITR 568 (Mad). 2. Indian Sugar and General Engg. Corpn. Vs. Collector of Cus., 1993 (68) ELT 832 (Tri-Del)
	Quid pro quo	What for what or Something for something.	Commissioner of Central Excise, Lucknow, U.P. Vs. Chhata Sugar Co. Ltd. 2004 (165) ELT 369 (S.C.) = MANU/SC/0189/2004
	Quo Warranto	An order issued by authority of the king A legal proceeding during which an individual's right to hold an office or government's privilege is challenged.	1. Dr .D .K .Belsarevs. Nagpur University MANU/MH/0351/1980 : 1980(82)BomLR494 2. L. Chandra Kumar Vs. UOI 1997 (92) ELT 318 (SC)
R	*Ratio Decidendi*	The reason or rationale for the decision by Court.	The Commissioner of Central Excise and S.T., Large Taxpayer Unit vs. ABB Limited, GIDC

			MANU/KA/0794/2011 = 2011 (44) VST 1 (Karn)
	Res Integra	An entire thing; an entirely new or untouched matter.	Commnr. of Central Excise, Vadodara Vs. Gujarat State Fertilizers and Chem. Ltd. MANU/SC/7776/2008 = (2008)15 SCC 46
	Res Ipsa Loquitur	The thing speaks for itself	1. Rahul and Ors. Vs. State of Maharashtra and Ors. MANU/MH/0861/2016 2. T. Shankar Prasad Vs. State of Andhra Pradesh 2004 (164) ELT 143 (SC)
	Res Judicata	A thing adjudged.	West Coast Paper Mills Vs. Superintendent of Central Excise and Ors., 1984 (16) ELT 91 (Kar.) = MANU/KA/0144/1971
S	*Sub Silentio*	Under silence; without any notice being taken	1. Ajay Gandhi and Anr. Vs. B. Singh and Ors. AIR 2004 SC 1391 = 2004(167)ELT257(S.C.) = MANU/SC/0012/2004 2. State of Maharashtra Vs. Subhash Arjundas Kataria, 2012 (275) ELT 289 (SC)
	Suppressio Veri or Suggestio Falsi	Concealment of truth or a statement of falsehood	1. Dilip N Shroff Karta of N.D. Shroff Vs. Joint Commissioner of Income Tax, Special Range Mumbai & Anr., MANU/SC/3182/2007 = 2007 (291) ITR 519 (SC) = 2007 (7) SCR 499 2. ITC Ltd., Vs. M.K.Chipkar and Others, 1985 (19) ELT 373 (Bom.)
U	*Ubi Jus IbiRemedium*	There is no wrong without a remedy. Wherever there is a right there is a remedy.	1. Kalpana Yogesh Dhagat Vs. Reliance Industries Limited MANU/GJ/2165/2016 2. Mithilesh Kumari Vs. Prem

			Behari Khare 1989 (40) ELT 257 (SC)
	Ubi Non Est Principalis Non Potest Esse Accessorius	Where there is no principal there is no accessory.	Pratibha Processors Vs. UOI, 1996 (88) ELT 12 (SC)
V	*Vigilantibus et non dormientibus jura subveniunt*	Law aids the vigilant and not the dormant or laws aid/assist those who are vigilant, not those who sleep upon/over their rights.	a. Pushpammal Vs. Jayavelu Gounder (Died), Krishna Gounder (Died) and Ors. MANU/TN/3711/2010. b. Bharat Petroleum Corpn. Ltd Vs. CC&CE, 2016(340) ELT 553 (T) = MANU/CH/0060/2016
	Volenti Non Fit Injuria	To the consenting, no injury is done.	Sarasamma and Ors. Vs. G. Pandurangan and Ors. MANU/TN/0763/2016 = (2016) 3 MLJ 286

Note: There are many legal maxims, which are quite often used in any legal proceedings. The above is only an illustrative list of few important maxims. The participants are encouraged to read and understand more such maxims from authoritative texts and judicial decisions and use it in appropriate proceedings.

Recommended reading/Legend:

1. Trayner's Legal Maxims
2. Broom's Legal maxims
3. EXCUS DVD, Centax Publications P.Limited
4. MANU - MANUPATRA.COM
5. TIOL – Taxindiaonline
6. SCC – Supreme Court Cases
7. AIR – All India Reporter
8. ELT – Excise Law Times
9. STC – Sales Tax Cases
10. ITR – Income Tax Reporter
11. VST – VAT and Service Tax

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