

Background Material

On

Model GST Law



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

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First Edition : July, 2016

Committee/Department : Indirect Taxes Committee

E-mail : itdc@icai.in

Website : www.icai.org; www.itdc.icai.org

Price : ₹ 450/-

ISBN : 978-81-8441-839-2

Published by : The Publication Department on behalf of the Institute of Chartered Accountants of India, ICAI Bhawan, Post Box No. 7100, Indraprastha Marg, New Delhi - 110 002.

Printed by : Sahitya Bhawan Publications, Hospital Road, Agra - 282 003.

Foreword

The much anticipated Goods and services Tax (GST) Bill awaits its passage in the upcoming monsoon session of the Parliament. The expectation of GST implementation on April, 2017 seems possible and the Indian economy is buoyant about it.

To ensure smooth transition, the government is working to acquaint its officials at Central and State levels with the nitty-gritties of soon to be implemented GST law. In this regard the officials of Department of Revenue met the representative of Indirect taxes Committee of ICAI. ICAI was requested to develop a Background Material on Model GST Law, video lectures, FAQs and Trade specific awareness material.

ICAI being committed to partner the government in nation building willingly took this responsibility and promised to deliver the training material within 30 days of the release of Model GST Law in public Domain.

It is indeed a moment of great pride for ICAI as it lived up to its commitment and developed this **“Background Material on GST”** for *Department Officials* within the prescribed period. The material contains section wise analysis of provisions of Model GST law along with relevant illustrations to enable the readers a comprehensive view of the entire GST law. This training material could be used in the training conducted by the department across India.

We appreciate the efforts put in by CA. Madhukar Hiregange, Chairman, CA. Sushil Kumar Goyal, Vice-Chairman and other members of the Indirect Taxes Committee of ICAI for undertaking and completing this task in a timely manner.

We welcome the readers for a fruitful and enriching experience.

CA. M Devaraja Reddy

President
ICAI

CA. Nilesh S Vikamsey

Vice-President
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Date: 14.07.2016

Place: New Delhi

ICAI

Preface

The release of the Model GST Law on 14th June 2016 by the Ministry of Finance is an important milestone as it provides an opportunity for stakeholders to engage with Government and collaboratively shape a final law that ensures certainty, efficiency and simplicity. This step of the Government, to educate its departmental officials with the fine nuances of the model law to enable them to understand new laws and fulfil their responsibilities effectively during transition and thereafter, is commendable.

It is indeed a matter of honour for Indirect Taxes Committee of ICAI as we were requested by the Department to prepare a Background Material on Model GST Law for its Officers, which we proudly accepted and have delivered within a very short and committed timeline.

The background material is comprehensive and contains a clause by clause analysis of the Model GST Law along with comparisons to related provisions of existing law, 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 entrusting us with this significant task. We especially thank the Study Groups located of the Indirect Tax Committee at Bangalore, Mumbai, Chennai, Hyderabad, Delhi, Pune, Kolkata, Bhubaneswar, Guwahati, Mumbai and Pune for their effort. We thank our colleagues from Indirect Taxes Committee for their constant backing and encouragement. We appreciate the Secretariat for their support and efforts.

We welcome the readers to an intellectual learning spree. We also welcome suggestions at tdtc@icai.in and may visit website of the Committee www.idtc.icai.org for regular updates on Indirect Taxes.

CA. Madhukar Narayan Hiregange
Chairman
Indirect Taxes Committee

CA. Sushil Kumar Goyal
Vice-Chairman
Indirect Taxes Committee

Date: 14.07.2016

Place: New Delhi

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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;
- (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 First Appellate Authority and the Appellate Tribunal;
- (5) “**agent**” means a person who carries on the business of supply or receipt of goods and/or services on behalf of another, whether disclosed or not and includes a factor, broker, commission agent, *arhatia*, *del credere* agent, intermediary or an auctioneer or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not;
- (6) “**aggregate turnover**” means the aggregate value of all taxable and non-taxable supplies, exempt supplies and exports of goods and/or services 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 supplies on which tax is levied on reverse charge basis and the value of inward supplies.

- (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 applies.
- (8) **“agriculturist”** means a person who cultivates land personally, for the purpose of agriculture;
- (9) **“Appellate Tribunal”** means the National Goods and Services Tax Appellate Tribunal constituted under section 81;
- (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;
- (13) **“associated enterprise”** shall have the meaning assigned to it in section 92A of the Income Tax Act, 1961;
- (14) **“audit”** means detailed 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;
- (15) **“authorized bank”** shall mean a bank or a branch of a bank authorised by the 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;
- (17) **“business”** includes –
- (a) any trade, commerce, manufacture, profession, vocation or any other similar activity, whether or not it is for a pecuniary benefit;
 - (b) any transaction in connection with or incidental or ancillary to (a) above;
 - (c) any 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;
- (18) **“business vertical”** shall have the meaning assigned to a ‘business segment’ in Accounting Standard 17 issued by the Institute of Chartered Accountants of India;
- (19) **“capital assets”** shall have the meaning as assigned to it in the Income Tax Act, 1961 (43 of 1961) but the said expression shall not include jewellery held for personal use or property not connected with the business;
- (20) **“capital goods”** means: - (A) the following goods, namely:-
- (i) all goods falling within Chapter 82, Chapter 84, Chapter 85, Chapter 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the Schedule to this Act;
 - (ii) pollution control equipment;
 - (iii) components, spares and accessories of the goods specified at (i) and (ii);
 - (iv) moulds and dies, jigs and fixtures;
 - (v) refractories and refractory materials;
 - (vi) tubes and pipes and fittings thereof;
 - (vii) storage tank; and
 - (viii) motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers used-
 - (1) at the place of business for supply of goods; or
 - (2) outside the place of business for generation of electricity for captive use at the place of business; or
 - (3) for supply of services,
- (B) motor vehicle designed for transportation of goods including their chassis registered in the name of the supplier of service, when used for
- (i) supplying the service of renting of such motor vehicle; or
 - (ii) transportation of inputs and capital goods used for supply of service; or
 - (iii) supply of courier agency service;

- (C) motor vehicle designed to carry passengers including their chassis, registered in the name of the supplier of service, when used for supplying the service of-
- (i) transportation of passengers; or
 - (ii) renting of such motor vehicle; or
 - (iii) imparting motor driving skills;
- (D) Components, spares and accessories of motor vehicles which are capital goods for the taxable person.
- (21) “**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;
- (22) “**CGST**” means the tax levied under the Central Goods and Services Tax Act, 2016;
- (23) “**chartered accountant**” means a chartered accountant within the meaning of the Chartered Accountants Act, 1949 (38 of 1949);
- (24) “**commissioner**” means the Commissioner of Central Goods and Services Tax/Commissioner of State Goods and Services Tax appointed under section 4 of the Central/State Goods and Services Tax Act, 2016;
- (25) “**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;
- (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 consisting of –
- (a) two or more goods;
 - (b) two or more services; or
 - (c) a combination of goods and services
- provided in the course or furtherance of business, whether or not the same can be segregated;
- (28) “**consideration**” in relation to the supply of goods and/or services to any person, 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 and/or services, whether by the said person or by any other person;
 - (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 and/or services, whether by the said person or by any other person:

Provided that a deposit, whether refundable or not, given in respect of the supply of goods and/or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply;

- (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 stop over 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;
- (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;
- (32) “**conveyance**” includes a vessel, 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 24;
- (36) “**debit note**” means a document issued by a taxable person as referred to in sub-section (2) of section 24;
- (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 cash ledger in electronic form maintained at the common portal for each registered taxable person in the manner as may be prescribed in this behalf;

(41) “**electronic credit ledger**” means 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;

(42) “**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 are specified in Schedule . . . of the Act or which may be exempt from tax under section 10;

(43) “**export of goods**” with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(44) the supply of any service shall be treated as “**export of 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;

Explanation.- For the purposes of clause (e), an establishment of a person in India and any of his other establishment outside India shall be treated as establishments of distinct persons.

(45) “**First Appellate Authority**” means an authority referred to in section 79;

(46) “**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;

(47) “**fund**” means the Consumer Welfare Fund established under section 40;

(48) “**goods**” means every kind of movable property other than actionable claim and money

but includes securities, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply;

Explanation.– For the purpose of this clause, the term ‘moveable property’ shall not include any intangible property.

- (49) “**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;
- (50) “**IGST**” means the tax levied under the Integrated Goods and Services Tax Act, 2016;
- (51) “**import of goods**” with its grammatical variations and cognate expressions, means bringing into India from a place outside India;
- (52) the supply of any service shall be treated as an “**import of service**” if,
- (a) the supplier of service is located outside India,
 - (b) the recipient of service is located in India,
 - (c) the place of supply of service is in India, and
 - (d) the supplier of service and the recipient of service are not merely establishments of a distinct person;

Explanation 1.- An establishment of a person in India and any of his other establishment outside India shall be treated as establishments of distinct persons.

Explanation 2.- A person carrying on a business through a branch or agency or representational office in any territory shall be treated as having an establishment in that territory.

- (53) “**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;
- (54) “**input**” means any goods other than capital goods, subject to exceptions as may be

provided under this Act or the rules made thereunder, used or intended to be used by a supplier for making an outward supply in the course or furtherance of business;

- (55) **“input service”** means any service, subject to exceptions as may be provided under this Act or the rules made thereunder, used or intended to be used by a supplier for making an outward supply in the course or furtherance of business;
- (56) **“Input Service Distributor”** means an office of the supplier of goods and / or services which receives tax invoices issued under section 23 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.

- (57) **“input tax”** in relation to a taxable person, means the {IGST and CGST}/{IGST and SGST} charged on any supply of goods and/or services to him which are used, or are intended to be used, in the course or furtherance of his business and includes the tax payable under sub-section (3) of section 7;
- (58) **“input tax credit”** means credit of ‘input tax’ as defined in section 2(56); (59) **“intangible property”** means any property other than tangible property;
- (60) **“invoice”** shall have the meaning as assigned to it under section 23;
- (61) **“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;
- (62) **“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;
- (63) **“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;
 - (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;

- (64) **“location of recipient of service”** means:
- (i) where a supply is received at a place of business for which registration has been obtained, the location of such place of business;
 - (ii) 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;
 - (iii) 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
 - (iv) in absence of such places, the location of the usual place of residence of the recipient;
- (65) **“location of supplier of service”** means:
- (i) where a supply is made from a place of business for which registration has been obtained, the location of such place of business ;
 - (ii) 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;
 - (iii) 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
 - (iv) in absence of such places, the location of the usual place of residence of the supplier;
- (66) **“manufacturer”** shall have the meaning assigned to it by the Central Excise Act, 1944 (1 of 1944);
- (67) **“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;
- (68) **“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 such similar instrument 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;
- (69) **“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;

- (70) “**non-taxable territory**” means the territory which is outside the taxable territory;
- (71) “**notification**” means notification published in the Official Gazette and the expressions ‘notify’ and ‘notified’ shall be construed accordingly;
- (72) “**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;
- (73) “**outward supply**” in relation to a person, shall mean supply of goods and/or services, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made by such person in the course or furtherance of business except in case of such supplies where the tax is payable on reverse charge basis;
- (74) “**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;
- (75) “**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;
- (76) “**prescribed**” means prescribed by the rules, regulations or by any notification issued under this Act;
- (77) “**principal**” means a person on whose behalf an agent carries on the business of supply or receipt of goods and/or services;
- (78) “**principal place of business**” means the place of business specified as the principal place of business in the certificate of registration where the taxable person keeps and maintains the accounts and records as specified under section 42 ;
- (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 Board/Commissioner of SGST;
- (80) “**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.
- (81) “**regulations**” means the regulations made by the Board/Commissioner under any provision of the Act on the recommendation of the Council;
- (82) 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 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.

- (83) **“removal”**, in relation to goods, means -
 - (a) dispatch 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;
- (84) **“return”** means any return prescribed or otherwise required to be furnished by or under this Act or rules made thereunder;
- (85) **“reverse charge”**, means the liability to pay tax by the person receiving goods and / or services instead of the person supplying the goods and / or services in respect of such categories of supplies as the Central or a State Government may, on the recommendation of the Council, by notification, specify;
- (86) **“rules”** means the rules made by the Central/State Government under any provision of the Act on the recommendation of the Council; (87) **“schedule”** means a schedule appended to this Act;
- (88) **“services”** means anything other than goods;
Explanation: Services include intangible property and actionable claim but does not include money.
- (89) **“SGST”** means the tax levied under the State Goods and Services Tax Act;
- (90) **“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];
- (91) **“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;
- (92) **“supply”** shall have the meaning as assigned to it in section 3;
- (93) **“tangible property”** means any property that can be touched or felt;
- (94) **“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 8;
- (95) **“tax period”** means the period for which the tax return is required to be filed;

- (96) “**taxable person**” shall have the meaning as assigned to it in section 9 of this Act;
- (97) “**taxable supply**” means a supply of goods and/or services which is chargeable to tax under this Act;
- (98) “**taxable territory**” means the territory to which the provisions of this Act apply; (99) “**Tax Return Preparer**” means any person who has been approved to act as a Tax Return Preparer under the scheme framed under section 34;
- (100) “**telecommunication service**” means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means;
- (101) “**time of supply of goods**” shall have the meaning as assigned to it in section 12;
- (102) “**time of supply of services**” shall have the meaning as assigned to it in section 13;
- (103) “**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.
- (104) “**turnover in a State**” means the aggregate value of all taxable and non-taxable supplies, including exempt supplies and 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;
- (105) “**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 (74), is incorporated or otherwise legally constituted;
- (106) “**valid return**” shall have the meaning assigned to it under sub-section (3) of section 27.

(107) “**works contract**” means an agreement for carrying out for cash, deferred payment or other valuable consideration, building, construction, fabrication, erection, installation, fitting out, improvement, modification, repair, renovation or commissioning of any moveable or immovable property;

(108) “**year**” means the financial year; and

(109) “**zero-rated supply**” means a supply of any goods and/or services on which no tax is payable but credit of the input tax related to that supply is admissible;

Explanation - Exports shall be treated as zero-rated supply.

Note: The Definitions have been discussed at the appropriate places wherever reference is required.

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 service, whether or not for a consideration and whether or not 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.
- (2A) Where a person acting as an agent who, for an agreed commission or brokerage, either supplies or receives any goods and/or services on behalf of any principal, the transaction between such principal and agent shall be deemed to be a supply.
- (3) Subject to sub-section (2), the Central or a State Government may, upon recommendation of the Council, specify, by notification, the transactions that are to be treated as—
 - (i) a supply of goods and not as a supply of services; or
 - (ii) a supply of services and not as a supply of goods; or
 - (iii) neither a supply of goods nor a supply of services.
- (4) Notwithstanding anything contained in sub-section (1), the supply of any branded service by an aggregator, as defined in section 43B, under a brand name or trade name owned by him shall be deemed to be a supply of the said service by the said aggregator.

Chapter-II

Administration

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

Statutory Provision

- (1) 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) First Appellate Authority,
 - (f) Additional Commissioners of CGST or Additional Directors of CGST,
 - (g) Joint Commissioners of CGST or Joint Directors of CGST,
 - (h) Deputy Commissioners of CGST or Deputy Directors of CGST,
 - (i) Assistant Commissioners of CGST or Assistant Directors of CGST, and
 - (j) Such other class of officers as may be appointed for the purposes of this Act.

4.1 Introduction

- This section specifies different ranks / class of officers from higher to lower levels for the administration of CGST law.
- This provision enumerates the classes of officers under the “Central” Goods and Services Tax Act.
- There are 9 classes of officers as per CGST Act, with 17 officers and a general class, whereas SGST Act contains 6 classes of officers, with a general class.

- Section 5 of the 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 CGST may be appointed by specified Officers, if authorised by the Board.
- 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.
- The provisions as per CGST appear to be exhaustive, whereas those under SGST are only indicative in nature, as is specifically mentioned under Section 4(1).

4.2 Analysis

- Section 4 (1) prescribes different classes 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.
- Each officer in the chain will have a different role to play and will be responsible to his immediate superior.
- 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

- 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

- Section 5 confers powers upon the Board to appoint officers under CGST law.
- Section 6 states the powers of officers under CGST law.
- Section 79 prescribes the powers of the first Appellate Authority.

4.5 FAQ

Q.1 Under which Section of CGST law are the various classes of officers prescribed?

Ans. Section 4

Q.2 Whether the list of class of officers given in Section 4 of CGST law is illustrative?

Ans. No, the list of 9 classes of officers is exhaustive, and further a general class of officers may also be prescribed by the appointing authority as and when required.

Q.3 How many other classes of officers can be appointed under Clause (j) of Section 4 (1) of CGST law ?

Ans. One, because the words "class of officers" has been used under Clause (j) unlike the words "classes of officers" used in Section 4 (1) itself.

Q.4 Whether classes of officers prescribed under Section 4 of CGST law will be similar to Section 4 of SGST law?

Ans. No, 9 classes of officers are prescribed under the CGST law against 6 classes of officers under SGST law, with a general class of officers in each case.

4.6 MCQ

Q.1 How many specific classes of officers are prescribed under CGST law?

- a. 19
- b. 10
- c. 9
- d. 17

Ans. c. 9

Q.2 How many Principal Chief Commissioners may be appointed by the Board under CGST law:

- a. 1
- b. 2
- c. as many as the Board appoints
- d. none of the above

Ans. c. as many as the Board appoints

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

Statutory Provision

- (1) There shall be the following classes of officers and persons under the State Goods and Services Tax Act namely:
 - (a) 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. [List is indicative]
- (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

- (i) This Section specifies the different ranks / class of officers for administration of SGST law.
- (ii) This provision enumerates the classes of officers under the "State" Goods and Services Tax Act.
- (iii) There are 9 classes of officers as per CGST Act, with 17 officers and a general class, whereas SGST Act contains 6 classes of officers, with a general class.
- (iv) The power to appoint such officers will be prescribed under the SGST laws.

4.2 Analysis

- The Commissioner of SGST will be the supreme authority in the State under SGST law and he will have jurisdiction over the whole of the appropriate State.
- Jurisdiction of all other officers will be over the whole of the respective State, unless otherwise, the area of jurisdiction of such officers is notified by the Commissioner.

4.3 Comparative Review

- The class of officers as stated in Section 4 (1) is more or less similar to the present hierarchy under various State VAT laws.
- First Appellate Authority for SGST law is prescribed under Section 79 of SGST law.

4.4 Related Provisions

- Section 5 confers powers upon the Board to appoint officers under CGST law.
- Section 6 states the powers of officers under CGST law.
- Section 79 prescribes the powers of the first Appellate Authority.

4.5 FAQ

Q.1 Under which Section of SGST law are the various classes of officers prescribed?

Ans. Section 4

Q2. Whether the list of class of officers given in Section 4 of SGST law is exhaustive?

Ans. No, the list is only indicative as mentioned at the end of Section 4(1).

Q3. How many Commissioners of SGST can be appointed under SGST law?

Ans. The indicative list given under Section 4 suggests that there should be one Commissioner of SGST under each State.

Q4. How many other classes of officers can be appointed under Clause (g) of Section 4 (1) of SGST law?

Ans. One, because the words “class of officers” has been used under Clause (g) unlike the words “classes of officers” used in Section 4 (1) itself. However, the Clause (g) also mentions about appointment of some **persons** besides class of officers.

4.6 MCQs

Q1. How many specific classes of officers are prescribed under SGST law?

- a. 6
- b. 7
- c. 9
- d. as many as the appropriate authority appoints

Ans. a. 6

Q2. How many Commissioners of SGST may be appointed in each State under SGST law:

- a. 1
- b. 2
- c. as many as appropriate authority appoints
- d. none of the above

Ans. a. 1

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

Statutory provision

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

- (i) This section deals with appointment of officers of CGST. There is a mention that similar provision would exist under State Laws. However instead of Board appointing the officers under CGST, the State Government may appoint under SGST.
- (ii) In exercise of the powers under the said provision, the Board may authorize the specified class of officers, namely Principal Chief Commissioner/Chief Commissioner of Central Goods and Services Tax (CGST) or a Principal Commissioner/Commissioner of CGST or an Additional/Joint or Deputy/Assistant Commissioner of CGST as under Sub Section (2) of Section 5 for to appoint officers below the rank of Assistant Commissioner of CGST appointing certain class of officers of CGST.

5.2 Analysis

- (i) The administrative set up under the CGST law shall be guided by this Section along with Section 4 of this law.
- (ii) 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.
- (iii) Section 5 of the Act empowers the 'Board' to appoint officers under the CGST Act.
- (iv) The "**Board**" means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 [sub-section (16) of Section 2 of this Act].
- (v) The Board may authorize the specified class of officers (Officers not below the rank of Deputy/Asst. Commissioner) to appoint officers below the rank of Assistant Commissioner of CGST. However the Board shall not delegate such power to the First Appellate Authority.

5.3 Comparative review

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.

In respect of Service Tax, the Rule 3 of the Service Tax Rules, 1994 deals with appointment of officers for the purpose of 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.

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

Statute	Section / Rule / Form	Description	Remarks
GST	Section 2 (16)	Definition of “Board”	Defines Board
GST	Section 2(22)	Definition of “CGST”	Defines CGST
GST	Section 2(89)	Definition of “SGST”	Defines SGST
GST	Section 2(79)	Definition of “proper officer”	Defines “proper officer” in relation to any function to be performed under this Act as the officer of goods and services tax who is assigned that function by the Board/ Commissioner of SGST.
GST	Section 4	Classes of officers	Specifies classes of officers under the CGST and SGST laws.
GST	Section 6	Powers of Officers	Empowers the Board/ officers under the Act to exercise and delegate powers subject to such conditions and limitations as may be imposed.

5.5 FAQ

Q1. What is the definition of “Board”?

Ans. The “**Board**” means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963.

Q2. Who can be authorized by the Board to appoint officers below the rank of Assistant Commissioner of Central Goods and Services Tax?

Ans. The Board may authorize the specified class of officers, not below the rank of Deputy/Assistant Commissioner of CGST to appoint officers below the rank of Assistant Commissioner of CGST

Q3. Who shall appoint the officers under CGST law?

Ans. The Board is authorized to appoint the officers. The “Board” means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963.

Q4. Whether Board can delegate power appoint officers to any class/ classes of officers?

Ans. Yes, under Section 5(2), the Board may authorize officers of the rank Assistant/ Deputy Commissioner of CGST or above except First Appellate Authority, to appoint officers below the rank of Assistant Commissioner of CGST.

5.6 MCQ

Q1. The Board cannot delegate power to which of the following authorities for appointment of subordinate officers?

- (a) Principal Commissioner
- (b) First Appellate Authority
- (c) Chief Commissioner
- (d) Joint Commissioner

Ans. (b) First Appellate Authority

Q2. Who can appoint an officer of the rank Assistant Commissioner under CGST law?

- (a) Board
- (b) Commissioner of CGST
- (c) Principal Chief Commissioner of CGST
- (d) All of the above is Board authorizes

Ans. (a) Board

Q3. Who can appoint an officer of the rank below the rank of Assistant Commissioner under CGST law?

- (a) Board
- (b) Commissioner of CGST
- (c) Principal Chief Commissioner of CGST
- (d) All of the above is Board authorizes

Ans. (d) All of the above is Board authorizes

ICAI

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

Statutory provision

- (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 Board/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 79 of this Act.

6.1 Introduction

- (i) This provision deals with power of 'Board' to specify the conditions and limitations for the officers to exercise the powers and discharge their duties.
- (ii) 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.
- (iii) It also empowers an officer to exercise powers and discharge duties conferred or imposed on him or his subordinate officers.
- (iv) The powers of the First Appellate Authority have been restricted to those specified under Section 79 of the CGST law.

6.2 Analysis

- (i) 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.
- (ii) It also empowers an officer to exercise powers and discharge duties conferred or imposed on him or his subordinate officers.
- (iii) The powers of the First Appellate Authority have been restricted to those specified under Section 79 of the CGST law.
- (iv) Similar provisions may be prescribed under SGST law.

- (v) On a reading of Section 6 along with various definition clauses, the powers of the officers appear to be as follows:

Section	Act	Applicability	Description	Power/Description
2(79)	CGST	Board / Commissioner of SGST	Supervisory and Regulatory functions	To assign function to Proper Officer
2(81)	CGST	Board / Commissioner	Supervisory and Regulatory functions	To make regulations on any provision of the act on the recommendation of the council
4(2)	CGST	Commissioner	Jurisdictional Decision	To have Jurisdiction over the state
4(2)	CGST	Commissioner	Jurisdictional Decision	To specify the jurisdiction of all officers other than Commissioner.
5(2)	CGST	Principal CC / CC of CGST or a Principal Commr / Commr of CGST or an Addl / Joint or Deputy / Asst Commr of CGST	Appointment of Officers	To appoint officers of Central Goods and Services Tax below the rank of Assistant Commissioner of Central Goods and Services Tax, on being authorized by the Board.
6(3)	CGST	Board / Commissioner	Delegation of powers	To delegate the powers to any other officer subordinate to him, subject to such conditions and limitation as may be specified.
19(6)	CGST	Board / Commissioner	Notifying UIN	To notify any specialized agency/ institution/ organization/ Consulate/ embassy/ any other person to obtain a Unique Identity Number.
Proviso to Sec. 25(1)	CGST	Board / Commissioner	Extension of time - Returns	To extend the time limit for submission of returns
Proviso to Sec. 26(2)	CGST	Board / Commissioner	Extension of time - submission of details of inward supplies	To extend the time limit for submission of details of Inward supplies
38(9)	CGST	Board / Commissioner	Withhold refund	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 proceedings after giving opportunity of being heard to tax payer.
42(2)	CGST	Commissioner / Chief Commissioner	Maintenance of Accounts	To notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified.
42(3)	CGST	Commissioner / Chief Commissioner	Maintenance of Accounts - Others	To permit such class of taxable persons to maintain accounts in such manner as may be prescribed.
43A(1)	CGST	Commissioner	Procedures with regard to Job work	To permit a registered taxable person to send taxable goods, without payment of tax, to a job worker for job-work and from there subsequently send to another job worker and after completion of job-work, allow to bring back without payment of tax, or supply such goods within India or on payment of tax or without payment of tax for export, by special order and subject to conditions as may be specified.
43C(10)	CGST	Not below the rank of Joint Commissioner		To require by notice, either before or during the course of any proceeding under this Act, the Electronic Commerce operator to furnish such details relating to supplies of goods and/or services effected and stock of goods held by the suppliers making supplies through such operator.
44A (3)	CGST	Commissioner, Joint/Additional Commissioner	Extension of time Other matters- Provisional Assessment	To extend the period for passing the final assessment order by the proper officer for a further period not exceeding six months by Joint/ Addl Commr and by the Commissioner for such further period as he may deem fit, on sufficient cause being shown and

				for reasons to be recorded in writing.
48(1)	CGST	Additional / Joint Commissioner		To grant permission to the proper officer to assess the tax liability to protect interest of revenue.
48(2)	CGST	Additional / Joint Commissioner	Withdrawal of erroneous order	To withdraw erroneous order either suo moto or on an application by the taxable person within 30 days
49(1)	CGST	Commissioner of CGST / SGST	Powers with regard to Audit	To undertake audit of the business transactions of any taxable person for such period, at such frequency and in such manner as may be prescribed
Proviso to Section 49(4)	CGST	Commissioner	Extension of Time - Audit	To extend the period for conducting the Audit by a further period not exceeding six months.
50(1)	CGST	Commissioner	Powers with regard to Audit - Special Audit	To approve audit of records including books of accounts of a Taxable person by a CA/CWA, as directed by a Deputy/ Assistant Commr.
50(2)	CGST	Deputy / Assistant Commissioner	Time limit - submission of Special Audit report	To receive the Audit report within 90 days.
50(5)	CGST	Commissioner	Determination of expenses of Special Audit	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.
55	CGST	Commissioner / Chief Commissioner	Extension of time under various matters	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 instalments
58(1)	CGST	Commissioner	Provisional attachment of property	To attach provisionally any property belonging to the taxable person in such a manner as may be prescribed.

59(1)(a)	CGST	Commissioner	Continuation of certain recovery proceedings	To serve upon the taxable person another notice of demand only in respect of the amount by which such Government dues are enhanced.
59(1)(b) (ii)	CGST	Commissioner	Continuation of certain recovery proceedings	To give intimation of such reduction to him and to the appropriate authority with whom recovery proceeding is pending.
60(1)	CGST	Not below the rank of Joint Commissioner	Inspection - Excess Input Credit/Escaping Payment of Tax	To 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 go down or any other place.
60(2)	CGST	Not below the rank of Joint Commissioner	Search and Seizure	To authorize in writing any other CGST/SGST officer to search and seize or himself search and seize such goods, documents or books or things.
60(8)	CGST	Principal Commissioner / Commissioner of SGST	Power of Magistrate	To execute the power of Magistrate as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure
62(1)	CGST	Commissioner of CGST / SGST	Power to Arrest	By order, authorise any CGST/SGST officer to arrest a person who has committed an offence punishable under clause (i) or (ii) of sub-section (1) or under sub-section (2) of section 73.
62(3)	CGST	Deputy Commissioner or the Assistant Commissioner of CGST/SGST	Powers of Officer-in-charge of a Police Station	To have the same powers and be subject to the same provisions as an officer-in-charge of a police station has under section 436 of the Code of Criminal Procedure, 1973 (2 of 1974).
64(1)	CGST	Additional / Joint	Access to	To Authorize any CGST/SGST

		Commissioner of CGST or SGST	Premises	officer to have access to any business premises 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.
65(2)	CGST	Commissioner of CGST / SGST	Power to call upon to assist	To call upon other class of officers to assist the CGST/SGST officers in the execution of this Act
79(2)	CGST	Commissioner of GST	Power to Call for and examine records	To call for and examine the records of any proceeding in which an adjudicating authority has passed any decision or order under this Act, and by order, direct any GST Officer subordinate to him to apply to the First Appellate Authority.
Proviso to Sec. 79(4)	CGST	Commissioner of GST	Decision as to a "Serious Case"	To decide a case as "serious case" for enabling the departmental authorities to apply to the First Appellate Authority for ordering a higher amount of pre-deposit.
80(1)	CGST	Commissioner	Revisionary Powers	To call for and examine the records of any proceeding under this Act, and if he considers that any decision or order passed under this Act by any officer subordinate to him 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.
80(2)	CGST	Commissioner	Revisionary Powers	To pass an order under sub-section (1) on any point which has not been raised and decide in an appeal referred to in clause (a) of sub-section (2).
86(4)	CGST	Commissioner	Disqualification	To determine, by order, when a

		of GST or the competent authority	s for acting as an authorised representative	person referred to in clause (b) shall be qualified to represent any person under sub-section (1)
87(1)	CGST	Commissioner of GST	Appeal to High Court	To file an appeal to the High Court
110(2)	CGST	Commissioner	Powers during Liquidation of a Company	To make such inquiry or call for such information as he may deem fit, for arriving at 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.
110(3)	CGST	Commissioner	Powers during Liquidation of a Company	To be entitled to satisfy himself that a non-recovery is not attributed to any gross neglect, misfeasance or breach of duty on the part of the Director in relation to the affairs of the company.
119(1)	CGST	Board / Commissioner	Power to collect Statistics	To direct, by notification, that statistics be collected relating to any matter dealt with, by or in connection with the Act.
119(2)	CGST	Commissioner	Power to Call upon information	To 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.
121	CGST	Commissioner of CGST / SGST or an officer authorized by him	Test Purchase of goods/services	To cause purchase of any goods and/or services by any person authorized by him from the business premises of any taxable person.
122	CGST	Commissioner of CGST / SGST or an officer authorized by him	Drawal of samples	To take samples of goods from the possession of any taxable persons.
132A	CGST	Board / Commissioner of SGST	Supervisory and Regulatory functions	To make regulations consistent with this Act and rules, generally to carry out the purposes of this Act.

6.3 Comparative review

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

6.4 Related provisions

The table summarises the powers discussed above refers to various other related provisions.

Statute	Section / Rule / Form	Description	Remarks
GST	Section 2 (45)	Definition of "First Appellate Authority"	Defines "First Appellate Authority" for purposes of Section 79 as referred to under sub-section (4) of Section 6.

6.5 FAQ

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. Is jurisdiction defined for the officers?

Ans. Under the SGST, the Commissioner is empowered to decide the jurisdiction.

Q4. Can a commissioner delegate his powers?

Ans. Yes, the CBEC or Commissioner can delegate the powers to the subordinate officers subject to conditions.

Q5. Who is empowered to extend the time limit for submission of the returns?

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

Q6. Who is empowered to extend the time limit for details of inward supplies?

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

Q7. Can the period for passing the final assessment order be extended?

Ans. Yes, the Joint/Additional Commissioner is empowered to extend the period for passing the final assessment order by the proper officer, for a further period not exceeding six months and the Commissioner is empowered to further extend the period as he may deem fit, on sufficient cause being shown and for reasons to be recorded in writing.

Q8. Can the period for conducting audit be extended?

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

Q9. 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 installments.

Q10. Who is empowered to withhold the refund?

Ans. CBEC or 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.

Q11. 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.

Q12. Who is empowered to permit a registered taxable person to send taxable goods on job work without payment of tax?

Ans. Commissioner/Chief Commissioner is empowered to permit a registered taxable person to send taxable goods, without payment of tax, to a job worker for job-work and from there subsequently send to another job worker and after completion of job-work, allow to bring back without payment of tax, or supply such goods within India or for export, by special order and subject to conditions as may be specified.

Q13. Can an erroneous order be withdrawn? Who is empowered?

Ans. Yes, an erroneous order can be withdrawn by the Additional/Joint Commissioner either suo moto or on an application by the taxable person within 30 days from the date of receipt of the order passed under sub section (1) by following the procedure laid down in section 51.

Q14. 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 at such frequency and in such manner as may be prescribed.

Q15. Can a Professional conduct the audit?

Ans. Yes, the Commissioner is empowered to approve audit 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.

- Q16. Who decides the remuneration of the Professionals conducting the audit?
- Ans. The 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.
- Q17. Can a Joint Commissioner attach any property belonging to the taxable person?
- Ans. No, only the Commissioner can provisionally attach a property under Section 58(1) of the Act.
- Q18. Can the place of business of an operator of warehouse or godown be inspected?
- Ans. Yes, any CGST/SGST officer authorized by an officer not below the rank of Joint Commissioner, can do such inspection.
- Q19. Can a Deputy Commissioner authorize search and seizure as per Section 60(2) of the act?
- Ans. No, only an officer who is not below the rank of Joint Commissioner may authorize search and seizure.
- Q20. Can a Special Commissioner – SGST execute powers of Magistrate as per the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure?
- Ans. No, only Principal Commissioner/Commissioner of SGST has such powers.
- Q21. Can an Assistant Commissioner arrest a taxable person for an offence punishable under clause (i) or (ii) of sub-section (1) or under sub-section (2) of section 73?
- Ans. Yes, any CGST/SGST officer authorized by Commissioner of CGST or the Commissioner of SGST under Section 62(1) of the act can arrest a taxable person.
- Q22. Who has the same powers as an officer-in-charge of a police station?
- Ans. Deputy Commissioner or the Assistant Commissioner of CGST/SGST
- Q23. Can an Assistant Commissioner authorize any CGST/SGST officer to have access to any business premises to inspect books, documents, etc?
- Ans. No, only Joint/Additional Commissioner of CGST/SGST is authorized to do so.
- Q24. What is the pre-requisite for departmental authorities to apply to the First Appellate Authority?
- Ans. Commissioner of GST needs to decide the case as "serious case" as per Proviso to Section 79(4).
- Q25. Can a Deputy Commissioner issue directions to collect statistics under Section 119(1) of the Act?
- Ans. No, only Board/Commissioner is empowered to issue such direction.

Q26. Can an officer authorized by the Commissioner under Sec. 121 of the act verify payment of Tax by the taxable person?

Ans. No, power given under Section 121 of the Act are only for verifying the issue of Tax invoices and not for the purpose of verifying payment of Tax.

Q27. 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.

6.6 MCQ

Q1. Which of the following authorities have supervisory and regulatory functions?

- (a) Board/Commissioner
- (b) Joint Commissioner
- (c) Additional Commissioner
- (d) Deputy Commissioner

Ans. (a) Board/Commissioner

Q2. Which of the following authorises have power for search and seizure?

- (a) Commissioner
- (b) Officer authorised by Commissioner
- (c) Officer not below the rank of Joint Commissioner
- (d) Officer authorised by Commissioner

Ans. (c) Officer not below the rank of Joint Commissioner

Q3. Which of the following authorises have power to access premises?

- (a) Joint/Additional Commissioner of CGST/SGST
- (b) Commissioner
- (c) Assistant commissioner
- (d) Chief Commissioner

Ans. (a) Joint/Additional Commissioner of CGST/SGST

Q.4 In case of a "serious case", the departmental authorities are enabled to apply to which of the following authorities?

- (a) Board

- (b) First Appellate Authority
- (c) Chief Commissioner
- (d) Commissioner

Ans. (b) First Appellate Authority

Q5. Which of the following authorities have power of magistrate?

- (a) Principal Commissioner/Commissioner of SGST
- (b) Board
- (c) Chief Commissioner
- (d) Joint Commissioner

Ans. (a): Principal Commissioner/Commissioner of SGST

LEGENDS:

1. CA – Chartered Accountant
2. CWA – Cost and Works Accountant
3. CBEC – Central Board of Excise and Customs

Chapter– III

Levy of, and exemption from, tax

7. 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 at the rate specified in the Schedule ... to this Act 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) Notwithstanding anything contained in sub section (2), 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 person receiving 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 such goods and / or services.

7.1. Introduction

- (i) Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. Charging Section is a must in any taxing statute for the purpose of levy and collection of tax. Before taxing any person, it must be shown that he falls within the ambit of the charging section by clear words used in the section. No one can be taxed by implication.
- (ii) Section 7 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 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) 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.
- (iv) Specifically, in respect of the tax payable on reverse charge basis, the following conditions would be mandatory:
 - (a) Recommendation of the Council.
 - (b) Notification specifying the categories of supply of goods and / or services.

7.2. Analysis

Levy of tax: Every supply will be liable to tax, if both conditions listed above are fulfilled:

- (i) It involves goods and / or services – viz., wholly goods or wholly services. *Prima facie*, where the supply includes both goods and services, Schedule II of the Act provides for clarity on the same by specifying that such supply would qualify, either as services or as goods, as mentioned therein.
- (ii) The supply is an intra-State supply if the location of the supplier and the place of supply are within the same State. (Refer Section 3A of the IGST Act to understand the meaning of intra-State supply);

Tax shall be payable by a 'taxable person': The tax shall be payable by a 'taxable person' in terms of Section 9 and Schedule III. Broadly, a taxable person is one who is carrying on business at any place in the State and who is registered or who is required to be registered. Please refer to the discussion under Section 9 read with Schedule III for a thorough understanding of this.

Tax shall be payable only on intra-State supplies: The meaning of intra-State supply is contained in Section 3A of the IGST Act. A supply would be an intra-State supply if the location of the supply and the place of supply, both are within the same State. Please refer to the discussion on Section 3A under the IGST Act for a thorough understanding of this.

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

- a. Imposition of CGST by the Parliament of India,
- b. Imposition of SGST by the respective State

Rate and value of tax: The rate of tax will be as specified in Schedule ____ 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 (for eg: Section 12(6) of the Act). The law has provided an inclusive meaning to the word 'supply' which implies that the specific transaction types which are listed above are only illustrative. It includes goods and / or services. Further, it is essential that such supplies should be made 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;
- It should involve *quid-pro-quo* – viz., there should be something in return which the person supplying will obtain from the recipient. 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'. Absence of consideration [as defined in Section 2(28)] to the supplier will take away the character of 'supply' under this clause.

- (b) **Supply should be in the course of 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 of 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.

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

- (c) **Includes importation of service:** Additionally, the word 'supply' would include importation of a service, whether or not 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, subject to the threshold limit. Amongst others, such services would be liable to tax under reverse charge mechanism.

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(f) 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:** The word 'transfer' in this clause suggests that there should be another person who would receive the business assets at the other end. This would include transactions in the nature of consignment transfers.

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.

For example: 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.

(ii) **Disposal of business assets:** Typically, donation of business assets or disposal in any other manner (other than as a sale) would qualify as 'supply' under this clause.

(iii) **Temporary application of business assets to private use:** Where any business assets (fixed assets, stock in trade, office equipment, motor vehicles etc.) are put to use by the management or the employees for any personal use (non-business usage), the same would qualify as 'supply' and would therefore be liable to tax, though there is no consideration which would be paid by such employee or managerial personnel to the business entity.

For example: Person engaged in leasing of motor vehicles – if he uses the motor cars for transport of guests on the occasion of a marriage in the family, it would qualify as supply from the business entity to the managerial person who used the motor cars.

(iv) **Services put to a personal or non-business use:** Where any services are provided by the taxable person in the course of his business and if such services are at any time put to use by the management or the employees for any personal use (non-business usage), the same would qualify as 'supply' and would therefore be liable to tax, though there is no consideration involved in this transaction. That is captive consumption of services by the employees or managerial personnel within the organization will qualify as 'supply'.

For example: An architect who is partner of architect firm designing the house for himself or building complex for his own use would qualify as 'supply'.

- (v) Assets retained after deregistration: In cases where a taxable person deregisters himself (for any reasons, whatsoever) under this Act, the assets which are retained by the entity after such deregistration would qualify as supply.

Technically, as a process, such assets should be identified and the taxable person should discharge the tax liability even before applying for deregistration.

It is important to note that even when the tax department, deregisters a taxable person *suo motu*, this clause would be applicable.

- (vi) Supply of goods and / or services by one taxable person to another taxable person or non-taxable person 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 any other person (whether or not a taxable person) even without consideration would qualify as 'supply'.

For example; free supplies, samples, gifts etc.

- (e) **Agency transactions:** Supply of any goods and / or services on behalf of a principal would qualify as 'supply' if it is undertaken for a commission or brokerage.
- (f) **Services provided under a brand name:** Where any services are provided under a brand name of another person (referred to as an aggregator), then all such services shall be deemed to have been provided (supplied) by the said aggregator and not the individual service providers who provided the services directly to the customers. Accordingly, the aggregator would be liable to discharge the tax on such supplies. For example: Ola, Uber.
- (g) **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:

<p>All forms of supply of goods and/or services such as:</p> <ul style="list-style-type: none"> • Sale • Transfer • Barter • Exchange • License • Rental • Lease • Disposal <p>For a consideration</p> <p>In the course or furtherance of business</p> <p style="text-align: center;">Section 3(1)(a)</p>	<p>Importation of Service</p> <p>Whether or not for a consideration</p> <p>Whether or not in the course or furtherance of business</p> <p style="text-align: center;">Section 3(1)(b)</p>	<p>All supplies specified in Schedule I</p> <p>Without a consideration</p> <ul style="list-style-type: none"> • Permanent trf/ disposal of business assets • Temporary application of business assets to personal use • Services put to personal use • Assets retained after deregistration • Supply by taxable person to any other person in course or furtherance of business <p style="text-align: center;">Section 3(1)(c) read with Schedule I</p>	<p>Agency transactions for an agreed commission or brokerage</p> <p style="text-align: center;">Section 3(2A) <i>(read with section 12(6) for exception)</i></p>
Will be liable to CGST+SGST	Will be liable to IGST	Will be liable to CGST+SGST	Will be liable to CGST+SGST

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’.

7.3. 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 taxable. 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’.

In the current law, there are multiple transactions which apparently qualify as both 'sale of goods' as well as 'provision of services'. For example: 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. At this juncture, it appears that a transaction in the nature of composite contracts would either qualify as goods or as services, under the GST law (Schedule II of the Act).

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.

7.4. Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 3 read with Schedule I and II	Definition of 'supply'	Every supply of goods or services would be liable to tax. Thus, it becomes essential to understand the meaning of 'supply'.
GST	Section 2(17)	Definition of 'business'	Defines Business.
GST	Section 9 read with Schedule III	Meaning of 'taxable person'	Liability to tax is on every taxable person. Thus, it becomes essential to understand the meaning of 'taxable person'.
GST	Section 35	Payment of tax	Provides for method and timelines for remittance of tax by the registrant.
IGST	Section 3A	Meaning of intra-State supplies	Defines intra-State supplies of goods and / or services for the purposes of levy of tax under the CGST Act.
IGST	Section 4	Levy and collection of IGST	Charging Section under IGST

7.5. FAQ

Q1. Is the reverse charge mechanism applicable only to services?

Ans. No, reverse charge applies to supplies of both goods and services.

Q2. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. The receiver of goods could 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 be taxable only in the hands of the main supplier?

Ans. Yes, the transaction of exchange is specifically included in the scope of “supply” as per section 3. Thus, both the exchanges could be taxable.

Q4. Whether money is included in service?

Ans. No, money is not included in the definition of service.

Q5. What are examples of ‘disposal’ as used in supply?

Ans. “Disposal” could include donation or supplies in manner other than sale.

Q6. Will a not for-profit-entity be liable to tax on any sales effected by it – e.g.: sale of assets received as donation?

Ans. Yes, it would be liable to tax on price paid to it for said sale of donated assets.

7.6. MCQ

Q1. As per section 7, 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) Services put to a private or non-business use
- (b) Importation of service
- (c) Agency transactions
- (d) Barter

Ans. (a) Services put to a private or non-business use

Q3. Who can notify a transaction to be supply of goods and/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.

8. Composition levy

Statutory provision

- (1) Notwithstanding anything to the contrary contained in the Act but subject to sub section (3) of section 7, 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 a financial year does not exceed fifty lakh of 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 one percent of the turnover during the year.

Provided that no such permission shall be granted to a taxable person who effects any inter-State supplies of goods and / or services.

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) 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.
- (3) If the proper office 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 equivalent to the amount of tax payable as aforesaid.

Provided that no penalty shall be imposed without giving a notice to show cause and without affording a reasonable opportunity of being heard to the person proceeded against.

8.1. Introduction

This provision deals with the composition scheme for payment of tax by eligible taxable persons, subject to certain conditions. The procedures and the documentation would be contained in the Rules, to be prescribed.

8.2. Analysis

Composition scheme is an option:

Tax payment under this scheme is an option available to the registered taxable person. This scheme would be applicable only to taxable person whose supplies are restricted to a particular State. In other words, a person effecting inter-State supplies cannot opt for this scheme.

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 under law or he becomes ineligible.

Applicable to both, goods and services:

Composition scheme may be opted for by taxable persons, for supply of goods and / or services. It must be noted that a taxable person **cannot** opt for payment of taxes under composition scheme say for supply of goods and opt for regular scheme of payment of taxes for supply of services.

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.

Eligibility to pay tax under composition scheme:

Only taxable persons whose 'aggregate turnover' does not exceed Rs. 50 lacs in a 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 Act, 2016 'aggregate turnover' means 'Value of all (taxable and non-taxable supplies + Exempt supplies + Exports) – (Taxes + Value of inward supplies + Value of supplies taxable under reverse charge) of a person having the same PAN. It is expected that this threshold of turnover would be for the relevant financial year.

The threshold of Rs. 50 lacs would be applicable to a person having the same PAN and can be understood as follows:

- Taxable person covered by the same PAN shall be under composition across India;
- Value of supplies in all forms – goods and / or services;
- Value of supplies of all business verticals.

Conditions:

- (i) **Restricted from effecting inter-State supplies:** The taxable person should not effect any inter-State supplies of goods and / or services. A plain reading of the proviso to Section 8(1) would imply that the restriction on supplies would be applicable only to sales / dispatches (outwards supplies).

(To explain, where a taxable person effects inter-State barter transaction (supply) or inter-State suwarranty contract (supply), he will not be eligible to opt for composition scheme. This restriction would apply even if there are imports.)

- (ii) **Would be applicable for all transactions under the same PAN:** Composition scheme would become applicable for all the business verticals / registrations which are separately 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.

For example: A taxable person has the following business verticals separately registered:

- Sale of footwear
- Sale of mobiles
- Franchisee of McDonalds

In the above scenario, the composition scheme would be applicable for all the 3 business verticals. 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.

- (iii) **Shall not collect tax:** Taxable person opting to pay tax under the composition scheme is prohibited from collecting tax.
- (iv) **Not entitled to input tax credit:** Taxable person opting to pay tax under the composition scheme will not be eligible for any input tax credit.

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) held on the day immediately preceding the date from which he becomes liable to pay tax under Section 7. (Refer Section 16(3) for the provision).

- (v) **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.

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 1% of the turnover in the State [‘turnover’ to be read as defined under Section 2(104) of the Act].

Cancellation of permission

Where the proper officer has reasons to believe that the taxable person was not eligible to the composition scheme or if the permission granted earlier was incorrectly granted, the proper officer may cancel the permission and demand the following:

- Differential tax – viz., tax payable under the other provisions of the Act
- Penalty equivalent to the tax.

However, it is essential that a show cause notice be issued and the taxable person afforded an opportunity of being heard before proceeding with the demand.

8.3. 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.

8.4. Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 7(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 7.
CGST	Section 2(6)	Meaning of 'aggregate turnover'	Only if the value of aggregate turnover is less than Rs. 50 lacs, can composition scheme be opted for.
CGST	Section 2(104)	Meaning of 'turnover in a State'	The composition rate of tax will be payable on the 'turnover'.
CGST	Sections 66, 67 and 68	Penalties	Adherence to these provisions and conditions specified therein is mandatory to attract imposition of penalty.

8.5. 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 effect inter-state 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 Rs. 50 Lakhs of aggregate turnover in 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 and non-taxable supplies + Exempt supplies + Exports) – (Taxes + Value of inward supplies + Value of supplies taxable under reverse charge) of a person having the same PAN.
- Q9. What does a person having the same PAN mean?
- Ans. "Person having the same PAN" means all the entities across India having the same PAN.
- Q10. What are the penal consequences if a taxable person violates the condition and is not eligible for payment of tax under the Composition scheme?
- Ans. Taxable person who is not eligible for the said scheme, could be subject to tax plus penalty equivalent to the tax.

8.6. MCQ

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

- | | |
|-----|----|
| (a) | 4% |
| (b) | 2% |
| (c) | 1% |
| (d) | 5% |

Ans. (c) 1%

9. Taxable person

Statutory provision

- (1) Taxable Person means a person who carries on any business at any place in India / State of ____ and who is registered or required to be registered under Schedule III of this Act:

Provided that an agriculturist shall not be considered as a taxable person.

Provided further that a person who is required to be registered under paragraph 1 of Schedule III of this Act shall not be considered as a taxable person until his aggregate turnover in a financial year exceeds [Rs ten lakh]

Provided further that a person who is required to be registered under paragraph 1 of Schedule III of this Act shall not be considered as a taxable person until his aggregate turnover in a financial year exceeds [Rs five lakh]

[This threshold of 5 lacs will apply only if a taxable person conducts his business in any of the NE States including Sikkim.]

- (2) The Central Government, a State Government or any local authority shall be regarded as a taxable person in respect of activities or transactions in which they are engaged as public authorities other than the activities or transactions as specified in Schedule IV to this Act.
- (3) The following persons shall not be considered as taxable persons for the purposes of this Act -
- (a) any person who provides services as an employee to his employer in the course of, or in relation to his employment, or by any other legal ties creating the relationship of employer and employee as regards working conditions, remunerations and employer's liability;
 - (b) any person engaged in the business of exclusively supplying goods and/or services that are not liable to tax under this Act;
 - (c) any person, liable to pay tax under sub-section (3) of section 7, receiving services of value not exceeding _____ rupees in a year for personal use, other than for use in the course or furtherance of his business.

9.1 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

— Lastly, it is only a 'taxable person' on whom levy can be fastened under this Act.

9.2 Analysis

Meaning of 'taxable person':

A taxable person is defined as any person who carries on any business in India and who is registered or who is required to be registered. Schedule III of the Act, lists out persons who are liable to get registered. A person who is required to be registered will be considered as a taxable person only if his aggregate turnover in a financial year exceeds Rs. 10 lacs (Rs. 5 lacs in case of North Eastern States including Sikkim). In this regard, North Eastern States would mean – Arunachal Pradesh, Assam, Meghalaya, Manipur, Mizoram, Nagaland and Tripura including Sikkim.

It is also important to understand that the threshold for registration and threshold for payment of tax are different. While the threshold for payment of tax is Rs. 10 lacs and Rs. 5 lacs as indicated above, the threshold for registration is Rs. 9 lacs and Rs. 4 lacs respectively.

- (i) **The following persons shall be taxable persons irrespective of the threshold / value of aggregate turnover: (Refer Para 5 of Schedule III)**
- (a) Person effecting an inter-State supply
 - (b) Person required to pay tax under reverse charge mechanism
 - (c) Casual taxable persons in terms of Section 2(21) - *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.*
 - (d) Non-resident taxable person in terms of Section 2(69) - *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.*
 - (e) Any person who is required to deduct tax under Section 37. This would include the following:
 - 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 recommendation of the Council
 - (f) Person who supplies goods and / or services on behalf of another registered taxable person.
 - (g) Input service distributor in terms of Section 2(56). An Input service distributor means an office of the supplier of goods and / or services receiving or issuing tax invoices

including debit / credit notes for the purposes of distributing SGST / CGST / IGST to the supplier of goods and / or services having the same PAN.

- (h) Person supplying goods and / or services (other than branded services) through an electronic commerce operator
- (i) Electronic commerce operators: In terms of Section 43B(e) of the Act, an electronic commerce operator means any person who directly or indirectly owns or operates or manages an e-platform that is engaged in enabling the supply of goods and / or services or information. It would however, not include person supplying goods and / or services on their own behalf.
- (j) An aggregator who supplies services under his brand name / trade name. *In terms of Section 43B(a) of the Act*, an aggregator is defined to mean a person, who owns and manages an electronic platform, and by means of the application and a communication device, enables a potential customer to connect with the persons providing service of a particular kind under the brand name or trade name of the said aggregator.
- (k) Job worker, in respect of goods supplied by the job worker after completion of job work (refer Section 43A)
- (l) Such other persons or class of person as the Central Government or State Government may notify on recommendations from the Council.
- (ii) The following persons shall be taxable persons subject to the threshold / value of aggregate turnover:**
 - (a) Central Government or State Government or the local authority functioning as public authorities, except the activities listed in Schedule IV. (Refer Section 9(2) of the CGST Act)
 - (b) Person who is liable to be registered but not registered
- (iii) The following are specifically excluded from the meaning of 'taxable person':**
 - (a) Agriculturist as per Section 2(8) read with Section 2(103).
 - (b) Person registered but where the aggregate turnover is less than the thresholds indicated above [Rs. 10 Lakhs/ Rs. 5 Lakhs].
 - (c) Employees providing any services under an employer-employee relationship or workers covered under Contract Labour Abolition Act, 1971.
 - (d) Persons engaged wholly in supply of goods and / or services which are not liable to tax under this Act. This exclusion will not apply to a person supplying exempt goods and / or services.
 - (e) Where any person is liable to pay tax on services under reverse charge mechanism, if the value of services received is less than a specified amount during the year and if the

said services are received for personal use (other than in the course of or furtherance of business).

Note: The above exemption of services received upto a specified value will be applicable only if such services are meant for personal use. Where any services are received in the course of, or furtherance of business, the threshold will not be applicable – viz., will be liable to tax, irrespective of the threshold.

The list / class of persons who would be required to registered under the CGST Act, irrespective of the thresholds or nature of business etc., are discussed under Sections 19 and 19A read with Schedule III.

9.3 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.

9.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 2(8)	Definition of agriculturist	Agriculturists are not taxable persons
CGST	Section 2(91)	Meaning of 'Supplier'	
CGST	Section 2(103)	Definition of 'to cultivate' personally	
CGST	Section 19	Registration	Liability of taxable persons to register
CGST	Schedule III	Liability to be registered	The list of persons who are liable to be registered

9.5 FAQ

Q1. What is the threshold to obtain registration?

Ans. — In case of persons specified in Schedule III, registration is required if his aggregate turnover in a financial year exceeds **Rupees Nine Lakhs**.

— This threshold limit will be **Rupees Four Lakhs** if a taxable person conducts his business in any of the North Eastern States including Sikkim.

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

Ans. Yes, persons supplying taxable and exempted goods or services shall obtain registration when annual aggregate turnover is in excess of specified limit.

Q3. Will a person not having any supply, but who is transferring all his stock/ production to his another unit 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 that is also considered as taxable supply.

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

Ans. Yes, registration is required by an agriculturist who is engaged in business of supply of taxable goods namely fertilizers when his aggregate turnover exceeds specified limit.

9.6 MCQ

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

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

10. 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.

Explanation: Where an exemption under sub section (1) 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; and
 - (b) be made available on the official website of the department of the Central or a State Government.

10.1 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.

10.2 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 a notification
- (iii) On recommendation from the Council
- (iv) Absolute exemption may be for any goods and / or services
- (v) By way of special order in case conditional exemptions are granted by citing the circumstances which are of exceptional nature.

With specific reference to the third condition indicated above, it is important to note that the exemption should be only in respect of goods and / or services. For example: an absolute exemption could be granted in respect of supply of water. A conditional exemption could be supply of goods to canteen stores department.

There is one school of thought wherein it is opined / understood that conditional exemption is an option available to the taxable person. However, an absolute exemption is required to be followed mandatorily. The other school of thought says that once the conditions relating to an exemption are satisfied, the exemption automatically follows. This understanding will have a direct bearing on the claim or otherwise of the input tax credit. This provision does not bring in any clarity on this issue.

In terms of sub-Section (2), the Government may issue a special order on a case-to-case basis. The circumstances of exceptional nature would also have to be specified in the special order.

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.

Effective date of the notification or special order:

The effective date of the notification or the special order would be the 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 01.04.2017
2. All kinds of training services with effect from 01.04.2017

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 Rs. 100” with effect from 01.04.2017

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 01.04.2017 in respect of all Hotels located in Patna in Bihar for a period of 3 months with effect from 01.08.2017 to 31.10.2017 in view of the flash floods.

10.3 Comparative review

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

10.4 FAQ

Q1. When exemption from whole of tax collected on goods and/or services has been granted unconditionally, can taxable person pay tax?

Ans. No, the taxable person providing such goods and/or services shall not collect the tax on such goods and/or services.

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 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.

10.5 MCQ

Q.1 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

Q2. When shall exemption notification come into force?

- (a) Date of its issue for publication in the official gazette;
- (b) Date on which it is made available on the official website of the Department
- (c) All of the above;
- (d) None of the above

Ans. (a) Date of its issue for publication in the official gazette

11. Remission of tax on supplies found deficient in quantity

Statutory provision

- (1) The Central or a State Government may, by rules made under this sub-section, provide for remission of tax on such supplies which are found to be deficient in quantity due to any natural causes.
- (2) Any rules made under sub-section (1) may, having regard to the nature of the supply, fix the limit or limits of percentage beyond which no such remission shall be allowed.

11.1 Introduction

'Remission of duty / tax' is a well-recognized concept under Indirect Tax laws by virtue of which the tax payer is relieved of the obligation to pay duty / tax upon happening of certain events causing loss or destruction to the goods.

11.2 Analysis

1. Remission would mean – the act of giving up, partly or wholly. Accordingly, under GST, it would mean where the taxable event (supply of goods and / or services) has occurred and the Government is entitled to collect tax, but is giving it up, partly or wholly.
2. Remission is available only in respect of goods. No remission will be allowed in respect of services.
3. Section 11 as drafted is similar to Rule 21 of the Central Excise Rules, 2001 as subsisting as on date and does not reckon with the change in the taxable event / point of charge under the GST dispensation.
4. Central Government and State Government are empowered by rules to grant remission of CGST and SGST respectively.
5. Remission of tax is permissible only on such supplies which are found to be deficient in quantity due to natural causes. Under GST regime, the taxable event is supply. Only upon supply, the levy gets attracted. Thus, the question of remission of tax arises where the goods are lost after they are supplied and before being accepted by the other person.
6. If any loss or destruction of goods happens within the premises of taxable person, question of tax payment does not arise as taxable event i.e. supply of goods did not occur. Thus there is no need to apply for remission of tax.
7. Central Government/State Government is also conferred with power to fix the limit or limits of percentage beyond which no such remission is allowed. Such limits shall be fixed by having regard to the nature of supply involved.
8. Upon a plain reading of the language of Section 11, it appears that the Section intends

to allow remission only for natural causes like evaporation, melting etc. Remission may not be allowed for damage or destruction of goods after supply for any other reasons unless the Rules to be framed extend the power of remission akin to what is currently in the Central Excise Rules. Thus it appears that the remission benefit is in a way intended only for volatile goods.

9. Section 24 of the Model GST Law provides for issuance of credit notes where a tax invoice has been issued for supply of goods/invoices and the amount of tax mentioned as payable in the said invoice is in excess of the taxable value/tax payable towards such supply, then the taxable person can issue credit notes adjusting the difference in the taxable value and the actual tax payable. Credit notes are allowed to be issued by receiver of goods on or before 30th day of September following the end of financial year in which such supply was made or date of filing relevant annual return whichever is earlier. By virtue of this provision, in case of loss or destruction of goods on account of any other reasons (other than natural causes), the tax incidence can be reduced by way of issuing credit notes.
10. The difference between remission under section 11 and adjustment by way of credit notes under section 24 is that under remission, waiver of tax will be applicable whether or not the value towards lost or deteriorated goods is also received by taxable person whereas under section 24, the adjustment is possible only when the value towards lost or destroyed goods is not received by supplier.

For example: Sale of iron ore on the basis of delivery at the site of the customer - If there is a loss in weight during transit (due to say water loss), remission may be granted in respect of such loss in quantity.

11.3 Comparative review

Study of Current Provisions under Excise, Customs and VAT Laws vis-à-vis GST Model Law

1. **Event that triggers remission:** Remission is allowed if the loss or destruction happens at any time after the taxable event but before the levy crystallises. The events that trigger remission under respective laws are as under;
 - (i) Customs: Under Customs law, remission is allowed if the loss or destruction of goods happens after importation (taxable event) but before order for home clearance is passed (levy crystallises).
 - (ii) Excise: Under Excise law, remission is allowed if the loss or destruction happens after manufacture of excisable goods (taxable event) but before the excisable goods are removed (levy crystallises)
2. **Nature of loss eligible for remission:** Remission is not allowed for all types of losses. Nature of loss should be the one specified in the relevant section or the rules made

thereunder. The following are nature of losses that allows remission of duty under each of the respective laws;

- (i) Customs: Under Customs law, remission is allowed upon pilferage, loss or destruction, relinquishment of title.
- (ii) Excise: Under Excise law, remission is allowed upon lost or destroyed by natural cause, unavoidable accident, goods declared by manufacturer as unfit for consumption or for marketing any time before removal.

11.4 FAQ

Q.1 What is remission of tax/duty?

Ans. It means relieving the tax payer from the obligation to pay tax/duty on goods when they are lost or destroyed. Remission is subject to conditions stipulated under the law and rules made thereunder.

Q.2 Whether remission is allowed under GST law?

Ans. Yes, proposed section 11 of Model GST law permits remission of tax on supply of goods when they are lost or destroyed.

Q.3 Whether remission is allowed for goods lost or destroyed before supply?

Ans. Remission of tax/duty will apply only when tax/duty is payable as per law i.e. taxable event should have happened and tax/duty is required to be paid as per law. Under GST Law, levy is applicable upon supply of goods. Where goods are lost or destroyed before supply, taxable event does not occur in order to pay tax/duty. Accordingly, question of remission of tax/duty does not rise.

Q.4 Whether remission is allowed on goods lost or destroyed for all reasons?

Ans. No, on plain reading of the language of proposed Section 11, remission is allowed only for those cases where supply of goods is found to be deficient in quantity due to natural causes. In case of goods lost or destroyed for any other reasons, tax incidence can be reduced by way of issuing credit notes.

11.5 MCQ

Q.1 Remission is allowed in which of the following circumstances:

- (a) Where supply of goods are found to be deficient in quantity due to natural causes
- (b) Where supplied goods are stolen by robber.
- (c) Where taxable goods are destroyed in workshop of supplier before being supplied.
- (d) In all of the above cases

Ans. (a) Where supply of goods are found deficient in quantity due to natural causes.

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 earliest of the following dates, namely,-
 - (a)
 - (i) the date on which the goods are removed by the supplier for supply to the recipient, in a case where the goods are required to be removed or
 - (ii) the date on which the goods are made available to the recipient, in a case where the goods are not required to be removed; or
 - (b) the date on which the supplier issues the invoice with respect to the supply; or
 - (c) the date on which the supplier receives the payment with respect to the supply; or
 - (d) the date on which the recipient shows the receipt of the goods in his books of account.

Explanation 1.- The provisions of sub-clause (ii) of clause (a) shall apply in cases where the goods

- (a) are physically not capable of being moved; or
- (b) are supplied in assembled or installed form; or
- (c) are supplied by the supplier to his agent or his principal.

Explanation 2.- For the purposes of sub-clause (ii) of clause (a), the expression 'made available to the recipient' shall mean when the goods are placed at the disposal of the recipient.

Explanation 3.- For the purposes of clauses (b) and (c) of sub-section (2), 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 4.- For the purpose of clause (c) of sub-section (2), "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 continuous supply of goods, where successive statements of accounts or successive payments are involved, the time of supply shall be the date of expiry of the

period to which such successive statements of accounts or successive payments relate. If there are no successive statements of account, the date of issue of the invoice (or any other document) or the date of receipt of payment, whichever is earlier, shall be the time of supply.

- (4) For the purposes of sub section (3) above, the Central or a State Government may, on the recommendation of the Council, specify, by notification, the supply of goods that shall be treated as continuous supply of goods;
- (5) 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 of receipt of invoice, or
 - (d) the date of debit in the books of accounts.

Explanation.- For the purpose of clause (b) of sub-section (5), “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.

- (6) If 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 time of supply shall be at the time when it becomes known that the supply has taken place or six months from the date of removal, whichever is earlier.
- (7) In case it is not possible to determine the time of supply under the provisions of subsection (2), (3), (5) or (6), 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. Introduction

The all-encompassing activity of supply must be shown to take place at a specific time so that it can be clearly known when exactly the levy is attracted. For this purpose, it is necessary to understand ‘time of supply’. In other words, if the ‘time’ of supply has not arrived then, the tax leviable cannot be levied but it must wait. So, the Government too must wait before attempting to levy / collect the tax and the tax payer is free from any obligation to pay tax until this ‘time’ arrives.

As explained in an earlier chapter, ‘supply’ is the taxable event and being an ‘event’ it occurs at a precise time and not at any approximate time. Knowing the precise time of supply triggers the provisions for collection of the levy.

12.2. Analysis

This section declares that the 'liability to pay' tax arises only at the 'time of supply' which is determined specifically under this section and in respect of goods only. If supply decides 'what' tax is imposed, time of supply decides 'when' this tax is imposed. If the events (defining the time of supply) have not occurred, then the levy of tax is postponed until they occur. These events are:

- Removal of goods by the supplier or by any person acting on behalf of the supplier
- Goods made available to recipient or to any person acting on behalf of the recipient
- Issuance of invoice
- Receipt of payment
- Recording of receipt in books of recipient.

“(83) “removal”, in relation to goods, means –

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

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

The above provisions are explained with an example as below:

Sl. No.	Particulars	Notes	Date of Removal	Date of invoice	Date made available to recipient	Date on which recipient records receipt of goods in his books of accounts	Date of receipt of payment	Time of supply
1	If goods are required to be removed	5 & 6	21.04.17	22.04.17	21.04.17	27.06.17	20.06.17	21.04.17
2	If goods are not required to be removed	1, 2, 5 & 6	NA	18.05.17	16.05.17	25.07.17	21.07.17	16.05.17
3	Issue of invoice	3, 5 & 6	21.05.17	20.05.17	26.05.17	23.05.17	10.08.17	20.05.17
4	Receipt of payment	3 & 4	10.06.17	11.06.17	16.06.17	10.06.17	09.05.17	09.05.17
5	Recipient recording receipt of goods in his books of account	5	11.07.17	10.07.17	17.07.17	12.06.17	30.07.17	12.06.17

Notes:

- 1 Clause will apply only if goods:
 - Cannot be moved physically e.g. machine embedded to earth
 - Supplied in assembled or installed form e.g. lifts
 - Supplier supplies to his agent or principal
2. When goods are placed at disposal of recipient
- 3 By way of fiction, supply is deemed to be made to the extent covered by invoice/ payment
4. Receipt of payment means earliest of:
 - Date of entry in books
 - Date of credit in books
- 5 Recipient of goods includes a person receiving goods on behalf of the recipient
- 6 Supplier includes a person supplying on behalf of the Supplier

'Removal' of goods is stated to be the time of supply. Removal being defined in Section 2(83) to be limited only to physical transportation and excludes any other form of extinguishment or consumption of goods. It is important to note that the removal is not when the goods are actually placed in the hands of the recipient, but the time when they are taken-up by the supplier with intention of transportation to the recipient. In other words, the time of supply is on commencement of the journey and not completion of the journey. Also, every other innocent transportation of goods not specifically and purposefully to supply it to the recipient would not be removal under this section. In other words, any transportation of goods before they are in a 'deliverable state' even if it is ultimately in furtherance of the supply would not be removal. To reiterate here, unless time of supply occurs, the incidence of tax is deferred. Unless goods are in a deliverable state, even if there is an attempt to supply or any transportation resembling supply, there would be no incidence of tax (yet).

Then, goods 'made available' to a recipient are stated to be the time of supply where removal of goods is not required. This expression is explained to mean 'placed at disposal' of recipient. In other words, without being required to remove the goods, if the supplier 'gives up control' over the goods, that would also be the time of its supply.

The word 'required' used in this Section seems to indicate a clause or covenant in the terms of supply imposed upon or expected of the supplier and not a feature of the goods that makes the goods usable by the recipient. Whether required to be removed or not, both appear to cover cases of business supplies under section 3(1)(a) such as sale, transfer, barter, exchange, license, rental, lease or disposal and not deemed supplies under section 3(1)(c) as per Schedule I -

- Permanent transfer / disposal of business assets

- Temporary application of business assets to a private or non-business use
- Services put to a private or non-business use
- Assets retained after deregistration
- Supply of goods and / or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business
- Supply to job worker (subject to 43A) not treated as supply

or (2A) viz, Principal – Agency transaction where principal supplies goods to a agent for sale or disposal. Hence, extinguishment or consumption of the goods even if considered to be supply, does not attract the levy of tax until its ‘time’ of supply can be determined under this section. Goods consumed to fulfil a supply are not liable to tax but the goods (or services) that are supplied by its consumption are only liable to tax. This aspect which has been explained in the discussion under section 7 is well supported by this section.

Now, if the above two provisions do not explain the time of supply, then the date of issuance of invoice or receipt of payment is stated to be the time of supply. It is important to note that every taxable person is obliged to issue an ‘invoice’ at the time of supply as per section 23. That means, supplying goods without issuing an invoice is not permissible. In fact, doing so is an offence under section 66(1)(i). So, time of supply cannot be decided by issuance of invoice because that, in itself, is an act of compliance expected of the supplier. Therefore, time of supply is left to be decided based on issuance of invoice or receipt of payment, applies in cases where something is done that subverts the time of supply under the previous criteria – ‘removal’ or ‘place at disposal’ of recipient.

In case of continuous supply of goods, time of supply is decided based on reaching billing-milestone if running account bills are permitted, and if not, earlier of actual date of invoice or receipt of payment. As per Section 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. As to which of the cases will be regarded as continuous supply of goods may be specified by notification.

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)
- making payment (to recipient / supplier)
- receipt of invoice
- debit in books (of recipient)

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

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.

Where goods are sent on approval basis, time of supply will be when the goods are irretrievably retained by recipient or six (6) months, whichever is earlier. Here something of tremendous interpretative meaning is provided – the framing of this sub-section to a removal otherwise than by way of supply. That is, the word 'removal' does not stand alone but along with a 'purpose'. So, whenever removal is referred to in the Act, it must be used with reference to the purpose behind each removal. This interpretation supports the analysis in the above paras that tax incidence must wait until removal occurs with the purpose of the supplier irreversibly giving up control over the goods.

Section 12 (6) - 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.

In summary, the provisions of section 12 specify the time of supply to be date when:

- Goods are removed for purpose of supply (sub section 2(a)(i))
- Goods are made available or placed at disposal of recipient (sub section 2(a)(ii))
- Invoice is issued (sub section 2(b))
- Payment is received (sub section 2(c))
- Goods are accounted by recipient (sub section 2(d))
- Billing-milestone reached as notified; if not, earlier of invoice is issued or payment is received (sub section 3)
- In case of reverse charge – when goods are received or invoice is issued or payment is received or accounted in books of recipient.
- In case of goods sent on approval basis – when goods are retained by recipient or six month, whichever is earlier.
- Lastly, on due date of periodical returns or payment of tax.

12.3. Comparative Review

Time of payment of VAT was determined as the earliest of the events when the sale occurred or raising of invoice or receipt of payment without any further rule on time of sale. However, in case of Central Excise duty the incidence is on manufacture although the date for determining rate of duty and tariff value is deferred until removal as stated in rule 5 of Central Excise Rule. Removal included captive consumption also.

On a comparative review of the above provisions, we find that 'destination of movement' guided the levy of CST and actual removal without reference to any purpose guided the levy of CE duty, whereas, 'purposeful handing over' appears to determine the 'time' of incidence of GST. And until that 'time' is reached, the incidence would be in abeyance.

12.4. Related provisions

Statute	Section or Rule	Description	Remarks
CGST Act	2(80)	Defines recipient	
CGST Act	2(83)	Defines removal	
CGST Act	3	Meaning and Scope of supply	
CGST Act	7	Levy and Collection	
CGST Act	Schedule I	Matters to be treated as supply without consideration	
CGST Act	23	Tax Invoice	

12.5. Frequently Asked Questions

Q1. What is time of supply of goods which are not required to be removed?

Ans. The time of supply of goods shall be the earliest of the following, namely,-

- (a) the date on which the goods are removed by the supplier for supply to the recipient or
- (b) the date on which the supplier issues the invoice with respect to the supply; or
- (c) the date on which the supplier receives the payment towards the supply; or
- (d) the date on which the recipient shows the receipt of the goods in his books of account

Q2. What is time of supply of continuous supply of goods?

Ans. (a) In case where successive statements of accounts or successive payments are involved: the date of expiry of the period to which such successive statements of accounts or successive payments relate.

- (b) If there are no successive statements of account, the earliest of date of issue of the invoice or the date of receipt of payment.

Q3. What is the time of supply in case of supply of goods taxable under reverse charge?

Ans. The time of supply shall be the earliest of the following—

- (a) the date of the receipt of goods, or
- (b) the date on which the payment is made, or
- (c) the date of receipt of invoice, or
- (d) the date of debit in the books of accounts

Q4. What is time of supply of goods sent on approval basis?

Ans. The time of supply shall be earliest of the time when it becomes known that the supply has taken place or six months from the date of removal.

12.6. MCQ

Q1. Removal of Goods means:

- (a) dispatch of the goods for delivery by the supplier or by any other person acting on behalf of such supplier,
- (b) collection of the services by the recipient or by any other person acting on behalf of such recipient;
- (c) none of the above
- (d) All of the above.

Ans. (a) dispatch of the goods for delivery by the supplier or by any other person acting on behalf of such supplier.

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:-
 - (a) the date of issue of invoice or the date of receipt of payment, whichever is earlier, if the invoice is issued within the prescribed period; or
 - (b) the date of completion of the provision of service or the date of receipt of payment, whichever is earlier, if the invoice is not issued within the prescribed period; or
 - (c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or (b) do not apply.

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 (a) and (b) of sub-section (2), "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.

- (3) In case of continuous supply of services, the time of supply shall be -
 - (a) where the due date of payment is ascertainable from the contract, the date on which the payment is liable to be made by the recipient of service, whether or not any invoice has been issued or any payment has been received by the supplier of service;
 - (b) where the due date of payment is not ascertainable from the contract, each such time when the supplier of service receives the payment, or issues an invoice, whichever is earlier;
 - (c) where the payment is linked to the completion of an event, the time of completion of that event;
- (4) For the purposes of sub section (3) above, the Central or a State Government may on the recommendation of the Council, specify, by notification, the supply of services that shall be treated as continuous supply of services;
- (5) 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 receipt of services, or

- (b) the date on which the payment is made, or
- (c) the date of receipt of invoice, or
- (d) the date of debit in the books of accounts.

Explanation.- For the purpose of clause (b) of sub-section (5), “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.

- (6) In a case where the supply of services ceases under a contract before the completion of the supply, such services shall be deemed to have been provided at the time when the supply ceases.
- (7) Where it is not possible to determine the time of supply of services in the manner specified in sub-sections (2), (3), (5) and (6), 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. Introduction

Time of supply of services is different from time of supply of goods. It is not possible to verify if Services they have been performed, except when they are performed on some article. But similar to goods, time of supply suspends the incidence of tax until the event making up the time of supply occurs. Sub-section 1 states that the liability will arise at the time determined under this section.

13.2. Analysis

The time of supply of services shall be:-

When the invoice is issued within the prescribed period: The date of issue of invoice or the date of receipt of payment, whichever is earlier,; or

if the invoice is not issued within the prescribed period: The date of completion of the provision of service or the date of receipt of payment, whichever is earlier; or

the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or (b) do not apply.

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.

Firstly, it is expected that a certain time period would be prescribed by way of Rules within which invoice for supply of services must be generated ('Prescribed Period'). The rest of the provisions of this section are based on the time that is set to be prescribed.

The fact that supply of services has taken place is made verifiable by the events listed in this section. When any of the specified events occurs, that is declared to be the 'time of supply' of the service.

Performance of a service may be verified either by the change that is produced in the articles on which the service is carried out or upon observing actions of parties that generally takes place only after the agreed service has been performed. But according to this section, all such observable events are not taken into consideration whereas the events specified alone determine the 'time of supply' of the services.

Where invoice is issued within the Prescribed Period, the time of supply will be earlier of two events – issuance of invoice or receipt of payment. Considering that scope of section 3(1)(a) includes supply 'made or agreed to be made', it appears that liability to pay tax will arise under this provision even if service is yet to be performed due to this fiction. So, a service is not performed until the time of its supply, described in this provision, arrives because sub-section (1) of Section 14 excludes arising of liability in any other manner.

Then, where invoice is not issued within the Prescribed Period, the time of supply will be the earlier of the two events – completion of service or receipt of payment. Here again, the actual completion of service is made relevant. This appears to be an anti-avoidance measure where the requirement to issue an invoice is avoided or postponed, then the tax is imposed at the time of actual performance.

Section 13 - Time of supply of services

Sl No.	Situation	Date of Completion of Services	Date of Invoice	Date of Payment	Date on which recipient shows receipt of services	Time of supply of services
1	Invoice issued within prescribed period of completion of service	16.04.17	20.04.17	28.04.17	21.04.17	20.04.17
2	Invoice issued within prescribed period of completion of service	30.09.17	01.10.17	30.11.17	24.09.17	24.09.17

3	Invoice issued after the prescribed period of completion of service	16.04.17	16.08.17	28.04.17	28.04.17	16.04.17
4	Invoice issued after the prescribed period of completion of service	10.06.17	18.08.17	30.04.17	18.08.17	30.04.17
5	Invoice issued after the prescribed period of completion of service	30.09.17	01.11.17	30.11.17	24.09.17	24.09.17

Continuous supply of service:

In case of continuous supply of services, time of supply is decided based on reaching contractual payment due date or billing-event and where it is not known, time of supply is decided by earlier of actual date of invoice or receipt of payment. Situations to be regarded as continuous supply of goods will be specified by way of a notification.

When tax payable under reverse charge:

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

- receipt of services (by recipient)
- making payment (to recipient)
- receipt of invoice
- debit in books (of recipient)

The above provisions are explained with an example as below:

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

Sl. No. (1)	Particulars (2)	Date of receipt of service (3)	Date of receipt of invoice (4)	Date of Making the Payment (5)	Date of Debit in books of accounts (6)	Time of Supply (7)
1	CASE I	21.06.2017	22.06.2017	10.05.2017	23.06.2017	10.05.2017
2	CASE II	22.06.2017	23.06.2017	28.06.2017	24.06.2017	22.06.2017
3	CASE III	26.06.2017	27.06.2017	30.07.2017	25.06.2017	25.06.2017
4	CASE IV	26.04.2017	29.04.2017	30.07.2017	05.04.2017	05.04.2017

Where services cease pre-maturely, they will be deemed to be supplied at the time of cessation.

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

13.3. Comparative Review

Point of Taxation of services is determined by Point of Taxation Rules, 2011 which classify services into various categories and then specific by legal authority which is its place of provision.

Service tax is regarded to be a 'destination based consumption tax'. Accordingly, this principle is contained in the Place of Provision of Service Rules. But, it is not expressly stated in the Rules.

13.4. Related Provisions

Statute	Section or Rule	Description	Remarks
CGST Act	2(88)	Definition of 'services'	
CGST Act	13	Time of supply of services	
CGST Act	3	Meaning and scope of supply	All forms of supply
CGST Act	Schedule II	Activities treated as supply of goods or services	

13.5. Frequently Asked Questions

Q1. What is time of supply of service when invoice is not issued within prescribed period?

Ans. The time of supply of service is the earliest of date completion of the provision of service or the date of receipt of payment.

Q2. What is time of supply of service when invoice is issued within prescribed period?

Ans. The earliest of the following:

- (a) date of completion of the provision of service or
- (b) the date of receipt of payment

Q3. What is time of supply of service in case tax payable under reverse charge?

Ans. The time of supply will be the earliest of the following dates:

- receipt of services (by recipient)
- making payment (to recipient)
- receipt of invoice
- debit in books (of recipient)

13.6. Multiple Choice Questions

Q1. Who can notify continuous supply of service on recommendation of GST council?

- (a) President of India.
- (b) Central Government
- (c) GST council
- (d) CBEC

Ans. (b) Central Government

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

Statutory Provisions

- (1) Notwithstanding anything contained in section 13, the time of supply, in cases where there is a change in the effective rate of tax in respect of services, shall be determined in the following manner, namely:-
- (a) in case the taxable service has been provided before the change in effective rate of tax-
- (i) where the invoice for the same has been issued and the payment is also received after the change in effective 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 effective rate of tax but the payment is received after the change in effective 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 effective rate of tax, but the invoice for the same has been issued after the change in effective rate of tax, the time of supply shall be the date of receipt of payment;
- (b) in case the taxable service has been provided after the change in effective rate of tax -
- (i) where the payment is received after the change in effective rate of tax but the invoice has been issued prior to the change in effective 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 effective 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 effective rate of tax but the payment is received before the change in effective rate of tax, the time of supply shall be the date of issue of invoice.

Explanation. For the purpose of 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:

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 effective rate of tax.

14.1. Introduction

This section overrides section 13 relating to time of supply of services and provides the

manner of determining the time of supply when there is a change in the rate of tax in between a provision of service, issuance of invoice and receipt of payment.

14.2. Analysis

Time of supply determined under section 13 is set aside by this section for the limited purpose to determine the effective rate of tax when there arises a situation of change in rate of tax on receipt of supply of services. Even though section 13 is overruled, this section is to be applied in each of the circumstances to which section 13 applies but modified as provided here.

So, it will be helpful to understand this section by replacing each of the provisions of section 13 with the corresponding provision from this section.

At the outset, the requirement to issue an invoice with the Prescribed Period continues.

The time of supply will be when two of the following three events have occurred before or after the change in rate of tax:

- Performance of service
- Issuance of invoice
- Receipt of payment

Among the two event the preference would be to invoice or payment as the case may be and where it is invoice and payment, earlier of the two.

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

SI 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

SI 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%

14.3. Comparative Review

Point of Taxation Rules specifies two-out-of-three criteria similar to that provided under this section.

14.4. Frequently Asked Questions

Q1. There was increase in tax rate from 20% to 24% w.e.f. 1.6.2017. What is the tax rate applicable when services provided and invoice issued before change in rate in April 2017, but payment received after change in rate in June 2017?

Ans. The old rate of 20% is applicable as services are provided prior to 1.06.2017

14.5. Multiple Choice Questions

Q.1 There was increase in tax rate from 20% to 24% w.e.f. 1.6.2017. Which of the following rate applicable when services provided after change in rate in June 2017 but invoice issued and payment received in April 2017?

- (a) 20%
- (b) 24%
- (c) 30%
- (d) None of above

Ans. (a) 20%

15. Value of supply

Statutory provision

- (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 transaction value under sub-section (1) shall include:
 - (a) 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;
 - (b) the value, apportioned as appropriate, of such goods and/or services as are supplied directly or indirectly by the recipient of the supply free of charge or at reduced cost for use in connection with the supply of goods and/or services being valued, to the extent that such value has not been included in the price actually paid or payable;
 - (c) royalties and licence fees related to the supply of goods and/or services being valued that the recipient of supply must pay, either directly or indirectly, as a condition of the said supply, to the extent that such royalties and fees are not included in the price actually paid or payable;
 - (d) any taxes, duties, fees and charges levied under any statute other than the SGST Act or the CGST Act or the IGST Act;
 - (e) 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;
 - (f) subsidies provided in any form or manner, linked to the supply;
 - (g) any reimbursable expenditure or cost incurred by or on behalf of the supplier and charged in relation to the supply of goods and/or services;
 - (h) any discount or incentive that may be allowed after the supply has been effected:
Provided that such post-supply discount which is established as per the agreement and is known at or before the time of supply and specifically linked to relevant invoices shall not be included in the transaction value.
- (3) The transaction value under sub-section (1) shall not include any discount allowed before or at the time of supply provided such discount is allowed in the course of normal trade practice and has been duly recorded in the invoice issued in respect of the supply.

- (4) The value of the supply of goods and/or services in the following situations which cannot be valued under sub-section (1), shall be determined in such manner as may be prescribed in the rules.
- (i) the consideration, whether paid or payable, is not money, wholly or partly;
 - (ii) the supplier and the recipient of the supply are related;
 - (iii) there is reason to doubt the truth or accuracy of the transaction value declared by the supplier;
 - (iv) business transactions undertaken by a pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery;
 - (v) such other supplies as may be notified by the Central or a State Government in this behalf on the recommendation of the Council.

15.1 Introduction

Consideration is *quid pro quo* in a contract and price is the consideration expressed in money terms. Value is the price prevalent when a transaction takes place under controlled conditions. Valuation is the study of all those circumstances and assessment of steps to reverse or rectify the effect of contractual or other arrangements that may suppress or understate the value of the transaction.

“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”

15.2 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 of supply of goods and/or services 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:

- Any amounts paid by recipient that are obligation of supplier to pay;
- Money value of goods or services provided free or at concession by recipient;
- Royalties and license fees payable by recipient as a condition of supply;
- Taxes levied under any other law(s) (other than SGST / CGST or IGST);
- Expenses incurred by supplier before supply and charged separately;
- Subsidy realized by supplier on the supply;
- Reimbursements claimed separately by supplier;
- Discounts allowed 'after' supply except when known before supply; (Discounts allowed as a normal trade practice and reflected on the face of the invoice shall not be included).

The circumstances which require reference to Valuation Rules are specifically listed in sub-section 4. In other words, if the transaction value determined under sub-section 1 is accepted after being examined for inclusions in sub-section 2 and 3, then there is no requirement to refer to Valuation Rules. Accordingly, Valuation Rules are to be referred in the following five cases:

- (i) Where goods or services are supplied for consideration which is defined in section 2(28) if this consideration is not in money terms then such a transaction may appear to escape levy of tax due to difficulty to quantify the same. Similar situation may arise in supply where only part of the consideration is expressed in money terms such that the whole of the consideration cannot be correctly determined. It is important to note that section 15 does not authorize any estimation of the non-monetary portion of the consideration but requires following the prescribed method of determination of the transaction value by reference to the Rules.

2(68) "**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 such similar instrument 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

Examples of consideration not in money:

1. Barter arrangement - Ram who is a trader of apples buys a second hand weighing machine from Shyam. Ram does not pay in money but agrees to provide Shyam with 10 kg of apples.
2. Exchange of services - A Chef provides catering services for Shyam's birthday party. In return Shyam agrees to draw lay out plan for chef's new wet kitchen for free.

Examples for consideration partly in money:

1. An electronic company is offering its customers a new model of TV set for Rs. 23,500. Ram who wants to buy a TV set for his living room, negotiates with the company to accept his old TV set as a trade in, together with a cash payment of Rs. 19,000 for the new TV set. The deal is finalized when the electronic company agrees with Ram's suggestion.
2. Shyam intends to sell his old scooter for Rs. 20,000. Ram who is having Rs. 17,000 in cash persuades Shyam to reduce the price to Rs. 17,000 since he urgently needs a scooter for some purpose. Both parties finally agree that for a full settlement for the scooter, Ram will pay Rs. 17,000 in cash and will repaint Shyam's car.
 - (ii) Where the supplier and the recipient of the supply are related to each other, then even if the existence of their relationship did not have any influence on the price of supply, this operates as a disqualification from accepting the price to be its transaction value for determination of the tax payable. It must be kept in mind that the relationship may have come into existence long after the arrangement to supply goods or services was entered into or has no relevance to the supply but, such transactions must pass through the scrutiny that is provided in the Rules. Further, it may be the case that after referring to the Rules, no change may be necessary to the transaction value but it is still required. It is of utmost importance to carefully consider the definition of related persons and not that it is a definition that must apply both ways – supplier to recipient and recipient to supplier.
 - (iii) Where the facts and circumstances of a particular supply are such that the reliability of the transaction value is suspect:- This being a matter of opinion arising out of certain facts about the supply, though it is not clear if suspicion must arise before applying the Rules or upon applying the Rules. Please note that rule 7(1)(b) illustrates the reasons for doubting the truth and accuracy of the value declared by the supplier. But, if the rule must be referred only if the suspicion arises, how can the suspicion arise before referring to the Rules. This anomaly may soon be resolved during enactment of the law. In any case, if the suspicion arises, then reference to the Rules is mandatory. It is of interest to note that the defence against this suspicion also appears to be the tests laid down by the very rule that lists the suspicious circumstances.
 - (iv) Where business transactions are undertaken by a specified category of persons being pure agent, money changer, insurer, air travel agent and distributor or selling agent of lottery then, reference to the Rules is required. This provision is to provide the legislative expectation of the acceptable transaction value due to the non-standard nature of practices in force in industry.
 - (v) Lastly, an enabling provision is also provided where certain supplies as notified may require examination by the Rules. This is wisdom of the lawmaker to retain authority to refer transactions that may escape the above four categories requiring application of the

tests in the Rules but still warrant a review just to ensure that it is acceptable. For example, supplies that are non-recurring in nature or of substantive value like a multimillion-dollar turnkey project or a long-gestation prospecting, exploration and evacuation project or a unique and innovative business for which no regulatory mechanism may have yet been provided for. It is important to note that the Valuation Rules are issued by the Government and not the Parliament. As such there is flexibility to attend swiftly to the needs of circumstances and requests of industry. At the same time, the exercise of this authority is still retained by Parliament and this is well balanced.

Valuation Rules, states in Rule 3 that the basic principle of valuation is the 'transaction value expressed in money terms' and the value of supplies for each of the circumstances of section 15(4) will be:

- Transaction value of goods / services of comparable kind adjusted for differences in the comparable selected;
- Computed value based on cost construction method;
- Residual method based on reasonable means of determination.

Where transaction value cannot be determined under rule 3, following steps are to be followed, in order of priority:

- Comparable price is one where the given supply is compared with supply to other customers by the same supplier (a) at like kind and quality (b) supplied at or about same time. Then adjustments are made for differences in (i) dates of supply (ii) commercial levels and quantity supplied (iii) composition, quality and design (iv) freight and insurance
- Computed value is aggregate of (a) cost of production (b) charges for design and brand (c) normal profit and overheads
- Residual method is the last resort where value is determined using reasonable means as per principles in the Rules

If the valuation cannot be determined based on these rules, the value shall be rejected if doubt of truth and accuracy of the value declared persists.

Subject to fulfilment of specified conditions, value of taxable supplies will be excluded for computation of tax payable.

Value of taxable supplies involving purchase or sale of foreign currency or money changing is specified to be the difference between the transaction rate and RBI rate.

GST Valuation (Determination of the Value of Supply of Goods and Services) Rules, 2016

1. *Short title, commencement and application.*
 - (1) *These rules may be called the GST Valuation (Determination of Value of Supply of Goods and Services) Rules, 2016.*

- (2) *These Rules shall come into force on the day the Act comes into force.*
- (3) *They shall apply to the supply of goods and/or services under the IGST/CGST/SGST Act.*
2. *Definitions*
- (1) *In these rules, unless the context otherwise requires:*
- (a) *"Act" means the IGST Act or the CGST Act or, as the case may be, the SGST Act;*
- (b) *"goods of like kind and quality" means goods which are identical or similar in physical characteristics, quality and reputation as the goods being valued, and perform the same functions or are commercially interchangeable with the goods being valued and supplied by the same person or by a different person;*
- (c) *"services of like kind and quality" means services which are identical or similar in nature, quality and reputation as the services being valued and supplied by the same person or by a different person; and*
- (d) *"transaction value" means the value of goods and/or services within the meaning of section 15 of the CGST Act.*
- (2) *Words, expressions and terms not defined in these Rules shall have the same meaning as assigned to them in the Act.*
3. *Methods of determination of value*
- (1) *Subject to rule 7, the value of goods and/or services shall be the transaction value.*
- (2) *The "transaction value" shall be the value determined in monetary terms.*
- (3) *Where the supply consists of both taxable and non-taxable supply, the taxable supply shall be deemed to be for such part of the monetary consideration as is attributable thereto.*
- (4) *The transaction value shall be accepted even where the supplier and recipient of supply are related, provided that the relationship has not influenced the price.*
- (5) *Where goods are transferred from—*
- (a) *one place of business to another place of the same business,*
- (b) *the principal to an agent or from an agent to the principal,*
whether or not situated in the same State, the value of such supply shall be the transaction value.
- (6) *The value of supplies specified in sub-section (4) of section 15 of the Act shall be determined by proceeding sequentially through rules 4 to 6.*
4. *Determination of value of supply by comparison*
- (1) *Where the value of a supply cannot be determined under rule 3, the value shall be determined on the basis of the transaction value of goods and/or services of like kind and quality supplied at or about the same time to other customers, adjusted in accordance with the provisions of sub-rule (2).*

(2) *In determining the value of goods and/or services under sub-rule (1), the proper officer shall make such adjustments as appear to him reasonable, taking into consideration the relevant factors, including-*

- (a) *difference in the dates of supply,*
- (b) *difference in commercial levels and quantity levels,*
- (c) *difference in composition, quality and design between the goods and/or services being valued and the goods and/or services with which they are compared,*
- (d) *difference in freight and insurance charges depending on the place of supply.*

5. *Computed value method*

If the value cannot be determined under rule 4, it shall be based on a computed value which shall include the following:-

- (a) *the cost of production, manufacture or processing of the goods or, the cost of provision of the services;*
- (b) *charges, if any, for the design or brand;*
- (c) *an amount towards profit and general expenses equal to that usually reflected in supply of goods and/or services of the same class or kind as the goods and/or services being valued which are made by other suppliers.*

6. *Residual method*

Where the value of the goods and/or services cannot be determined under the provisions of rule 5, the value shall be determined using reasonable means consistent with the principles and general provisions of these rules.

7. *Rejection of declared value*

- (1)(a) *When the proper officer has reason to doubt the truth or accuracy of the value declared in relation to any goods and/or services, he may ask the supplier to furnish further information, including documents or other evidence and if, after receiving such further information, or in the absence of any response from such supplier, the proper officer still has reasonable doubt about the truth or accuracy of the value so declared, it shall be deemed that the transaction value of such goods and/or services cannot be determined under the provisions of sub-rule (1) of rule 3.*
- (b) *The reasons to doubt the truth or accuracy of the value of the supply declared by the supplier shall include, but not be limited to the following:*
 - (i) *the significantly higher value at which goods and/or services of like kind or quality supplied at or about the same time in comparable quantities in a comparable commercial transaction were assessed;*
 - (ii) *the significantly lower or higher value of the supply of goods and/or services compared to the market value of goods and/or services of like kind and quality at the time of supply; or*

- (iii) any mis-declaration of goods and/or services in parameters such as description, quality, quantity, year of manufacture or production.
- (2) The proper officer shall intimate the supplier in writing the grounds for doubting the truth or accuracy of the value declared in relation to the supply of goods and/or services by such supplier and provide a reasonable opportunity of being heard, before taking a final decision under sub-rule (1).
- (3) If after hearing the supplier as aforesaid, the proper officer is, for reasons to be recorded in writing, not satisfied with the value declared, he shall proceed to determine the value in accordance with the provisions of rule 4 or rule 5 or rule 6, proceeding sequentially.

Explanation.- For removal of doubts, it is hereby declared that this rule by itself does not provide a method for determination of value. It provides a mechanism and procedure for rejection of declared value in cases where there is reasonable doubt that the declared value does not represent the transaction value.

8. Valuation in certain cases

- (1) Pure Agent
 - (a) Notwithstanding anything contained in these rules, the expenditure or costs incurred by the service provider as a pure agent of the recipient of service, shall be excluded from the value of the taxable service if all the following conditions are satisfied, namely:-
 - (i) the service provider acts as a pure agent of the recipient of service when he makes payment to third party for the goods and/or services procured;
 - (ii) the recipient of service receives and uses the goods and/or services so procured by the service provider in his capacity as pure agent of the recipient of service;
 - (iii) the recipient of service is liable to make payment to the third party;
 - (iv) the recipient of service authorises the service provider to make payment on his behalf;
 - (v) the recipient of service knows that the goods and/or services for which payment has been made by the service provider shall be provided by the third party;
 - (vi) the payment made by the service provider on behalf of the recipient of service has been separately indicated in the invoice issued by the service provider to the recipient of service;
 - (vii) the service provider recovers from the recipient of service only such amount as has been paid by him to the third party; and
 - (viii) the goods and/or services procured by the service provider from the third party as a pure agent of the recipient of service are in addition to the services he provides on his own account.

Explanation. - For the purposes of this sub-rule, "pure agent" means a person who—

- (a) enters into a contractual agreement with the recipient of service to act as his pure agent to incur expenditure or costs in the course of providing taxable service;
 - (b) neither intends to hold nor holds any title to the goods and/or services so procured or provided as pure agent of the recipient of service;
 - (c) does not use such goods and/or services so procured; and
 - (d) receives only the actual amount incurred to procure such goods and/or services.
- (2) Money Changer

The value of taxable service provided for the services in so far as it pertains to purchase or sale of foreign currency, including money changing, shall be determined by the service provider in the following manner:-

For a currency, when exchanged from, or to, Indian Rupees (INR), the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency:

Provided that in case where the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received, by the person changing the money:

Provided further that in case where neither of the currencies exchanged is Indian Rupee, the value shall be equal to 1% of the lesser of the two amounts the person changing the money would have received by converting any of the two currencies into Indian Rupee on that day at the reference rate provided by RBI.

15.1 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

15.2 Frequently Asked Questions

Q1. Are there separate valuation provisions for supply of goods and supply of services?

Ans. No, section 15 is common for supply of goods as well as supply of services.

Q2. Are there separate valuation provisions for CGST, SGST and IGST?

Ans. No, section 15 is common for all three taxes.

Q3. Is contract price not sufficient to determine valuation of supply?

Ans. Contract price is more specifically referred to as 'transaction value' and that is the basis for computing tax. However, when the price is influenced by some factors like relationship of parties or certain transactions are deemed to be supply, which do not have a price, it is required to overcome these factors to determine the transaction value correctly.

Q4. Is reference to Valuation Rules required in all cases?

Ans. No, reference to Valuation Rules is required only in cases listed under section 15(4)

Q5. What is to be done if there are certain factors affecting price though the transaction is not covered by section 15(4)?

Ans. Section 15(2) provides list of adjustments that may be made to make the price of a transaction reliable for purposes of determining tax payable

15.5. Multiple Choice Questions

Q1. Where is meaning of 'transaction value' provided?

- (i) somewhere in definition section 2
- (ii) explained in section 15(1)
- (iii) based on contract between parties
- (iv) based on intention of parties

Ans. (ii) explained in section 15(1)

Q2. Whether reference to Valuation Rules is mandatory for all cases?

- (i) no, Rules are to be referred only when the price cannot be clearly determined
- (ii) yes, all the adjustments are specified only in these Rules
- (iii) no, Rules are to be referred to only in cases specified under section 15(4)
- (iv) no, Rules are to be referred to only when officer thinks it is necessary

Ans. (iii) no, Rules are to be referred to only in cases specified under section 15(4)

Q3. Can the transaction value determined under section 15(1) be accepted?

- (i) yes, it can always be accepted

- (ii) no, it cannot be accepted
- (iii) yes, it can be accepted after examining for inclusions in section 15(2)
- (iv) no, transaction value must be verified before accepting

Ans. (iii) Yes, it can be accepted after examining for inclusions in section 15(2)

Q4. What is post-supply discount?

- (i) discount that is not in normal course of business
- (ii) discount not known at the time of supply
- (iii) discount offered after supply and at the time of payment
- (iv) all of the above

Ans. (iv) all of the above

Q5. When are Valuation Rules applicable?

- (i) consideration not in money terms
- (ii) parties are related or supply by any specified category of supplier
- (iii) transaction value declared not reliable
- (iv) all of the above

Ans. (iv) all of the above

Q6. What are the reasons for doubting transaction value declared?

- (i) comparable supplies are at significantly higher value
- (ii) transaction is at significantly lower or higher than market value of supplies
- (iii) errors in declared information
- (iv) all of the above

Ans. (iv) all of the above

Chapter-V

Input Tax Credit

16. Manner of 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 35, be entitled to take credit of input tax admissible to him and the said amount shall be credited to the electronic credit ledger of such person.
- (2) 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.
- (2A) A person, who takes registration under sub-section (3) of section 19, 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 registration.
- (3) Where any registered taxable person ceases to pay tax under section 8, 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 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 section 7.
- (3A) A taxable person shall not be entitled to take input tax credit under sub-section (2), (2A) or sub-section (3) 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.
- (4) The amount of credit under sub-section (2), (2A) or sub-section (3) shall be calculated in accordance with generally accepted accounting principles in such manner as may be prescribed.
- (5) 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.
- (6) Where the goods and / or services are used by the registered taxable person partly for effecting taxable supplies and partly for effecting non-taxable supplies, including

- exempt supplies but excluding zero-rated supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the taxable supplies including zero-rated supplies.
- (7) 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 (5) and (6) above may be attributed.
- (8) 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.
- (9) Notwithstanding anything contained in sub-section (1), (2), (2A) or (3) input tax credit shall not be available in respect of the following:
- (a) motor vehicles, except when they are supplied in the usual course of business or are used for providing the following taxable services—
 - (i) transportation of passengers, or
 - (ii) transportation of goods, or
 - (iii) imparting training on motor driving skills;
 - (b) goods and / or services provided in relation to food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, membership of a club, health and fitness centre, life insurance, health insurance and travel benefits extended to employees on vacation such as leave or home travel concession, when such goods and/or services are used primarily for personal use or consumption of any employee;
 - (c) goods and/or services acquired by the principal in the execution of works contract when such contract results in construction of immovable property, other than plant and machinery;
 - (d) goods acquired by a principal, the property in which is not transferred (whether as goods or in some other form) to any other person, which are used in the construction of immovable property, other than plant and machinery;
 - (e) goods and/or services on which tax has been paid under section 8; and
 - (f) goods and/or services used for private or personal consumption, to the extent they are so consumed.
- (10) 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.

- (11) Notwithstanding anything contained in this section, but subject to the provisions of section 28, 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, debit note, supplementary invoice or such other taxpaying document as may be prescribed, issued by a supplier registered under this Act or the IGST Act;
 - (b) he has received the goods and/or services;
 - (c) the tax charged in respect of such supply has been actually paid to the credit 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 27:
- Provided that where the goods against an invoice are received in lots or instalments, the registered taxable person shall be entitled to the credit upon receipt of the last lot or instalment.
- 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.
- (12) Where any registered taxable person who has availed of input tax credit switches over as a taxable person for paying tax under section 8 or, where the goods and / or services supplied by him become exempt absolutely under section 10, 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 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.
- (13) The amount payable under sub-section (12) shall be calculated in accordance with generally accepted accounting principles in such manner as may be prescribed.
- (14) In case of supply of capital goods 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 reduced by the percentage points as may be specified in this behalf or the tax on the transaction value of such capital goods under sub-section (1) of section 15, whichever is higher.
- (15) A taxable person shall not be entitled to take input tax credit in respect of any invoice for supply of goods and/or services, after the filing of the return under section 27 for the

month of September following the end of financial year to which such invoice pertains or filing of the relevant annual return, whichever is earlier.

- (16) Where credit has been taken wrongly, the same shall be recovered from the registered taxable person in the manner as may be prescribed in this behalf.

16.1 Introduction

Chapter V of GST Act deals with input tax credit. The chapter is divided into 4 sections:

- (i) **Section 16:** Manner of taking input tax credit.
- (ii) **Section 16A:** Taking input tax credit on inputs sent for job work.
- (iii) **Section 17:** Manner of distribution of credit by ISD.
- (iv) **Section 18:** 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 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 carries on any business at any place in India/State of ___ and who is registered or required to be registered under Schedule III of the Act. [Section 2(96) r/w section 9].
- (b) **Input tax credit:** It means credit of "input tax" as defined in section 2(57). [Section 2(56)]
- (c) **Input tax:** "Input tax" in relation to a taxable person, means
 - the {IGST and CGST}/{IGST and SGST} charged on any supply of goods and/or services to him
 - which are used, or are intended to be used,
 - in the course or furtherance of his business
 - and includes the tax payable under reverse charge. [Section 2(57)].

Section 7(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 ledger in electronic form maintained at the common portal for each registered taxable person in the manner as may be prescribed in this behalf. [Section 2(41)].

- (e) **“capital goods”** means: -
- (A) Following goods: -
- All goods falling within Chapter 82, 84, 85, 90, heading 6805, grinding wheels and the like, and parts thereof falling under heading 6804 of the Schedule to this Act; [yet to be specified]
 - Pollution control equipment;
 - Components, spares and accessories of the goods specified at (i) and (ii);
 - Moulds and dies, jigs and fixtures;
 - Refractories and refractory materials;
 - Tubes and pipes and fittings thereof;
 - Storage tank; and
 - Motor vehicles other than those falling under tariff headings 8702, 8703, 8704, 8711 and their chassis but including dumpers and tippers
- used-
- (1) at the place of business for supply of goods; or
- (2) outside the place of business for generation of electricity for captive use at the place of business; or
- (3) for supply of services,
- (B) motor vehicle designed for transportation of goods including their chassis registered in the name of the supplier of service when used for:
- (i) supplying the service of renting of such motor vehicle; or
 - (ii) transportation of inputs and capital goods used for supply of service; or
 - (iii) supply of courier agency service;
- (C) motor vehicle designed to carry passengers including their chassis, registered in the name of the supplier of service when used for supplying the service of-
- (i) transportation of passengers; or
 - (ii) renting of such motor vehicle; or
 - (iii) imparting motor driving skills;
- (D) Components, spares and accessories of motor vehicle which are capital goods for the taxable person
- (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
- 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(55)].

(ii) **Section 16**

(a) **Registered person to take credit:** Every registered taxable person subject to Section 35 shall be entitled to take credit of admissible input tax. The input tax credit is credited to the electronic credit ledger.

(b) **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:

S.N.	Eligible persons	Credit entitled	As on	Restriction/conditions
1	Person applied for registration within 30 days from the date of liability to pay tax register and 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 liable to pay tax	→ Cannot avail credit of goods and / or services after 1 year from tax invoice date
2	Person applied for registration after 30 days from the date of liability to pay tax, registers and registered	Nil	NA	→ The amount of credit calculated as per GAAP
3	Person who is not required to register, but obtains voluntary	Inputs held in stock and inputs contained in semi-finished or	The day immediately preceding the date of	

	registration	finished goods held in stock	registration	
4	Person ceases to pay composition tax	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 liable to pay tax under regular scheme	

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 29th July, 2017.

(c) Proportionate credit:

- (i) 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.
- (ii) 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 for 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 the amount of credit shall be restricted to the taxable supplies. Taxable supplies include zero rated supplies and non-taxable supplies shall include exempted supplies.

- (d) **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

(e) Ineligible credit:

- (i) motor vehicles, except when they are supplied in the usual course of business or are used for providing taxable services of –
 - Transportation of passengers
 - Transportation of goods
 - Imparting training or motor driving skills
- (ii) Goods and / or services provided in relation to -
 - food and beverages, outdoor catering, cosmetic and plastic surgery
 - life insurance, health insurance
 - travel benefits to employees on vacation such as leave or home travel concession
 - membership of a club, beauty treatment,
 - health services,
 - health and fitness centresuch goods and / or services as are used primarily for personal use or consumption of employee
- (iii) Goods and/or services acquired by principal in the execution of works contract
 - when such contract results in construction of immovable property,
 - other than plant and machinery.
- (iv) Goods acquired by principal, the property in which is not transferred
 - whether as goods or in some other form
 - to any other person,
 - which are used in construction of immovable property,
 - other than plant and machinery.
- (v) Goods and/or services on which composition tax has been paid (u/s 8)
- (vi) Goods and/or services used for private or personal consumption to the extent they are so consumed.

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.

- (f) Conditions for availing input tax credit:** Registered taxable person is not entitled to input tax credit on supply of goods and/or services unless he:
- (i) is in possession of a
 - tax invoice, debit note, supplementary invoice or
 - such other taxpaying document as may be prescribed.
 - (ii) has received the goods and/or services. The goods are deemed to be received by the taxable person when
 - goods are delivered by supplier to recipient or other person on direction of the taxable person whether an agent or otherwise before or during movement of goods by way of transfer of documents of title of goods or otherwise.
 - (iii) Tax charged for such supply
 - is actually paid to the credit of the appropriate Government,
 - either through cash or through utilisation of input tax credit admissible in respect of such supply
 - (iv) He has furnished return as per section 27
 - (v) In case of the goods which are received in lots or installments, against an invoice the credit could be availed upon receipt of last lot or installment by registered taxable person.

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 along with his return u/s 27. Receipt of goods shall include delivery to another person as directed by the taxable person by way of transfer of documents of title to goods or otherwise.

- (g) When taxable person switches over from regular scheme to composition scheme:**
- pay an amount by debiting electronic cash ledger,
 - equivalent to input tax credit of -
 - inputs held in stock or
 - 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.
 - The amount payable is to be determined as per general accepted accounting principles (GAAP).

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

- (h) **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.
- (i) **Credit in respect of invoice for supply of goods or services for the month of September, after filing returns:** A taxable person shall not take input tax credit
- in respect of any invoice for supply of goods and/or services,
 - after the filing of the return for the month of September
 - following the end of financial year to which such invoice pertains or
 - filing of the relevant annual return, whichever is earlier.
- (j) **Recovery when credit is wrongly taken:** Input tax credit taken wrongly; the same shall be recovered from the registered taxable person in the manner prescribed.

16.3 Comparative review:

Aspect	Credit under present system	Input tax credit under GST
Definition of "capital goods"	Defined in Cenvat Credit Rules	Similar to that defined in Cenvat Credit Rules
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
Credit on stock-in-hand	No such concept	Specified persons in specified situations are eligible for input tax credit on stock
Proportionate credit	No explicit distinction made between credit used for	Specific distinction made between credit used for

	business and non-business	business and non-business
Works contract credit	Restriction to inputs services	Restriction to both inputs and input services
Credit on inputs used for construction of immovable property	Restriction to inputs only	Similar to that in CGST
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

16.4 Related provisions

Statute	Section	Description	Remarks
CGST	7	Levy and collection of GST	Assessee is entitled to input tax credit if he is paying tax under regular scheme
CGST	8	Composition levy of GST	Assessee is not entitled to input tax credit if he is paying tax under composition scheme
CGST	10	Power to exempt from tax	When any supply is absolutely exempt, input tax credit is not eligible
CGST	19(3)	Voluntary registration under GST	Person obtaining voluntary registration is entitled to credit on input in stock
CGST	27	Returns under GST	Returns to include details of input tax credit availed.
CGST	28	Claim of input tax credit and provisional acceptance thereof	Input tax credit as per returns will be credited to electronic credit ledger on provisional basis
CGST	29	Matching, reversal and reclaim of input tax credit	Details of inward supply furnished by taxable person matched with details of output supply furnished by supplier.
IGST	27	Certain section of CGST Act applicable to IGST	Input tax credit and utilisation thereof as per CGST applicable to IGST also.

16A. Taking input tax credit in respect of inputs sent for job work

Statutory Provision

- (1) The “principal” referred to in section 43 A shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax on inputs sent to a job-worker for job-work if the said inputs, after completion of job-work, are received back by him within one hundred and eighty days of their being sent out:

Provided that 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, and in such a case, the period of one hundred and eighty days shall be counted from the date of receipt of the inputs by the job worker.

- (2) The “principal” shall, subject to such conditions and restrictions as may be prescribed, be entitled to take credit of input tax on capital goods sent to a job-worker for job-work if the said capital goods, after completion of job-work, are received back by him within two years of their being sent out:

Provided that 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, and in such a case, the period of two years shall be counted from the date of receipt of the capital goods by the job worker.

- (3) Where the inputs or capital goods, as the case may be, are not received back by the “principal” within the time specified under sub-section (1) or under sub-section (2), as the case may be, he shall pay an amount equivalent to the input tax credit availed of on the said inputs or capital goods, as the case may be, along with interest specified under sub-section (1) of section 36:

Provided that the said “principal” may reclaim the input tax credit and interest paid earlier when the inputs or capital goods, as the case may be, are received back by him at his place of business.

16A.1 Introduction

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

16A.2 Analysis

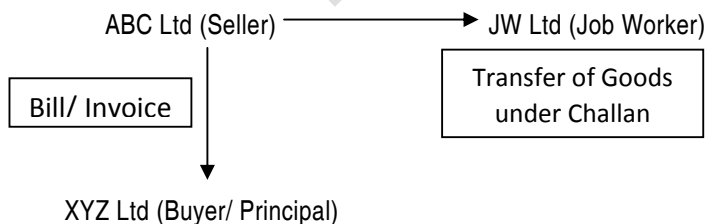
(i) **Relevant Definitions:**

- **Job work:** Any treatment or process done by a person on goods belonging to a 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 180 days 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 180 days is counted from the date when job worker receives input.
 - If the inputs are not received back within 180 days, 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 2 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 2 years, the principal shall pay an amount equal to input tax credit taken on the said capital goods.
 - If the capital goods are received back by the principal, he may reclaim the input tax credit and interest paid earlier.

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:



16A.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	Similar in CGST
Reversal of credit if inputs/capital goods not returned within specified time	Credit to be reversed	Similar in CGST
Re-credit if goods returned after specified time	Re-credit allowed	Re-credit allowed along with interest paid earlier

16A.4 Related provisions

Statute	Section	Description	Remarks
CGST	43A	Special procedure for removal of goods for certain purposes	Provides procedure for removal of goods by principal manufacturer to job worker

16A.5 FAQs

- Q1. What is the eligibility of input tax credit on inputs in stock for a person who obtains voluntary registration?
- Ans. The person who obtains voluntary registration is entitled to take the input tax credit of input tax on inputs in stock, inputs in semi-finished goods and finished goods in stock.
- Q2. Where goods and/or service is received which is used for both taxable and non-taxable supplies, whether the input tax credit is available to the registered taxable person?
- Ans. The input tax credit of goods and / or service used in taxable supplies can be taken by registered taxable person.
- Q3. What would be input tax eligibility in case where the goods and/or services supplied by a registered taxable person become absolutely exempt?
- Ans. The registered taxable person who supplies goods and / or services which become absolutely exempt, has to pay amount equivalent to the credit taken on goods and / or services which are in stock or in semi-finished and finished goods in stock.

Q4. Whether the principal is eligible to avail input tax credit of inputs sent to job worker for job work?

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

Q5. Whether principal has to reverse the input tax credit on inputs which have not been received back from the job worker within 180 days?

Ans. Yes, the principal has to reverse the credit on inputs which have not been received back from job worker within 180 days.

16A.6 MCQs

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

Q2. The inputs sent to job work has to be received back within:

- (a) 280 days
- (b) 2 years
- (c) 180 days

Ans. (c) 180 days

Q3. 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

Q4. If the capital goods sent to job worker have not been received within 2 years from the date of being sent:

- (a) Principal has to pay amount equal to credit taken on such capital goods along with interest
- (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 along with interest.

17. 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 IGST and IGST as 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. - **CGST ACT**
- (1) The Input Service Distributor may distribute, in such manner as may be prescribed, the credit of SGST as 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 a supplier shall be distributed only to that supplier;
 - (d) the credit of tax paid on input services attributable to more than one supplier shall be distributed only amongst such supplier(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 supplier, during the relevant period, to the aggregate of the turnover of all such suppliers to whom such input service is attributable and which are operational in the current year, during the said relevant period.

17.1 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 the same PAN.

17.2 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 1. The Corporate office of XYZ company Ltd., is at New Delhi, with 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 the 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 or IGST as the case may be as IGST by issuing prescribed document mentioning the amount of credit distributed to recipient of credit located in different States.

Illustration 2. In the above illustration, if the corporate office of XYZ Ltd, an ISD situated in Delhi receives invoices indicating Rs. 4 lakhs of CGST in one service and Rs. 7 lakhs as of IGST in another case, it can distribute both CGST of Rs. 4 Lakhs and IGST of Rs. 7 Lakhs totaling to Rs. 11 Lakhs as credit of IGST to its locations at Chennai, Mumbai and Kolkata through a prescribed document containing the amount of credit distributed.

- (iv) **Distribution of credit where ISD and recipient are located in different States under SGST Act:** ISD could distribute as prescribed credit of SGST as IGST by issuing a prescribed document containing the amount of credit distributed.

Illustration 3. In the above illustration, corporate office of XYZ Ltd., also received SGST of Rs.6 Lakhs along with Rs. 4 Lakhs of CGST. It can distribute SGST credit as IGST to its locations at Chennai, Mumbai and Kolkata through a prescribed document containing the amount of credit distributed.

Distribution of credit by an ISD in terms of section 17 (1) of the CGST-SGST Act, 2016

When the ISD is in one State say at Delhi and the Receipients of credits (Suppliers or Locations) are in different States say in Chennai, Tamil Nadu and Bangalore, Karnataka. Assume the turnovers for the relevant period (previous financial year) of Chennai unit is Rs.10 crores and that of Bangalore unit is at Rs.30 crores

Credits available with ISD at Delhi (Amounts in Rs. Lakhs)				
Particulars	SGST	CGST	IGST	Total
Credits directly attributable to:				
Chennai	5	5	10	20
Bangalore	3	2	5	10
Common credits:	5	7	8	20
Total	13	14	23	50

The above credit can be distributed in the following manner by Delhi:

Distribution of credits by the ISD at Delhi (Amounts in Rs. Lakhs)				
Particulars	SGST	CGST	IGST	Total
First allocate credits directly attributable to the respective units				
Chennai :(CGST &IGST as IGST)			15	15
Chennai: (SGST as IGST)			5	5
Bangalore: (CGST &IGST as IGST)			7	7
Bangalore: (SGST as IGST)			3	3
Common credits to be allocated in the ratio of turnovers of the relevant period				
Chennai: Common credit of CGST / IGST at Rs.15 lakhs (of both Chennai & Bangalore) to be allocated in the ratio of Rs.10 crores : Rs.30 crores i.e 25% & 75% as IGST			3.75	3.75
Bangalore: Common credit of CGST / IGST at Rs.15 lakhs (of both Chennai & Bangalore) to be allocated in the ratio of Rs.10 crores : Rs.30 crores i.e 25% & 75% as IGST			11.25	11.25

Chennai: Common credit of SGST at Rs.5 lakhs (of both Chennai & Bangalore) to be allocated in the ratio of Rs.10 crores : Rs.30 crores i.e 25% & 75% as IGST			1.25	1.25
Bangalore: Common credit of SGST at Rs.5 lakhs (of both Chennai & Bangalore) to be allocated in the ratio of Rs.10 crores : Rs.30 crores i.e 25% & 75% as IGST			3.75	3.75
			50	50

- (v) **Distribution of credit where ISD and recipient are located within the State under CGST Act:** In case of different registrations within the same State by an entity, it may have to distribute credit to such locations also as in the case of 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.

Illustration4: 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 Rs. 4 lakhs of CGST and Rs. 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 5: In the same example of ABC Ltd., above the input tax credit say Rs. 6 lakhs of SGST and Rs. 10 Lakhs of IGST can be distributed as SGST.

Note: However since already IGST is transferred as CGST under CGST Act, again the same Rs. 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.

Situation 2 - CGST and IGST is utilised as CGST

When the ISD is in one State say at Hubli, Karnataka and the Receipients of credits (Suppliers or Locations) are engaged in business in different Verticals in Same State say in Mysore, Karnataka and Bangalore, Karnataka. Assume the turnovers for the relevant period (previous financial year) of Mysore unit is Rs.10 crores and that of Bangalore unit is at Rs.30 crores

Credits available with ISD at Hubli (Amounts in Rs. Lakhs)				
Particulars	SGST	CGST	IGST	Total
Credits directly attributable to:				
Mysore	5	5	10	20
Bangalore	3	2	5	10
Common credits:	5	7	8	20
Total	13	14	23	50
Distribution of credits by the ISD at Hubli (Amounts in Rs. Lakhs)				
Particulars	SGST	CGST	IGST	Total
First allocate credits directly attributable to the respective units				
Mysore :(CGST &IGST transferred as CGST)	0	15	0	15
Mysore :(SGST &IGST transferred as SGST) restricted to the extent of Rs. 5 lakhs as per Sec. 17(3)(b)	5	0	0	5
Bangalore: (CGST &IGST transferred as CGST)	0	7	0	7
Bangalore: (SGST &IGST transferred as SGST) restricted to the extent of Rs. 3 lakhs as per Sec. 17(3)(b)	3	0	0	3
Common credits to be allocated in the ratio of turnovers of the relevant period				
Mysore : Common credit of CGST & IGST at Rs.15 lakhs (of both Mysore & Bangalore) as CGST to be allocated in the ratio of Rs.10 crores : Rs.30 crores i.e 25% & 75% as IGST	0	3.75	0	3.75
Bangalore: Common credit of CGST & IGST at Rs.15 lakhs (of both Mysore & Bangalore) as CGST to be allocated in the ratio of Rs.10 crores : Rs.30 crores i.e 25% & 75% as IGST	0	11.25	0	11.25

Mysore: Common credit of SGST & IGST is transferred as SGST restricted to Rs.2 lakhs as per Sec. 17(3)(b)	2		0	2
Bangalore: Common credit of SGST & IGST is transferred as SGST restricted to Rs.3 lakhs as per Sec. 17(3)(b)	3		0	3
Grand Total	13	37	0	50

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

- (i) Credit distributed to recipient through 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), has 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 did not have any turnover in the previous financial year, then previous quarter of the month to which the credit is being distributed.

Illustration 6. A Ltd has input service credit of Rs. 35 lakhs used by more than one location to be distributed among recipient locations X, Y and Z. The turnover of X, Y, Z in preceding financial year is Rs. 10 crores, Rs.15 crores and Rs.5 crores respectively. The credit of Rs.5 lakhs pertains to input service received only by Z. The credit attributable to X, Y, Z is as follows:

Particulars	Amount (in Rs.)
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
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Example showing distribution of input tax credit by an ISD to its units is shown as under:-

Illustration 8 : 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 for permission to distribute the credit to various units.

- (i) CGST paid on services used only for Delhi Unit: Rs.300000/-
- (ii) IGST, CGST & SGST paid on services used for all units: Rs.1200000/-
- (iii) Total Turnover of the units for the Financial Year 2015-16 are as follows:-

Unit	Turnover (Rs.)
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	Credit Distributed to all units			
	Total Credit available	Delhi	Jaipur	Gujarat
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 is as under:-

- (a) Unit Delhi: $(50000000/100000000)*1200000 = \text{Rs.}600000$
- (b) Unit Jaipur: $(30000000/100000000)*1200000 = \text{Rs.}360000$
- (c) Unit Gujarat: $(20000000/100000000)*1200000 = \text{Rs.}240000$

17.3 Comparative review

These provisions are similar to the provisions contained in 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 to each recipient also appears to be continued as before.

17.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	2(56)	Definition of Input Service Distributor	The meaning of the term Input Service Distributor is relevant to understanding the manner of distribution of credit.
GST	Explanation to Section 18(2)	Definition of relevant period.	It would be relevant to compute on the basis of the turnovers for distribution of credit

17.5 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.

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 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.

17.6 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.

18. Manner of recovery of credit distributed in excess

Statutory provision

- (1) Where the credit distributed by the Input Service Distributor is in excess of the credit available for distribution by him, the excess credit so distributed shall be recovered from such distributor along with interest, and the provisions of section 51 shall apply mutatis mutandis for effecting such recovery.
- (2) Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 17 resulting in excess distribution of credit to one or more suppliers, the excess credit so distributed shall be recovered from such supplier(s) along with interest, and the provisions of section 51 shall apply mutatis mutandis for effecting such recovery.

Explanation – For the purposes of section 17 and 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.

18.1 Introduction

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

18.2 Analysis

(i) Excess credit distributed by ISD:

The credit distributed by ISD in excess of credit available for distribution is to be recovered from the ISD along with interest. The manner of recovery will be same as recovery of tax under Section 51.

(ii) Excess Credit distributed in contravention of provision:

Excess credit distributed to one or more supplier (locations) in contravention of ISD provision under Section 17 is recoverable from the suppliers (locations) along with Interest. It is important to note that:

- The provision of sub-section 1 of Section 18 deals with a situation where the credit distributed is in excess of what was available for distribution; whereas
- The provision of sub-section 2 of Section 18 deals with a situation where the distribution is correct but one of the locations gets more than what it is entitled to.

The recovery will be under the provisions of Section 51.

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

(iii) 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.

Example-1 Total Credit Available to ISD is Rs.15,00,000/- & the credit distributed to all the units is Rs.16,50,000/- (i.e. Delhi Rs.10,00,000, unit Jaipur Rs.4,00,000 & unit Gujarat Rs.2,50,000). What will be the consequences?

Solution: The excess credit of Rs.1,50,000 (Rs.16,50,000- Rs.15,00,000) distributed will be recovered from the distributor 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 Rs.15,00,000/- & the credit should have been distributed equally to all the units as all units had equal turnover. However credit distributed in violation of Section 17, is as under:

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

What will be the consequences?

Solution: The excess credit of Rs.2,00,000 (Rs.7,00,000- Rs.5,00,000) shall be recovered from Delhi and Rs 1,00,000 (Rs 600,000 – Rs 5,00,000) shall be recovered from Jaipur along with interest and the provisions of section 51 shall apply mutatis mutandis for effecting such recovery.

18.3 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.

18.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 17	Manner of distribution of credit by Input service distributor	
CGST	Section 18	Manner of recovery of credit distributed in excess	
GST	Section 51	Demand and Recovery of tax not paid, short paid or erroneously refunded.	Recovery mechanism provided in this section has to be adopted to recover excess credit distributed or excess credit availed at one location.

18.5 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 ISD 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 could be recovered from the unit to which it is distributed along with interest.

Chapter-VI

Registration

19. Registration

Statutory Provision

- (1) Every person who is liable to be registered under Schedule III 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 if the person, other than an Input Service Distributor, is registered under an earlier law, it shall not be necessary for him to apply for fresh registration under this section and he shall follow the procedure as may be prescribed in this behalf.
- (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 III, 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 subsection (1), (2) or (3).
- (4A) 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.
- (5) 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.
- (6) Notwithstanding anything contained in sub-section (1), 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, 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.

- (7) The registration or the Unique Identity Number, shall be granted or, as the case may be, rejected after due verification in the manner and within such period as may be prescribed.
- (8) The proper officer shall not reject the application for registration or the Unique Identity Number without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.
- (8A) A certificate of registration shall be issued in the prescribed form, with effective date as may be prescribed.
- (9) A registration or a Unique Identity Number shall be deemed to have been granted after the period prescribed under sub-section (7), if no deficiency has been communicated to the applicant by the proper officer within that period.
- (10) Notwithstanding anything contained in sub-section (7), 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.
- (11) 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 subsection (7).
- (12) 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.

19.1 Introduction

Section 19 provides for registration of every person who is liable to be registered under Schedule III 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.

19.2 Analysis

- Schedule III 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 Nine Lakhs**. This threshold limit will be **Rupees Four Lakhs** if a taxable person conducts his business in any of the North Eastern States including Sikkim.
- 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.
- A person having multiple business verticals [as defined in Accounting Standard (AS) 17 prescribed by ICAI] 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 if his aggregate turnover consists of only such Goods and/or Service which are not liable to Tax under this Act.
- 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 43A (ie 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;
- non-resident taxable persons;

- persons who are required to deduct tax under section 37 (Tax Deduction 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 branded services, through electronic commerce operator;
- every electronic commerce operator;
- an aggregator who supplies services under his brand name or his trade name; 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 III, 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 19 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

Every person who is liable to take a registration or wants to get voluntary Registration shall have a Permanent Account Number (PAN). 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 organisation is expected to mention the UID on the invoices and treat such supplies as business to business (B2B) supplies.

Issuance of Registration by Proper Authority:

The registration or Unique Identity Number, (UID) is granted / issued with effective dates. The registration or UID is granted or rejected after due verification and within the time prescribed. A certificate of registration shall also be issued in prescribed form with effective date as may be prescribed.

A registration or a UID shall be deemed to have been granted after the period prescribed (under sub-section (7) of Section 19 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.

19A. Special provisions relating to casual taxable person and non-resident taxable person

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 extendable by another 2 months 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 35 (Payment of Tax, interest, penalty and other amounts) of the ACT.

20. Amendment of Registration Certificate:

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.

21. Cancellation of registration

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 21 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 III.

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 when -

- the registered taxable person has contravened such provisions of the Act or the rules made thereunder 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, wilful misstatement or suppression of facts.

As such, cancellation of registration, shall not affect the liability of the taxable person to pay tax and other dues under the Act for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation. The cancellation of registration under 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,

In case of capital goods, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods **reduced by the prescribed percentage points** or the tax on the transaction value of such capital goods [under sub-section (1) of section 15 (Value of Taxable supply) of Act], whichever is higher. The amount payable under these provisions shall be calculated in accordance with generally accepted accounting principles.

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22. Revocation of cancellation of registration

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. 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 its 13th 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 8 / 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 one percent of the total turnover 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 on 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 enrollment.

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 authorised 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 not captured in PAN.	In case of Companies, GSTN would strive for online verification of Company Identification 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	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	This is required as an evidence to show possession of business premises. If the

business	<p>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</p> <p>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.</p>	<p>Case”, warranting a post registration visit for verification. GST Law Drafting Committee may add penalty provision for providing wrong lease</p>	<p>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</p> <p>Case”, warranting a post registration visit for verification. GST Law Drafting Committee may add penalty provision for providing wrong lease details.</p>
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., Name of the Account Holder, MICR and IFS Codes and Branch details		This is required for all the bank accounts through which the taxpayer would be conducting business
17. Details of Authorised Signatory	For each Authorised Signatory: Letter of Authorisation 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 Authorised Signatory is duly empowered to do so.
Photograph	<ul style="list-style-type: none"> - 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) 		

	<ul style="list-style-type: none"> - HUF – Karta - Company – Managing Director or the Authorised 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
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The GST common portal shall carry out preliminary verification / validation, including real-time PAN validation with CBDT portal, Adhaar 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 center to be operated by GSTN. The location details of this central processing center 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 database 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 19 of the ACT are allowed 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 19 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 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 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.	Purpose of the Form
1	Application for Registration under Goods and / or services Tax ACT
2.	Application for Surrender of Registration under Goods and Service Tax Act
3.	Application to Opt for Composition Scheme (for existing Tax payers)
4.	Application for withdrawal from Composition Scheme (for existing Taxpayers)

5.	Application for Amendment (s) in Particulars subsequent to Registration under Goods and / or services Tax Act
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19.3 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
19	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.

19.4 Related Provisions

Statute	Section or Rule	Description	Remarks
CGST	Schedule III	Liability to be registered	Provides for persons liable to be registered

19.5 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 19 of the Model GST Law, every person who is liable to be registered under Schedule III of this Act shall apply for registration.
- Q2. What is the time limit for taking a Registration under Model GST Law ?
- Ans. Any 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.
- Q3. If a person is operating in different states, with the same PAN number, whether he operate with a singly 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 19 of Model GST Law.
- Q4. Whether a person having multiple business verticals in a state can obtain for different registrations?

- Ans. In terms of Sub-Section (2) of Section 19, 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 voluntarily though he may not be liable to pay GST?
- Ans. In terms of Sub-section (3) of Section 19 a person, though not liable to be registered under Schedule III, may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.
- Q:6. 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 19 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 5 of Section 19, 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. Whether the proper Officer can reject an Application for Registration?
- Ans. In terms of Sub-Section 8 of Section 19, The proper officer shall not reject the application for registration or the Unique Identity Number without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.
- Q9. Whether the Registration granted to any person is permanent?
- Ans. Yes, the registration Certificate once granted in 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 statutory 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 19, 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 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 20, 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 21 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/SGST 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

23. Tax Invoice

Statutory Provisions

A registered taxable person supplying,

- (i) **taxable goods** shall issue, at the time of supply, a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed;
- (ii) **taxable services** shall issue a tax invoice, within the prescribed time, showing the description, the tax charged thereon and such other particulars as may be prescribed:

Provided that a registered taxable person may 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;

Provided further that a registered taxable person supplying non-taxable goods and/or services or paying tax under the provisions of section 8 shall issue, instead of a tax invoice, a bill of supply containing such particulars as may be prescribed.

Explanation: The expression “tax invoice” shall be deemed to include a document issued by an Input Service Distributor under section 17, and shall also include any supplementary or revised invoice issued by the supplier in respect of a supply made earlier.

23A. Amount of tax to be indicated in tax invoice and other documents

Statutory Provision

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.

23.1 Introduction

- (i) This section mandates issuance of tax invoice for supply of taxable goods/services, the particulars to be mentioned therein, timelines for issue of tax invoice etc.
- (ii) Tax invoice issued by the registered taxable person is an essential document for the recipient of goods/services to avail input tax credit.

23.2 Analysis

Tax Invoice: Every registered taxable person shall issue a tax invoice for supply of taxable goods or taxable services. The tax invoice shall contain the description of goods/services, quantity of goods supplied, value of goods/services, tax charged on the supply and such other particulars as may be prescribed.

Further prescribing the time of issuance of invoice for goods as the “time of supply” would result in issuance of invoices even for advances, entries in books etc in some situations. Thus, determining the time of supply is important.

- (iii) For supply of taxable goods, tax invoice shall be issued at the time of supply of goods (refer Section 12 of the model GST law).
- (iv) For supply of taxable services, tax invoice shall be issued within such time limit as may be prescribed.
- (v) In case of an intra-state supply of goods/services, the tax invoice will mention CGST and SGST.
- (vi) In case of an inter-state supply of goods/services, the tax invoice will mention IGST and Additional tax, if applicable.
- (vii) The tax invoices shall be raised by the registered taxable person. Additional particulars required in the invoice would be prescribed once in the Rules
- (viii) ‘Tax invoice’ will include a document issued by an input service distributor and also any supplementary or revised invoice issued by the supplier in respect of a supply made earlier.

Revised Invoice: Revised invoice shall be raised by the registered taxable person against the invoice already issued, starting from the effective date of registration till the date of issuance of certificate of registration. Effective date of registration would be mentioned in the registration certificate issued. The revised invoice would enable the recipient to take credit of tax charged in the revised invoice..

- (ix) **Bill of Supply:** In case of a person paying tax under the Composition scheme or a person supplying non-taxable goods/services, a bill of supply containing prescribed particulars is to be issued instead of a tax invoice. In the case of such supplies, the recipient is not entitled to take input tax credit.
- (x) **'Tax amount' to be indicated in the tax invoice and other documents:** Where the supply is made for a consideration, the amount of tax which will form part of the price (at which supply is made) shall be indicated in all documents relating to assessment, tax invoice and other such documents.
- (xi) As per section 23A, it is mandatory to indicate the taxable value and tax amount included in the invoice for all supplies for consideration. This includes cases of non-taxable supply and composition scheme.

23.3 Comparative review

Under the current indirect tax laws, depending upon the taxable event, as to whether it is manufacture or sale or service, excise invoices or tax invoices are raised.

In the present scenario, under service tax regime, a time limit to issue a tax invoice is prescribed having regard to date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier. The GST law provides for such time limit to be prescribed.

The provision to issue revised invoice (from the effective date of registration to the date of issuance of certificate) is not available at present. This document would be useful for claiming tax credit for supply of goods/services during this period.

At present, invoices or bills of sale etc. can be issued inclusive of tax in certain cases whereas it is mandatory to indicate the tax charged in the GST regime.

23.4 FAQs

- Q1. Is tax invoice required for advance payments received for goods or services?
Ans. Yes, tax invoice is 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, 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.

24. Credit and Debit Notes

Statutory Provision

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, the 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 on or before the thirtieth day of September following the end of the financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier:

Provided that no credit note shall be issued by the said person if the incidence of tax and interest on such supply has been passed by him to any other person.

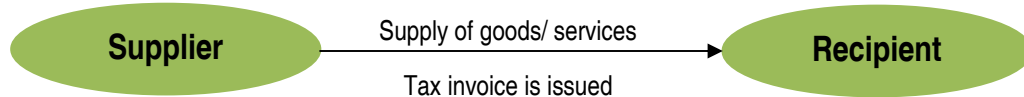
2. Where a tax invoice has been issued for supply of any goods and/or services and the taxable value and/or tax charged in that tax invoice is found to be less than the taxable value and/or tax payable in respect of such supply, the taxable person, who has supplied such goods and/or services, shall issue to the recipient a debit note containing such particulars as may be prescribed on or before the thirtieth day of September following the end of the financial year in which such supply was made, or the date of filing of the relevant annual return, whichever is earlier.
3. Any registered taxable person who issues or receives a credit or debit note in relation to a supply of goods and/or services shall declare the details of such credit or debit note, as the case may be, in the return for the month during which such credit or debit note has been issued or received or in the return for any subsequent month but not later than September following the end of financial 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.

24.1 Introduction

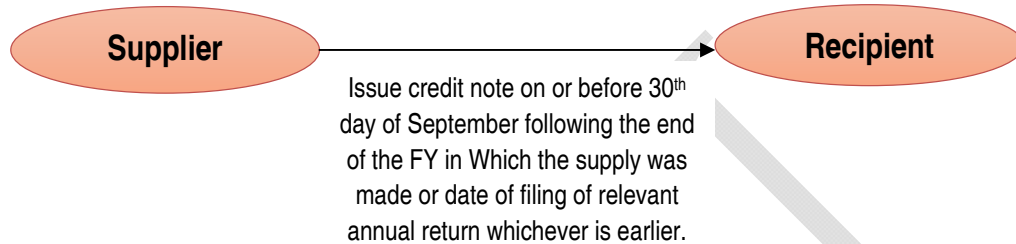
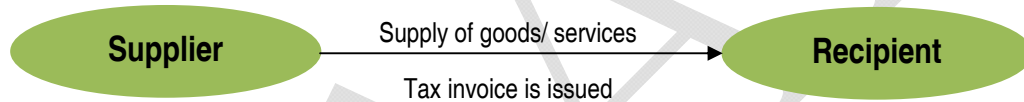
- A. This provision prescribes the circumstances when a credit or debit note can be issued against a tax invoice issued earlier. It also mandates when a credit note shall not be issued.
- B. The reporting requirements in respect of credit or debit notes issued or received are also prescribed.

24.2 Analysis

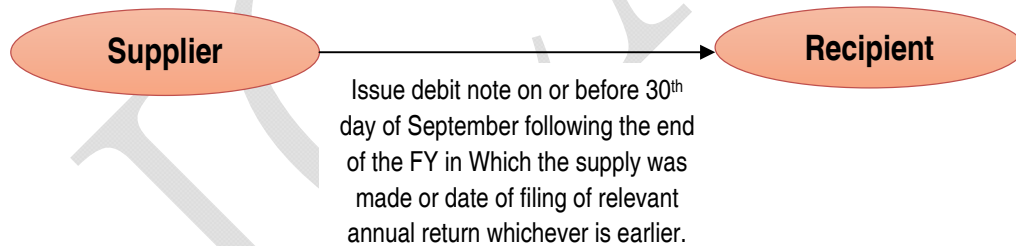
- (i) Section 24 has been introduced to explicitly deal with issue of credit and debit notes. Also, specific timelines have been introduced within which such credit notes and debit notes have to be issued.
- (ii) The scenario when credit notes and debit notes may be issued and the timelines has been explained below:

Scenario-1 Credit note issue

Scenario 1: Tax Charged/ Taxable Value > Tax Charged/ Taxable Value (w.r.t. that supply), then

**Scenario-2 Debit note issue**

Scenario 2: Tax Charged/ Taxable Value < Tax Charged/ Taxable Value (w.r.t. that supply), then



- (iii) The credit notes and debit notes shall contain such particulars as may be prescribed. Rules are yet to be notified to prescribe such particulars.
- (iv) 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.
- (v) 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.
- (vi) If the details are not shown as above, the credit/debits notes may not be considered for adjustment of tax liability.

24.3 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 order to avail the benefit of Cenvat Credit.
- (ii) As per the Rule, Cenvat Credit can be availed based on:-
 - (a) An invoice
 - (b) Supplementary invoice
- (iii) In the context of excise laws, though credit notes may be issued in situations where taxable value is reduced, typically, no adjustment is made for excise valuation purpose (except when the assessment is provisional). Instead of debit notes for increase in taxable value/tax, supplementary invoices are issued (this is a valid document for taking Cenvat credit). There is no time limit for issuance of credit/debit notes (supplementary invoice).
- (iv) In the context of service tax laws, notes credit notes may be issued in situations where taxable value is reduced. Adjustment of excess tax paid is permissible in specified situations. Instead of debit notes for increase in taxable value/tax, supplementary invoices are issued (this is a valid document for taking Cenvat credit). There is no time limit for issuance of credit/debit notes (supplementary invoice).

However credit availed on tax paid on supplementary invoices could be disputed in circumstances where additional tax was payable by reason of fraud, collusion, wilful mis-statement, suppression of facts, contravention of any of the provisions with intent to evade duty/taxes.

- (v) Most State VAT laws have provisions relating to issue of Credit or Debit notes for difference in value of supply and tax. Time period (usually 6 months from the date of sale) is prescribed for issuance of credit/debit notes for adjustment against taxable value. Some States provide that if the credit has already passed on in the original invoice, the tax component shall not be adjusted by issuance of credit note (this is because the buyer would have taken credit in such cases and the credit is left undisturbed).

24.4 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.

24.5 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

25. Furnishing details of outward supplies

Statutory Provision

- (1) Every registered taxable person, other than an input service distributor and a person paying tax under the provisions of section 8 or section 37, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods and/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 Board / Commissioner may, for valid and sufficient reasons, by notification, extend the time limit for furnishing such details:

Provided further that any extension of time limit by the Board/Commissioner of State Goods and Services Tax shall be deemed to be approved by the Commissioner of State Goods and Services Tax/Board:

Explanation - For the purposes of this section, the expression “details of outward supplies” shall include details relating to zero-rated supplies, inter-state supplies, return of goods received in relation to/ in pursuance of an inward supply, exports, debit notes, credit notes and supplementary invoices issued during the said tax period.

- (2) Any registered taxable person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 29, 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 filing of the return under section 27 for the month of September following the end of the financial year to which such details pertain, or filing of the relevant annual return, whichever is earlier.

25.1 Introduction

This provision relates to furnishing of details of outward supplies.

25.2 Analysis

This e-return should be furnished by every registered taxable person, for prescribed tax period to present "Details of outward supplies" which shall include details relating to zero-rated supplies, inter-state supplies, return of goods received in relation to/ in pursuance of an inward supply, exports, debit notes, credit notes and supplementary invoices issued during the said tax period. This e-return shall be filed within 10 days from the end of the tax period.

The Board / Commissioner may notify any extension in time limit for filing such returns for valid and sufficient reason.

Any extension of time limit by the Board/Commissioner of State Goods and Services Tax shall be deemed approved by the Commissioner of State Goods and Services Tax (SGST)/Board.

This Return is not applicable to Input Service Distributor, Deductor of Tax (Section 37) and Taxable persons opting for Composition Levy (Section 8)

Revision / Rectification of original return -

In case any outward supplies are not matched with the respective recipients' return of inward supplies (discussed under section 26), the return for outward supplies requires rectification which 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 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 Rs. 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 Rs. 5 Crore.
 - (b) For taxpayers with turnover between Rs 1.5 Crores and Rs 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 Rs. 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 Rs. 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 concomitant 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 will be 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.

26. Furnishing details of inward supplies

Statutory Provision

(1) Every registered taxable person, other than an input service distributor and a person paying tax under the provisions of section 8 or section 37, 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 25 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 25.

(2) Every registered taxable person shall furnish, electronically, the details of inward supplies of taxable goods and/or services, including inward supplies of 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 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 Board/Commissioner may, for valid and sufficient reasons, by notification, extend the time limit for furnishing such details:

Provided further that any extension of time limit by the Board/Commissioner of State Goods and Services Tax shall be deemed to be approved by the Commissioner of State Goods and Services Tax/Board.

(3) Any registered taxable person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 29, 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 filing of the return under section 27 for the month of September following the end of the financial year to which such details pertain, or filing of the relevant annual return, whichever is earlier.

26.1 Introduction

This provision relates to furnishing of details of inward supplies.

26.2 Analysis

In respect of the return for outward supplies filed by the supplier of goods / services (under section 25) the receiver is required to match his receipts with the details of supplies filed by

the supplier. 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 for inward supplies by the recipient.

Details of inward supplies include debit notes, credit notes and inward supplies liable for tax payment on reverse charge basis. 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 Board / Commissioner may notify any extension in time limit for filing such returns for valid and sufficient reason.

In case the return for outward 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-2. The same may be modified i.e. added or deleted by the Taxpayer while filing the GSTR-2. 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 taxpayer 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 (to be prescribed in GST Law in terms of duration and number of installments) from the date of accounting of capital goods in the taxpayer's books of accounts. [GST Law may provide that Input credit pertaining to Capital Goods will be allowed to be availed over a period of 2 years in two equal installments]

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 concomitant 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 will be 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. Addition or Deletion of the invoice by the taxpayer will be permitted between 12th and 15th of the succeeding month. Adjustments would be permitted on 16th and 17th of the succeeding month.

The return (GSTR-2) would be filed by 17th of the succeeding month. Late filing would be permitted on payment of late fees only.

27. Returns

Statutory Provision

- (1) Every registered 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, 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 within twenty days after the end of such month:

Provided that a registered taxable person paying tax under the provisions of section 8 of this Act shall furnish a return for each quarter or part thereof, electronically, in such form and in such manner as may be prescribed, within eighteen days after the end of such quarter:

Provided further that a registered taxable person shall not be allowed to furnish return for a tax period, if valid return for any previous tax period has not been furnished by him.

- (2) Every registered taxable person, who is required to furnish a return under subsection (1) 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.
- (3) A return furnished under sub-section (1) by a registered taxable person without payment of full tax due as per such return shall not be treated as a valid return for allowing input tax credit in respect of supplies made by such person.
- (4) Every registered taxable person shall furnish a return for every tax period under sub-section (1), whether or not any supplies of goods and/or services have been effected during such tax period.
- (5) Every registered taxable person required to deduct tax at source shall furnish a return, electronically, in such form and in such manner as may be prescribed, 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.
- (6) Every Input Service Distributor shall, for every calendar month or part thereof, furnish a return, electronically, in such form and in such manner as may be prescribed, within thirteen days after the end of such month.
- (7) Subject to the provisions of sections 25 and 26, if any taxable person after furnishing a return under sub-section (1) 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 filed 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 filing 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 filing of relevant annual return, whichever is earlier.

27.1 Analysis

Every registered taxable person:

- (i) 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
 - (f) within 20 days after the end of such month:
- (ii) Paying tax under composition scheme shall furnish a return for each quarterly basis, electronically, in prescribed form manner, within 18 days after the end of such quarter:
- (iii) Shall not be allowed to furnish return for a tax period if valid return for any previous tax period has not been furnished by him.
- (iv) 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.
- (v) 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.
- (vi) Required to deduct tax at source shall furnish are turn electronically, in prescribed form and manner, 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.
- (vii) A return furnished without payment of full tax due as per such return shall not be treated as a valid return for allowing input tax credit in respect of supplies made by such person.

In addition to above:

- (viii) Every Input Service Distributor (ISD) shall, for every calendar month or part thereof, furnish a return, electronically, in prescribed form and manner within 13 days after the end of such month.
- (ix) If any taxable person after furnishing a return discovers any omission or incorrect particulars therein, shall rectify in the return to be filed for the month or quarter, during

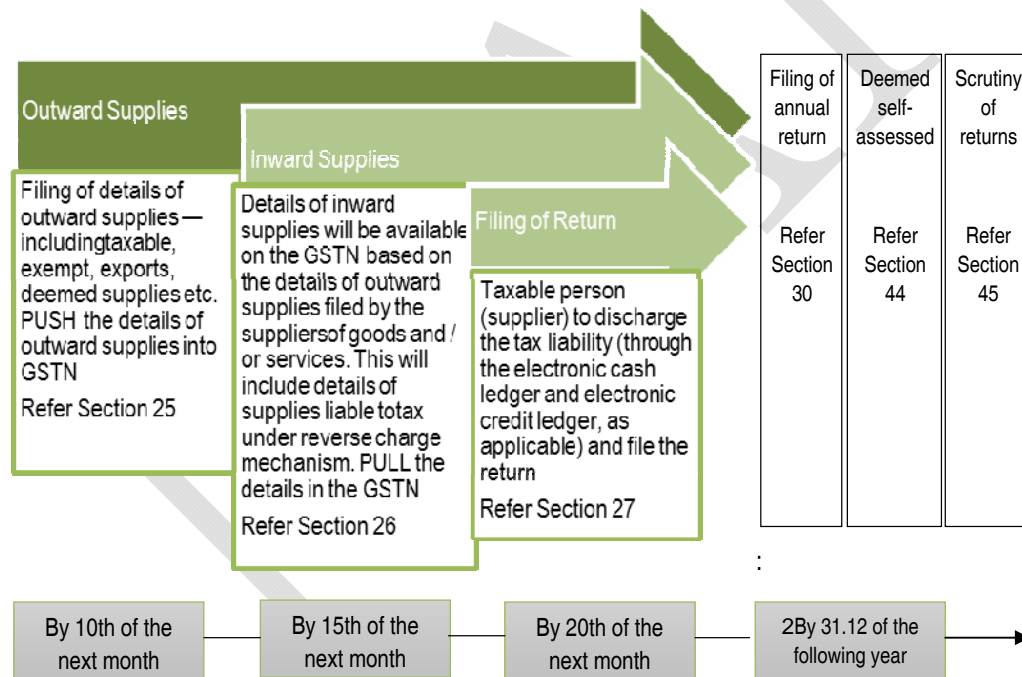
which such omission or incorrect particulars are noticed, subject to payment of specified interest as applicable.

- (x) 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

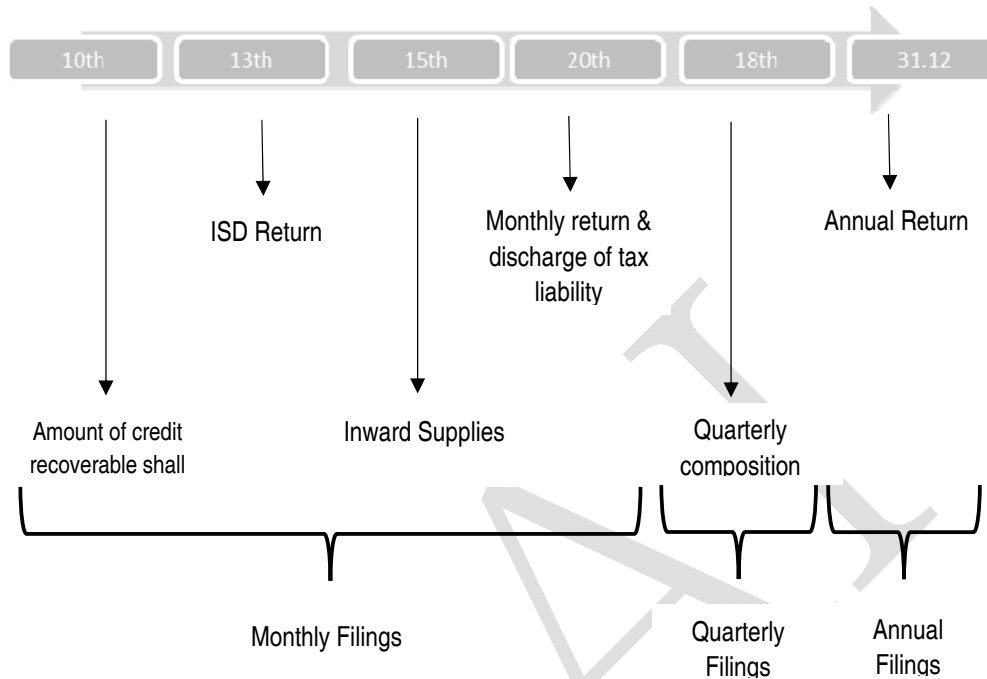
Valid Return -

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:



If a return of outward supplies is filed without paying related tax, such return shall not be treated as a valid return and the ITC related to such supplies will not be allowed to the recipient.

Every registered tax payer – 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 Tax.
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 Tax.
13. Details of the payment of tax under various tax heads of CGST, SGST, IGST and Additional Tax 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 tax 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 tax) 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 17 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 15th of the succeeding month.

Brief Analysis on TDS Return (GSTR – 7)

Refer discussion under section 37 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:

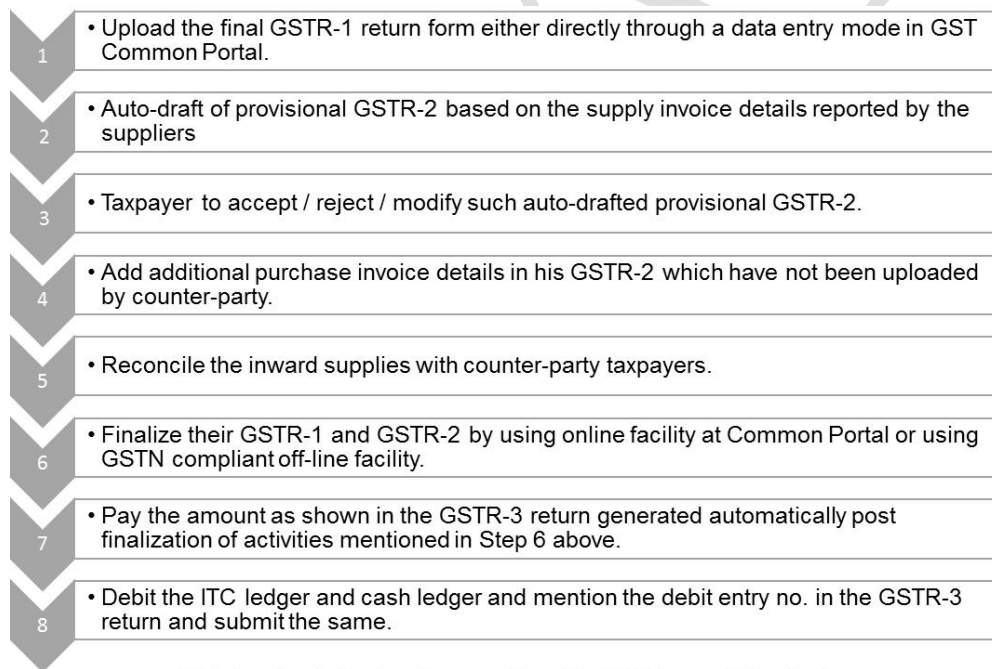
1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Details of GSTIN of the Supplier along with the invoices against which the Tax has been deducted. This will also contain the details of tax deducted against each major head i.e. CGST, SGST and IGST.
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:

The following chart may be referred in this regard:



This is based on the Business Processes Report for GST Returns published by the Empowered Committee of State Finance Ministers on 06.10.2015.

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 by 10th day 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 provisional GSTR-2 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 provisional GSTR-2. (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-1 and 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.

27A. First Return

Statutory Provision

- (1) Every registered taxable person paying tax under the provisions of section 7 shall furnish the first return containing the details of:
- (a) outward supplies under section 25 from the date on which he became liable to registration till the end of the month in which the registration has been granted;
 - (b) inward supplies under section 26 from the effective date of registration till the end of the month in which the registration has been granted:
- Provided that a registered taxable person paying tax under the provisions of section 8 shall furnish the first return for the period starting from the date on which he becomes a registered taxable person till the end of the quarter in which the registration has been granted.
- (2) Provisions of section 25, 26 and 27, other than the provision pertaining to tax period, shall apply mutatis mutandis to the said person furnishing return under subsection (1).

27A.1 Analysis

First Return - After obtaining registration, the taxable person is required to file his very first return. This section provides for the aspects that need to be considered while filing this first return, namely:

Transaction to be reported	Consideration involved
Outward supplies	From date of liability to register till the end of month* when registration is granted
Inward supplies	From effective date of registration till end of month* when registration is granted

* Up to the quarter in case of composition levy under section 8

Section 25[furnishing details of inward supplies], 26[furnishing details of outward supplies] and 27[returns], excluding than the provision pertaining to tax period, shall apply to the person furnishing first return.

27A.3 FAQ's

- Q1. From when do the first returns need to be filed by taxable person in respect of outwards supplies?
- Ans. First returns of outwards supplies need 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 need to be filed by taxable person in respect of inward supplies?
- Ans. First return of inward supplies need to be filed from the effective date of registration till the end of the month in which the registration has been granted

28. Claim of input tax credit and provisional acceptance thereof

Statutory Provision

Every 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:

Provided that a taxable person who has not furnished a valid return under section 27 of the Act shall not be allowed to utilize such credit till he discharges his self-assessed tax liability.

28.1 Introduction

This Section relates to claim of input tax credit and its provisional acceptance.

28.2 Analysis

At the outset, every registered tax payer 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 outward supplies.

29. Matching, reversal and reclaim of input tax credit

Statutory Provision

- (1) The details of every inward supply furnished by a 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 16, 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 (7) of section 27.
- (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 36 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 36.

29.1 Introduction

This provision relates to matching, reversal and reclaim of input tax credit.

29.2 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 other party (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 38 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 29A which discusses this aspect of payment of interest by the supplier.

Any reduction of liability by the recipient in contravention of the provisions 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 Rs 1000 in May 2017; CGST thereon is, say, Rs 120. Unfortunately A Ltd did not furnish these details in its outward supply to B Ltd.

While matching the credit, B Ltd failed to set this right and went ahead with credit claim and utilized the credit against CGST liability. Later, GST officer intimates this mismatch, say by August 2017. In the absence of A Ltd's due response, B Ltd may pay back the credit with interest (for wrong credit).

A Ltd rectifies the outward return with details omitted earlier, in October 2017. Accordingly, B Ltd can certainly take back the credit earlier reversed.

Example – 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.

29A. 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 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 (7) of section 27.
- (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 36 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 36.

29A.1 Introduction

This provision relates to matching, reversal and reclaim of output tax liability.

29A.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 parties.

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 38 are 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 supplier. Reference may be had to the discussion under section 29 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.

30. Annual return

Statutory Provision

- (1) Every registered taxable person, other than an input service distributor, a deductor under section 37, 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 taxable person who is required to get his accounts audited under subsection (4) of section 42 shall furnish, electronically, the annual return 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.

30.1 Introduction

Every registered tax payer shall file Annual Return on or before 31st December following the end of the financial year.

30.2 Analysis

Input Service distributor, deductor of tax, casual taxable person and Non-Resident taxable person are not required to furnish annual return.

Taxable persons who get their accounts audited under section 42(4) are required to electronically file annual return under this section 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 particulars.

31. 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.

31.1 Introduction

This Section relates to final return to be filed by a taxable person.

31.2 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 prescribed form and manner.

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.

32. Notice to return defaulters

Statutory Provision

Where a registered taxable person fails to furnish a return under section 27 or section 31, a notice shall be issued requiring him to furnish such return within such time and in such form and manner as may be prescribed.

32.1 Introduction

This provision relates to issuing of a notice to defaulters in filing returns.

32.2 Analysis

Notice to defaulter

Notice shall be issued in prescribed manner, requiring to file the periodic returns (Ref: Section 27) or Final Return (Section 31). Reference may kindly be had to the discussion under section 46 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.

33. Levy of late fee

- (1) Any registered taxable person who fails to furnish the details of outward or inward supplies required under section 25 or section 26, as the case may be, or returns required under section 27 or section 31 by the due date shall be liable to a late fee of rupees one hundred for every day during which such failure continues, subject to a maximum of rupees five thousand.
- (2) Any registered taxable person who fails to furnish the return required under section 30 by the due date shall be liable to a late fee of rupees one hundred for every day during which such failure continues, subject to a maximum of an amount calculated at a quarter percent of his aggregate turnover.

33.1 Introduction

This provision relates to levy of late fees on filing belated return.

33.2 Analysis

For late filing of return, the following late fee shall be levied:

Defaulted Return	Late fee
Return on Outward Details (Ref: Sec 25)	Rs. 100 per day of delay Maximum Rs. 5,000
Return on Inward Details (Ref: Sec 25)	same as above
Return on Input credit (Ref: Sec 27)	same as above
Final Return for prescribed three months (Sec 31)	same as above
Annual Return (Sec 30)	Rs. 100 per day of delay Maximum = 0.25% on Aggregate Turnover*

* 2(6) "Aggregate Turnover" means the aggregate value of all taxable and non-taxable supplies, exempt supplies and exports of goods and/or services 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 supplies on which tax is levied on reverse charge basis and the value of inward supplies

34. 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 25, the details of inward supplies under section 26 and the return under section 27, 30 or section 31, 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 particulars 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.

34.1 Introduction

This provision relates to filing of returns by a tax return preparer.

34.2 Analysis

The Appropriate Government may prescribe the eligibility conditions, duties and obligations, manner of removal and such other conditions as may be relevant for the functioning as a Tax Return Preparer. However, in all cases registered Tax Payer continues to be liable for the correctness of the return filed through Tax Return Preparer.

A registered taxable person may, in the manner prescribed, authorise an approved Tax Return Preparer to furnish the details of outward/inward supplies and furnish the return under section 27, 30[annual return] or section 31[final return], as case maybe, and such other prescribed tasks.

Tax Return Preparer: means any person who has been approved to act as a Tax Return Preparer under the scheme framed under section 34;[Section 2(99)].

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)].

34.3 Frequently Asked Questions

Q1. How many returns has a Registered Tax Payer to file per tax period generally? Is a person eligible to pay tax under composition levy also to file the same number of returns or is there any difference?

Ans. Generally, three returns (GSTR 1, GSTR 2 and GSTR 3) shall be filed by a tax payer for each tax period. Tax payer under Composition Levy Scheme shall file one return per tax period (Quarter Year).

Q2. Whether a return for Outward Supplies can be rectified after the financial year end?

Ans. Yes, after the year end such return can be rectified; but, no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after filing of the return under section 27 for the month of September following the end of the financial year to which such details pertain, or filing of the relevant annual return, whichever is earlier.

Q3. Mr. Supplier is registered under GST statute duly; files his returns regularly. For the months of August 2017 and September 2017 due to certain unavoidable reason there was no supply of goods or service. Accordingly GST payable by him is also Nil only. Mr. Supplier decides that he need not file any GST return for that period; that only taxable person should file periodic return/s; that he being a person with no taxable transaction during the relevant month/s has liability to file any GST return. Is he right?

Ans. No, as per Section 27 (4), *ibid*, whether taxable turnover was there or not, during the period of holding valid GST registration, he has to file his returns – even with Nil figures.

Q4. What are the due dates for filing GST Regular Returns, Annual Return and Final Return?

S. No.	Return	For	To be filed by
1	GSTR 1	Outward supplies made by taxpayer (other than compounding taxpayer and ISD)	10 th of the next month
2	GSTR 2	Inward supplies received by a taxpayer (other than a compounding taxpayer and	15 th of the next month
3	GSTR 3	Monthly return (other than compounding taxpayer and ISD)	20 th of the next month
4	GSTR 4	Quarterly return for compounding Tax Payer	18 th of the month next to Quarter
5	GSTR 5	Periodic return by Non-Resident Foreign Taxpayer	Last day of registration*
6	GSTR 6	Return for Input Service Distributor (ISD)	15 th * of the next month
7	GSTR 7	Return for Tax Deducted at Source	10 th of the next month
8	GSTR 8	Annual Return	By 31 st December of next FY

Ans. A final return should be filed within three months of the date of cancellation of GST Registration or date of cancellation order, whichever is later, in such form and in such manner as may be prescribed.

Q5. What is the importance of first return? Will it cover several months or quarter years too?

Ans. Every registered tax payer shall be liable to furnish his first return containing the details of outward supplies and inward supplies **from the date** on which he is liable to be registered **till the end of the month** in which registration is granted. In case of taxable persons opting to pay tax under composition levy this return shall cover the period **from the date** on which he is liable to be registered **till the end of the quarter** in which registration is granted.

Accordingly, this return could cover several months or quarter years too.

Q6. 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.

Q7. 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.

Q8. What is the maximum limit for late fee on belated returns of different types?

Ans.

Defaulted Return	Late fee
Return on Outward Details (Ref: Sec 25)	Rs. 100 per day of delay Maximum Rs. 5,000
Return on Inward Details (Ref: Sec 25)	- Do -
Return on Input credit (Ref: Sec 27)	- Do -
Final Return for prescribed three months (Sec 31)	- Do -
Annual Return (Sec 30)	Rs. 100 per day of delay Maximum = 0.25% on Aggregate Turnover*

* "Aggregate Turnover" means the aggregate value of all taxable and non-taxable supplies, exempt supplies and exports of goods and/or services 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 supplies on which tax is levied on reverse charge basis and the value of inward supplies

Q9. 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 34, certainly the Tax Payer is the person who is responsible for the correctness or otherwise of the return filed through Tax Return Preparer.

Q10. Write 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.

34.4 Multiple Choice Questions

Q1. Which one of the following is true?

- (a) Each return shall be validated by proper officer of GST after detailed scrutiny
- (b) A GST return shall be valid only when related tax has been paid
- (c) Each return shall be filed in paper form by the registered tax payer
- (d) A GST return should be filed only when there is any tax liability in a particular tax period

Ans. (b) A GST return shall be valid only when related tax has been paid

Q2. For every Tax Period, *generally* there -

- (a) Are 5 GST returns

- (b) Is 1 GST return
- (c) Are 3 GST returns
- (d) Is no specified GST return at all

Ans. (c) Are 3 GST returns

Q3. Which one is a correct statement -

- (a) Due date for a Tax Payer who pays tax at regular rate to file Return on outward Supplies is 20 days from the end of Tax period (Month/Quarter year)
- (b) Due date for a Tax Payer who pays tax at regular rate to file Return on inward Supplies is 15 days from the end of Tax period (Month/Quarter year)
- (c) Due date for a Tax Payer who pays tax at regular rate to file Return on Input Tax Credit is 30 days from the end of Tax period (Month/Quarter year)
- (d) All the due dates prescribed by the statute for tax payers at regular rate are equally applicable to a Tax Payer who pays GST under Compound Levy Scheme too.

Ans. (b) Due date for a Tax Payer who pays tax at regular rate to file Return on inward Supplies is 15 days from the end of Tax period (Month/Quarter year)

Q4. Annual Returns need not be filed by –

- (a) Compound levy tax payer and Tax Payer utilizing input tax credit
- (b) Tax payer who does not have place of business in more than 2 States
- (c) Tax payer who has filed his periodic returns in time throughout the financial year
- (d) Input Service distributor, deduct or who makes GSTDS, Casual Tax Payer and Non Resident Tax Payer

Ans. (d) Input Service distributor, deduct or who makes GSTDS, Casual Tax Payer and Non Resident Tax Payer

Q5. If a Tax Payer files his e>Returns under GST law through a Tax Return Preparer, for the correctness of the return –

- (a) Tax Return Preparer is responsible
- (b) Proper Officer is responsible
- (c) Tax Payer is responsible
- (d) Who has accepted specific responsibility shall only be responsible

Ans. (c) Tax Payer is responsible

Chapter – IX

Payment of Tax

35. 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.
 - (2) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger 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 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.
- Note : This provision is to be incorporated in 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 38 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 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 51.
- (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.

35.1 Introduction

This section provides for the following:

1. Methodology or mode of payment of tax, interest, penalty, fee or any other amount by a taxable person,
2. This Section prescribes three kinds of ledgers to be maintained by the taxable person.
 - (a) Electronic Cash Ledger;
 - (b) Electronic Input Tax Credit Leger or Electronic Credit Ledger;
 - (c) Electronic tax Liability Ledger.
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.

35.2 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 35 of the model GST.

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.

Business Process Report:

The Empowered Committee of State Finance Ministers has submitted a **Report of the Joint Committee on business processes for GST on GST payment processes** in April 2015. This report has emphasized a uniform system of banking arrangements for collection, remittance and reporting of GST to both Central and State Government.

Some of the key features are:

1. New Format of challans for tax payers paying GST and non-GST tax payers;
2. Detailed accounting procedure common to both Central and State Governments covering all aspects of payments accounting and related banking arrangements.;
3. Attempt towards paperless transactions – hassle-free payment of tax anytime and anywhere; online payment mechanisms;
4. Faster remittance of tax revenue to the Government account;
5. Speedy accounting and reconciliation of tax receipts;
6. RBI to play the role of an aggregator through its e-kuber system and the like.

A detailed report of the payment process is given in the Business Process Report which is a useful guide for tax payers, Banks, tax authorities and the Government.

The Business Process Report mentions four different major heads of account viz. CGST, IGST, additional tax and SGST along with five minor heads. The Heads of payment contemplated Under the GST Regime are: -

SI no.	Major heads	Minor Heads
1.	IGST	Tax
2.	CGST	Interest
3.	SGST	Penalty
4.	Additional Tax (if applicable)	Fee
5.	-	Any other amount

The minor heads of payments which are deposited in the Central Government or State Government treasury will be reflected in the Electronic Cash Ledger under the respective **major** head of payment.

For instance, if a penalty payment is made under the IGST Act, it will reflect in the Electronic Cash Ledger as **IGST penalty**.

Likewise, if a compounding fee is remitted in proceedings under the CGST Act or SGST Act into the Central treasury or the State treasury as the case may be, that deposit will be reflected in the Electronic Cash ledger as **CGST fee** or **SGST fee** as the case may be.

The Major payments reflected in the Electronic Cash Ledger would include some of the following:

- Tax paid on outwards supplies.
- Tax paid by way of pre-deposit in appeal.
- Admitted tax paid by virtue of an assessment order.
- Admitted tax paid by virtue of an assessment order / adjudicating proceedings admitted tax paid at the time of filing appeal.
- Penalty paid along with disputed tax paid by way of pre-deposit while filing appeal (10%)
- Interest on belated payment of tax.
- Compounding fee paid in compounding proceedings.
- Payment by way of reverse charge.

The above is illustrative and not exhaustive, Thus the direct deposit into the State/Central Government Treasury of any or all of these amounts by any of the payment methods mentioned above will be reflected in the Electronic Cash Ledger and the Amount Available on date can be used for making payment of Tax, Interest, Penalty, fee etc.

Section 35(3) provides that the amount reflected in the **Electronic Cash Ledger** may be used for payment of tax, interest, penalty, fee, or any other amount. However, the manner of utilization, condition and timelines are yet to be prescribed. It is not clear as to whether cross-utilization of balances in cash ledger in between the **major/minor heads** would be permitted.

B. ELECTRONIC CREDIT LEDGER:

Sub Section (2) of Section 35 of the Model GST 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 charge 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 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 38 (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.

35.3 Comparative Review

The Electronic Cash Ledger, Electronic Credit Ledger and Tax Liability Register are unique features of the 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.

35.4 Related Provisions

Section 7 of the IGST Act is a verbatim reproduction of GST Model Law except sub-section (c). Sub-Section (c) is exclusive to CGST and SGST enactments.

35.5 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 ledger

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?

SI no.	Major heads	Minor Heads
1.	IGST	Tax
2.	CGST	Interest
3.	SGST	Penalty
4.	Additional Tax (if applicable)	Fee
5.	-	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 any payment towards 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:

Q11. Self-assessed tax and other dues arising out of returns for previous tax periods have to be discharged first.

Ans. 1. Self-assessed tax and other dues relating to the return of the **current tax period**.
2. Any other amount payable under the Act/Rules (liability arising out of demand notice or adjudicated proceedings etc).

35.6 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

36. 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 29, he shall be liable to pay interest on such undue or excess claim at the prescribed rate for the period computed in the manner prescribed.

36.1 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.

36.2 Analysis

Sub-Section (1) of Section 36 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 undue or excess claim of ITC under section 29(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.

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 by the Central or State Government on the recommendation of the Council.

COMPUTATION PERIOD FOR PAYMENT OF INTEREST UNDER SECTION 36 OF 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 27(2) lays down the last date for remittance as the last date on which taxable person is required to furnish such return.

2. Section 51(3) provides that if the tax along with interest has been paid, the adjudicating authority shall not serve any show cause notice.
3. Section 51(5) provides that where a person has been served with show cause notice but has made the payment of tax and penal interest under Section 36(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 36(1) 51(3) and 51(5) 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 model GST Act.

36.3 Comparative Review

Section 36(1) r/w. Section 51 (3) & 51(5) of the 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 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 model GST law.

36.4 Related Provisions

Act	Section
CGST	Section 27(1) & (2) Section 51(3) & 51(5)
IGST	Section 29

36.5 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 36(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 29(10).

Q5. 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.

36.6 MCQ

Q1. Interest is payable on :-

- (a) Belated payment of tax
- (b) Undue claim of Input Tax Credit.
- (c) Excess claim of Input Tax Credit.
- (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

37. Tax deduction at source

Statutory provision

- (1) Notwithstanding anything contained to the country 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 deductor”], 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 ten 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 credit of the appropriate Government by the deductor within ten days after the end of the month in which such deduction is made, in the manner prescribed.
- (3) The deductor 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 deductor 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:
- (5) The Deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor filed under Sub-section (5) of Section 27, in the manner prescribed.
- (6) If any deductor fails to pay to the credit 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 section 36, 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 51.

- (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 38:

Provided that no refund to deductor shall be granted if the amount deducted has been credited to the electronic cash ledger of the deductee.

37.1 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.

37.2 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 10 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 ie 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 36 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 38 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.

37.3 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 Acts and model GST Act:

TDS Provisions under

	State VAT Act	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

37.4 Related provisions

Section 35 and 38 of the model GST Act.

37.5 FAQ

Q1. Who are the 'persons' who can deduct tax at source under Section 37 of model GST Act?

Ans. The following persons are to deduct tax as per the provisions of Section 37 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 37 deduct tax at source?

Ans. The Deductors u/s 37 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 ten 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 a 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 (5) of Section 27, 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 38. 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.

37.6 MCQ

Q1. The deduction of tax by the Deductor under Section 37 of model GST Act is at the rate of:

- (a) 2%
- (b) 3%
- (c) 1%
- (d) None of the above.

Ans. (c) 1%

Q2. The amount of tax deducted by the Deductor has to be paid to the credit of the appropriate Government within days after the end of the month in which such deduction is made:

- (a) 20 days
- (b) 10 days
- (c) 15 days
- (d) 5 days

Ans. (b) 10 days

Q3. The time limit for furnishing the deduction –cum- remittance certificate by the Deductor to the Deductee is:

- (a) 10 days
- (b) 20 days
- (c) 5 days
- (d) None of the above.

Ans. (c) 5 days

Q4. The Deductee can claim credit of the remittance made by the Deductor in his,

- (a) Electronic Credit Ledger
- (b) Tax liability Ledger
- (c) Electronic Cash Ledger
- (d) None of the above.

Ans. (c) Electronic Cash Ledger

Q5. If excess or erroneous deduction has been made by the Deductor and this amount is credited to Electronic Cash Ledger of the Deductee, refund can be claimed by,

- (a) Deductor
- (b) Deductee
- (c) Both Deductor and Deductee
- (d) None of the above

Ans. (d) None of the above

INDIAN

Chapter – IXA

Transfer of Input Tax Credit

37A. 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 35, 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 35, 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 SGST Act.

37A.1 Introduction

This section deals with transfer of transfer of input tax credit (ITC) from CGST to IGST account and SGST to IGST account.

37A.2 Analysis

- (i) This provision deals with the 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 credit to the respective states there should be separate mechanism, which Government should notify by rules/regulation/notification.
- (vii) The State Government too, 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 122nd Constitutional Amendment Bill.
- (ix) Transfer of the available credit will be possible only when the assessee has properly paid the dues to the government account or 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.

37A. 3 Comparative review

There are no specific provisions in any of the earlier laws such as Central Sales Tax Act 1956 or Central Excise Act 1944, 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 by the States, or the Central Government may assign to the States to collect the taxes and transfer the amount collected to the Central Government.

37A. 4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Sub-section 35(5)	Utilization of input tax credit	ITC of IGST available in the electronic credit ledger shall first be utilized towards payment of IGST and balance, if any, may be utilized towards payment of CGST & SGST.

37A.5 FAQs

- Q1. Whether there will be any time limit for transfer for ITC?
- Ans. 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?
- Ans. There is no specific mechanism prescribed in the section, but the same is discussed in

the 122nd Constitution Amendment Bill and further the Central Government will come up with separate mechanism for transfer of unutilized credit.

Q3. Whether there will be separate team for allocation of taxes to the states/centre?

Ans. 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.

37A.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-X

Refunds

38. 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 the limitation of two years shall not apply where such tax or interest or the amount referred to above has been paid under protest.
- (2) Subject to the provisions of sub-section (8), 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 or in cases where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on outputs:
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.
- (3) The application shall be accompanied by—
 - (a) such documentary evidence as may be prescribed to establish that a refund is due to the applicant, and
 - (b) such documentary or other evidence (including the documents referred to in section 23A) 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 by him to any other person:

Provided that where the amount claimed as refund is less than five lakh 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 by him to any other person.
- (4) 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.

- (4A) Notwithstanding anything contained in sub-section (4), the proper officer may, in the case of any claim for refund on account of export of goods and/or services made by such category of registered taxable persons as may be notified in this behalf, refund eighty percent of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, on a provisional basis, in the manner and subject to such conditions, limitations and safeguards as may be prescribed and the remaining twenty percent may be refunded after due verification of documents furnished by the applicant.
- (5) The proper officer shall issue the order under sub-section (4) within ninety 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.
- (6) Notwithstanding anything contained in sub-section (4) or sub-section (4A), 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 used in the goods and/or services which are exported out of India;
 - (b) refund of unutilized input tax credit under sub-section (2);
 - (c) 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
 - (d) 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.
- (7) 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 (6).
- (8) Notwithstanding anything contained in sub-section (2), 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 submitted the return or paid the tax, interest or penalty, as the case may be;
 - (b) deduct from the refund due, any tax, interest or penalty which the taxable person is liable to pay but which remains unpaid.

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 after the last date for filing an appeal under this Act, in a case where an appeal has been filed.
- (9) Notwithstanding anything contained in sub-section (4) or sub-section (4A), 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 / Board is of the opinion that grant of such refund is likely to adversely affect the revenue, he may, after giving the taxpayer an opportunity of being heard, withhold the refund till such time as he may determine.
- (10) Where a refund is withheld under sub-section (9), the taxable person shall be entitled to interest as provided under section 39, if as a result of the appeal or further proceeding he becomes entitled to refund.
- (11) Notwithstanding anything contained in this section, no refund under sub-section (4) or sub-section (4A) shall be paid to an applicant if the amount is less than rupees one thousand.

Explanation. — For the purposes of this section -

- (A) “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 (2).
- (B) “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 goods returned for being remade, refined, reconditioned, or subjected to any other similar process in any place of business, the date of entry into the place of business for the purposes aforesaid;
- (d) 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;
- (e) 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;
- (f) in the case of refund of unutilized input tax credit under sub-section (2), the end of the financial year in which such claim for refund arises; and
- (g) 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.

38.1 Introduction

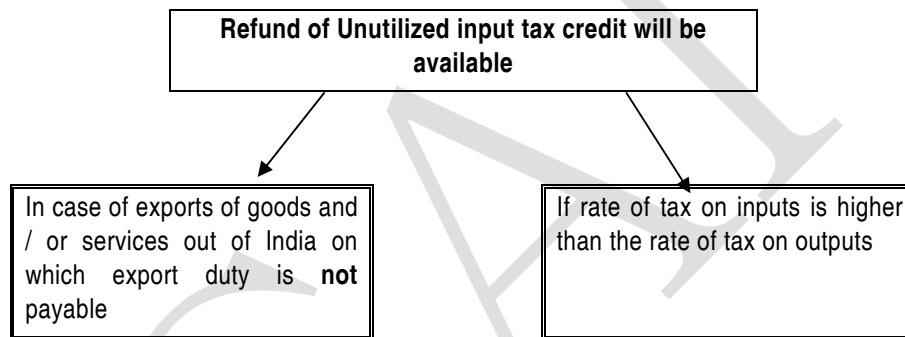
This section deals with the legal and procedural aspects of claiming refund by any person. The refund can be claimed for -

- 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;
- 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 available.

38.2 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) Refund of the unutilized input tax credit can be claimed at the end of any tax period in the following cases:



However, if the goods are exported out of India are subjected to export duty, no refund will be given under this provision.

- (iv) The refund application has to be supported by prescribed documents evidencing facts that the refund is due to the applicant.
- (v) 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 Rs.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.
- (vi) The refund relating to an application if found in order, will be sanctioned **within ninety days** from the date of receipt of complete application containing all the prescribed information.
- (vii) 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 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
- (viii) In other cases where the application is found to be in order, the refund amount, shall be **credited to Consumer Welfare Fund.**
- (ix) It is also provided that in case of refund claim by notified registered taxable person where refund is on account of export of goods and/or services, refund will be limited to eighty percent of the total amount claimed (excluding input tax credit not yet finalized). This refund of 80% will be on a provisional basis, and will be subject to prescribed conditions, limitations and safeguards. Remaining twenty percent may be refunded after due verification of documents furnished by the applicant.
- (x) 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 due for payment of any tax, interest or penalty ordered, which is not stayed by Court or appellate Authority within
 - 30 days after the last date for filing the appeal where appeal is filed; and
 - in case where appeal is not filed, on the expiry of the due date for filing appeal.
 - In cases where Commissioner/Board is of the opinion that granting of refund would affect the revenue adversely, 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
- it shall withhold the refund till such time as it may determine. This can be done only after affording the taxpayer an opportunity of being heard
- (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.
- **Goods** returned for being remade, refined, reconditioned, or subjected to any other similar process in any place of business->the date of entry for the purposes aforesaid at a place of business.
- 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/decreed/order/direction.
- Refund of unutilized input tax credit due to exports - end of the financial year in which such claim for refund arises; and
- Provisionally paid tax - the date of adjustment of tax after the final assessment.

38.3 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.

38.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 2(37)	Deemed Exports	
CGST	Section 23A	Amount of tax to be	Invoice or other documents referred to in Section 23A have to be

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 2(37)	Deemed Exports	
		indicated in tax invoice.	enclosed along with refund application.
CGST	Section 40	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.

38.5 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 said 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 90 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 Rs. 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.

38.6 Multiple Choice Questions

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. (c) 80%

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 permissible in case of?

- (a) 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.

39. Interest on delayed refunds

Statutory Provision:

If any tax refundable under section 38 to any applicant is not refunded within three months 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 the due date for sanction of refund under section 38 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 (4) or sub-section (4A) of section 38, 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 (4) or sub-section (4A) for the purposes of this section.

39.1 Introduction

This section provides for payment of interest on delayed refunds beyond the period of three months from the date of receipt of application to avoid delays in sanction or grant of refund.

39.2 Analysis

- (i) The section provides that interest is payable if –
 - Tax paid becomes refundable under section 38 to the applicant; and
 - It is not refunded within 3 months from the date of receipt of application for refund of tax under Section 38(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 30.09.2016. In such a case, interest has to be paid for the period from 19.09.2017 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 from the date of completion of 90 days from the date of original refund claim being 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 a case interest has to be paid for the period from 19.09.2017 to 30.07.2018.

39.3 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.

39.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 38	Refunds	Provision providing for refund of tax.

39.5 FAQ

Q1. Whether interest is payable on delayed sanction of refund of tax only?

Ans. Yes, the provision for payment of interest is only with respect to delayed payment of 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 38(1) relating to tax paid and not under Section 38(2). Therefore, there is no provision for payment of interest on delayed refund of unutilized input tax credit.

39.6 MCQ

1. Interest U/s 39 is applicable on delayed payment of refunds issued under?

- (a) Section 38
- (b) Section 39
- (c) Section 36
- (d) Section 40

Ans. (b) Section 38

2. Interest U/s 39 has to be paid for delayed refunds, if the refund is not granted within
- (a) 90 days
 - (b) 3 months
 - (c) 1 year
 - (d) None of the above

Ans. (b) 3 months

40. 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 (4) or sub-section (4A) of section 38; and (b) any income 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.

40.1 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.

40.2 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 (4) or sub-section (4A) of section 38; and
- any income 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.

40.3 Comparative Analysis with the present law

These provisions are broadly similar to the provisions contained in existing Central Indirect Tax laws.

40.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 38	Refund of tax	Provision for claiming refund of tax
GST	Section 41	Utilization of the fund	Provisions relating to the manner of utilization of the fund.

40.5 FAQs

- Q1. What 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 (4) or sub-section (4A) of section 38; and
- any income 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.

40.6 MCQ

Q.1 In cases where the application is found to be in order, the refund amount, shall be credited toFund.

- (a) Investor Protection and Education Fund
- (b) Consumer Protection Fund
- (c) Consumer Welfare Fund
- (d) Refund Claim Fund

Ans. (b) 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

41. 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.

41.1 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.

41.2 Analysis

- (i) It should be ensured that the monies credited to the fund shall be utilised 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.

41.3 Comparative review

These provisions are broadly similar to the existing provisions contained in Section 12D of the Central Excise Act, 1944

41.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 38	Refund of tax	Provision for claiming refund of tax
GST	Section 40	Consumer Welfare Fund	Provisions relating to the amounts to be credited to Consumer Welfare Fund.

41.5 FAQ

Q1. How can it be ascertained 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.

41.6 MCQ

Q1. Proper and separate accounts 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– XI

Accounts and Records

42. Accounts and other records

Statutory Provision

- (1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of 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 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 statement of accounts, the reconciliation statement under sub-section (2) of section 30 and such other documents in the form and manner as may be prescribed in this behalf.

42.1 Introduction

- (i) This section mandates the upkeep and maintenance of records, at the place(s) of business in electronic or other forms.
- (ii) Power is vested with the Commissioner/Chief Commissioner for relaxation and prescribing additional records for certain classes of taxable persons.

- (iii) Furnishing of an audited statement of accounts and reconciliation statement is also contemplated for persons having turnover exceeding prescribed limit

42.2 Analysis

Place of business - Section 2 (75) of the 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 Audit of Accounts and Reconciliation Section 2(78) of the 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 where the taxable person keeps and maintains the accounts and records as specified under section 42.
- (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.
- (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 30(2) as prescribed. The relevant form is awaited.

42.3 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

At present, under the Central excise and service tax laws, there is no requirement for audit of accounts and furnishing reconciliation statement by an accountant.. However, 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.

42.4 Related provisions

Statute	Section or Rule	Description	Remarks
CGST	Section 9	Taxable Person	
CGST	Section 2(75)	Place of business	
CGST	Section 2(78)	Principal place of business	
CGST	Section 2(104)	Turnover in a state	
CGST	Section 19(2)	Registration	
CGST	Section 30(2)	Annual return	

42.5 Frequently Asked Questions

Q1. Where shall the books and other records u/s 42 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 is specified in the certificate, records relating to each place of business should be maintained at that place

Q2. What are the records that are to be maintained u/s 42?

Ans. The following records are to be maintained u/s 42:-

- 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, the accounts relating to each place of business shall be kept at respective places of business concerned.

Q4. Whether the records are to be maintained physically or in electronic 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 is to be submitted?

Ans. Section 42(2) obligates an assessee who is required to get his accounts audited to file an electronic reconciliation statement and the 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.

42.6 MCQ

Q1. The books and other records u/s 42 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 situated within a State.
- (d) Any place of business in a State pertaining to all places situated within that State.

Ans. (a) Each place of business pertaining to such place alone

Q3. Which of the following is true?

- (a) The assessee can maintain fewer 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 fewer records if notified thereto by the Commissioner / Chief Commissioner.
- (d) The class of assesseees are obligated to maintain such additional or fewer records as the Commissioner / Chief Commissioner may notify.

Ans. (d) The class of assesseees are obligated to maintain such additional or fewer records as the Commissioner / Chief Commissioner may notify

43. Period of retention of accounts

Statutory Provision

- (1) Every registered taxable person required to keep and maintain books of account or other records under sub-section (1) of section 42 shall retain them until the expiry of sixty months from the last date of filing of Annual Return for the year pertaining to such accounts and records: 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 that a taxable person, who is a party to an appeal or revision or any other proceeding before any Appellate Authority or Tribunal or Court, whether filed by him or by the department, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceeding for a period of one year after final disposal of such appeal or revision or proceeding, or for the period specified under sub-section (1), whichever is later.

43.1 Introduction

This section provides for the period up to which records have to be maintained by the assessee.

43.2 Analysis

1. Every assessee shall retain the prescribed books of accounts and other records until the expiry of sixty months (5 years) from the last date of 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, then the books of account and other records are to be maintained till 30.11.2023.

This time period also coincides with the maximum time period for issuance of order of assessment in cases of fraud, wilful mis-statement, suppression of facts, etc.

2. **In case an appeal or revision or any other proceeding is pending before** any Appellate Authority or Tribunal or Court, the assessee shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceeding for a period of one year after **final disposal** of such appeal or revision or proceeding, or for the period specified records u/s 42(1), whichever is later.

43.3 Comparative Review

- Rule 5(3) of Service Tax Rules, 1994 provides that all records shall be preserved for a period of five years immediately after the financial year to which such records pertain.
- Chapter 6 of the 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 prescribe 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.

43.4 Related provisions

Statute	Section or Rule	Description	Remarks
CGST	Section 9	Taxable Person	
CGST	Section 42(1)	Books of accounts	
CGST	Section 30(2)	Annual return	
CGST	Section 42(2)	Accounts and records	

43.5 FAQ

Q1. Is there any time limit for the maintenance of the books of account or other records u/s 42?

Ans. Yes, such records shall be retained until the expiry of sixty months from the last date of 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 Tribunal or Court, (as an appellant or a respondent), then he shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceeding for a period of one year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 42(1), whichever is later.

43.6 MCQ

Q1. The time limit for the keep and maintenance of the books of account or other records u/s 42 is ____

- Sixty months from the date of filing of Annual Return or due date of filing the Annual Return, whichever is earlier.
- Forty Eight months from the last date of filing of Annual Return.
- Sixty months from the last date of filing of Annual Return.
- None of the above.

Ans. (c) Sixty months from the last date of filing of Annual Return

Q2. In case, the assessee is a party to an appeal or revision or any other proceeding before

any Appellate Authority or 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 42(1), whichever is earlier.
- (c) Six months after final disposal of such appeal or revision or proceeding, or for the period specified for 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 for records u/s 42(1), whichever is later.

Ans. (d) One year after final disposal of such appeal or revision or proceeding, or for the period specified for records u/s 42(1), whichever is later.

Chapter – XIA

Job Work

43A. Special procedure for removal of goods for certain purposes

Statutory Provision

- (1) The Commissioner may, by special order and subject to conditions as may be specified by him, permit a registered taxable person (hereinafter referred to in this section as the “principal”) to send taxable goods, without payment of tax, to a job worker for job-work and from there subsequently send to another job worker and likewise, and may, after completion of job-work, allow him to-
- (a) bring back such goods to any of his places of business, without payment of tax, for supply there from on payment of tax within India, or with or without payment of tax for export, as the case may be, or
 - (b) supply such goods 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 goods shall not be permitted to be supplied from the place of business of a job worker in terms of clause (b) unless the “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 19; or
 - (ii) where the “principal” is engaged in the supply of such goods as may be notified in this behalf.
- (2) The responsibility for accountability of the goods including payment of tax thereon shall lie with the “principal”.

43A.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.

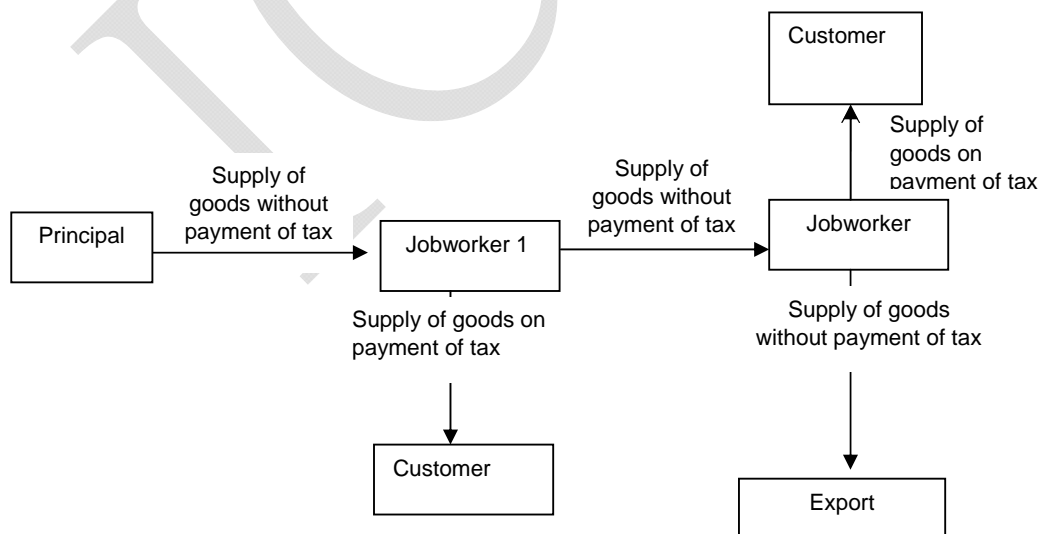
Meaning of job work and job worker: Section 2(62) gives the meaning of the term ‘job work’. As per the said provision, it means a person undertaking any treatment or processing of goods belonging to another registered taxable person. Any person who does such job work will be considered as “Job worker”.

43A. 2 Analysis

- (i) This provision enables **registered taxable person** to send **taxable goods** to a job worker without payment of tax.

- (ii) The provision requires that the Commissioner specifically permit this facility by special order with applicable conditions.
- (iii) It also provides that the goods can be sent from one job worker to another job worker as well without payment of any tax on such goods being sent.
- (iv) After the processing of goods, 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;
- (v) 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 -
 - (a) If job worker is registered under Section 19;
 - (b) The principal is engaged in the supply of notified goods.
- (vi) 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:



43A.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.

43A. 4 Related provisions

In section 43A there is no specific reference to any other sections but there are other provisions where section 43A has been referred to:

Statute	Section / Rule / Form	Description	Remarks
GST	Sub-section 62 of Section 2	Job work definition	The job work has been defined to mean undertaking any treatment or process.
GST	Section 16A	Taking ITC in respect of inputs sent for Job work	The condition and procedure has been prescribed.
GST	Schedule I	Matters to be treated as supply without consideration	Supply of goods by a registered taxable person to a job-worker shall not be treated as supply of goods
GST	Schedule III	Liability to be registered	The turnover of job work for principal should not be included in aggregate turnover of job worker

43A.5 FAQ

Q1. Who shall undertake responsibility under this provision and in case of contraventions?

Ans. The principal would undertake the primary responsibility and accountability of the goods including payment of taxes if any.

Q2. Can goods be supplied from job worker's place?

Ans. Yes, this provision allows supply of goods from job worker's premises but only on payment of taxes within India and without payment of taxes for export.

Q3. Whether any time period has been prescribed within which goods have to be returned to principal?

Ans. The section does not provide any specific time limit, However in Section 16A 180 days has been mentioned within which the goods have to be returned to the principal.

Q4. Whether there is any time limit for capital goods also?

Ans. The section does not provide any specific time limit. However in Section 16A 2 years has been mentioned within which the capital goods have to be returned to the principal.

43A.6 MCQ

Q1. The Commissioner may, by special order and subject to conditions as may be specified by him, permit _____ to send _____ to job worker for job work.

- (a) Taxable person, non-taxable goods
- (b) Unregistered taxable person, taxable goods
- (c) Registered taxable person, taxable goods

Ans. (c) Registered taxable person, taxable goods

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
- (b) 180 days
- (c) 270 days
- (d) 2 years

Ans. (b) 180 days

Q5. What is the time limit within which Capital goods have to be returned to principal?

- (a) 365 days
- (b) 180 days
- (c) 270 days
- (d) 2 years

Ans. (d) 2 years

Chapter – XIB

Electronic Commerce

43B. Definitions

In this Chapter, unless the context otherwise requires, -

- (a) **'aggregator'** means a person, who owns and manages an electronic platform, and by means of the application and a communication device, enables a potential customer to connect with the persons providing service of a particular kind under the brand name or trade name of the said aggregator;
- (b) **'brand name or trade name'** means, a brand name or a trade name, whether registered or not, that is to say, a name or a mark, such as an invented word or writing, or a symbol, monogram, logo, label, signature, which is used for the purpose of indicating, or so as to indicate a connection, in the course of trade, between a service and some other person using the name or mark with or without any indication of the identity of that person;
- (c) **'branded Services'** means services which are supplied by an electronic commerce operator under its own brand name or trade name, whether registered or not;
- (d) **'electronic commerce'** shall mean the supply or receipt of goods and / or services, or transmitting of funds or data, over an electronic network, primarily the internet, by using any of the applications that rely on the internet, like but not limited to e-mail, instant messaging, shopping carts, Web services, Universal Description, Discovery and Integration (UDDI), File Transfer Protocol (FTP), and Electronic Data Interchange (EDI), whether or not the payment is conducted online and whether or not the ultimate delivery of the goods and/or services is done by the operator;
- (e) **'electronic commerce operator'** shall include every person who, directly or indirectly, owns, operates or manages an electronic platform that is engaged in facilitating the supply of any goods and/or services or in providing any information or any other services incidental to or in connection there with but shall not include persons engaged in supply of such goods and/or services on their own behalf.

43C. Collection of tax at source - E Commerce

Statutory provision

- (1) Notwithstanding anything to the contrary contained in the Act or in any contract, arrangement or memorandum of understanding, every electronic commerce operator (hereinafter referred to in this section as the “operator”) shall, at the time of credit of any amount to the account of the supplier of goods and/or services or at the time of payment of any amount in cash or by any other mode, whichever is earlier, collect an amount, out of the amount payable or paid to the supplier, representing consideration towards the supply of goods and /or services made through it, calculated at such rate as may be notified in this behalf by the Central/State Government on the recommendation of the Council.
- (2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.
- (3) The amount collected under sub-section (1) shall be paid to the credit 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 prescribed.
- (4)(a) Every operator shall, furnish a statement, electronically, of all amounts collected under sub-section (1), towards outward supplies of goods and/or services effected through it, during a calendar month, in such form and manner as may be prescribed, within ten days after the end of such calendar month.
- (b) The statement under clause (a) shall contain, inter alia, the details of the amount collected on behalf of each supplier in respect of all supplies of goods and/or services effected through the operator and the details of such supplies during the said calendar month.
- (5) Any amount collected in accordance with the provisions of this section and paid to the credit of the appropriate Government shall be deemed to be a payment of tax on behalf of the concerned supplier and the supplier shall claim credit, in his electronic cash ledger, of the tax collected and reflected in the statement of the operator filed under sub-section (4), in the manner prescribed.
- (6) The details of supplies and the amount collected under sub-section (1) during a calendar month, and 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 in his valid return for the same calendar month or any preceding calendar month.
- (7) Where the details of outward supply, on which the tax has been collected, as declared by the operator under sub-section (4) do not match with the corresponding details declared by the supplier under section 25, the discrepancy shall be communicated to both persons in the manner and within the time as may be prescribed.

- (8) The value of a supply relating to any payment in respect of which any discrepancy is communicated under sub-section (7) 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 liability of the said supplier, in the manner as may be prescribed, for the calendar month succeeding the calendar month in which the discrepancy is communicated.
- (9) 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 36 on the amount so added from the date such tax was due till the date of its payment.
- (10) Any authority not below the rank of Joint Commissioner may, by notice, either before or during the course of any proceeding under this Act, require the operator to furnish such details relating to—
- (a) supplies of goods and/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.
- (11) Every operator on whom a notice has been served under sub-section (10) shall furnish the required information within five working days of the date of service of such notice.
- (12) 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 66, be liable to a penalty which may extend to rupees twenty-five thousand.
- 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.

43C.1 Introduction

It is pertinent to note that the concept of aggregator has been restricted to those cases where along with the web based software a communication device also exists between the aggregator and service providers for communication and thus, this tends to exclude a lot many aggregators and applies only to selected few like private metered cabs working.

(i) Supply by an aggregator

- As per section 3(4) of the Central Goods and Service Tax Act, 2016, the supply of any branded service by an aggregator under a brand name or trade name owned by him shall be deemed to be a supply of the said service by the said aggregator.
- “Brand name or trade name” and “Branded Services” is an important concept of being

an aggregator. Thus, it is a very wide definition covering almost all kinds of words, symbols etc. providing a distinct identity to an operator.

- The term “**aggregator**” is defined under section 43B(1) of the Goods and Service Tax Act, 2016 which means a person, who owns and manages an electronic platform, and by means of the application and a communication device, enables a potential customer to connect with the persons providing service of a particular kind under the brand name or trade name of the said aggregator;

(ii) Liability to get registered in case of an aggregator

- Clause 5 of Schedule III provides that an aggregator who supplies services under his brand name or his trade name, is liable to get registered irrespective of the threshold limit specified in the schedule as Rs. Nine Lakh. Further, entry 9 of clause 5 provides that every electronic commerce operator is also liable to get registered irrespective of the threshold.

- This provision introduces the concept of TCS on e-commerce operators. The e-commerce operators would be required to collect by way of tax:

- On amounts credited to the supplier’s account; or
- At the time of payment by way of cash; or
- by any other mode

on occurrence of the earliest of the events.

- This provision overrides anything contrary in the Act and it also overrides the contract / MOU or agreement between parties. The amount so collected should be remitted by the e-commerce operator to the Government.

43C.2 Analysis

This is 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, the following would be applicable:

- (i) E-commerce operator shall collect an amount at a rate to be notified from the supplier of goods;
- (ii) Would be applicable in respect of goods and / or services supplied through the website / portal of the e-commerce operator;
- (iii) Amount shall be collectible at the earliest of the following:

shall include every person who, directly or indirectly, owns, operates or manages an electronic platform that is engaged in facilitating the supply of any goods and /or services or in providing any information or any other services incidental to or in connection therewith but shall not include persons engaged in supply of such goods and / or services on their own behalf.

- (a) time of credit of any amount to the account of the supplier of goods and / or services; or
 - (b) time of payment of any amount in cash; or
 - (c) by any other mode
- (iv) The rate of tax to be collected at source would be as notified by the Central / State Government (on the recommendation of the Council)

Compliances for the e-commerce operator

Upon collection of the amount 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 5 working days from the date of service of such notice.

Any operator who does not comply with the notice shall be levied with penalty of up to Rs. 25,000.

43C.3 Comparative review

There are no provisions relating to collection of tax at source under the current tax regime.

43C.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 43B	Definitions	Relevant to collection of tax by the e-commerce operators Definitions of (i) aggregator (ii) brand name or trade name (iii) branded services (iv) electronic commerce

Chapter XII

Assessment

44. 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 27.

Explanation — For the purposes of this Section, where goods received in pursuance of an inward supply are returned by the recipient to the supplier within a period of six months from the date of the relevant invoice, the tax payable on such return supply shall be equal to the input tax credit availed of earlier in respect of such inward supply

44.1 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 44)
- Provisional Assessment (Section 44A)
- Summary Assessment in certain special cases (Section 48)

Additionally, the CGST Act also provides for determination of the tax liability by:

- Scrutiny of tax returns filed by registered taxable persons (Section 45)
- Assessment of registered taxable person who have failed to file the tax returns (Section 46)
- Assessment of unregistered persons (Section 47)

Section 44 refers to the assessment made by the taxable person himself while all other assessments are undertaken by tax authorities.

Provisional assessment under Section 44A is an Assessment undertaken at the instance of the assessee. It is later followed by a final assessment. Section 45 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 51 of the Act. Assessments under Sections 46 and 47 are assessments undertaken by tax authorities on the principles governing best judgment assessment. Assessment under Section 48 refers to a protective assessment based on information gathered from intelligence wing of the tax authorities in a particular case.

44.2 Analysis:

Self-assessment means an assessment by the tax payer himself and not an assessment by the Proper Officer. The GST regime continues to promote the scheme of self-assessment. Hence every registered taxable person would be required to assess his tax dues in accordance with the provisions of GST Act and report the basis of calculation of tax dues to the tax administrations by filing periodic tax returns.

Explanation to Section 44 deals with treatment in cases involving *return of goods received pursuant to inward supply*. It clarifies that, if such goods are returned to the supplier within a period of 6 months from the date of invoice (issued at the time of inward supply) for such goods, then tax required to be payable in respect of such goods returns, would be equal to the input tax credit availed, if any, in respect of such inward supply of goods.

44.3 Comparison with equivalent provisions under other laws:

The principles of self-assessment are presently contained in Central Excise Law, Service Tax Law as well as VAT Laws.

Presently, Rule 6 of Central Excise Rules, provides that the assessee shall himself assess the duty payable on excisable goods (except in the case of cigarettes). As regards service tax, concept of self-assessment is envisaged in Section 70 of the Act which provides that every person liable to pay service tax shall himself assess the tax due on services provided by him. State VAT laws also provide for filing of returns and payment of VAT on self-assessment basis [For instance, Section 20 of MVAT Act, 2002 or Section 38 of the Karnataka VAT Act, 2003]

It may be noted that, under Section 8-A(2) of Central Sales Tax Act, 1956 sale price of all goods returned to the dealer, by the purchaser of such goods, within a period of six months from the date of delivery of goods shall be allowed as deduction in determining the turnover for the purpose of that Act, provided satisfactory evidence of return of goods and of refund or adjustment in accounts of the sale price thereof is produced. Similar provisions are also contained in State VAT laws [For instance, Rule 3 of MVAT Rules, 2005 or Rule 3 of the Karnataka VAT Rules, 2005].

44.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 27	Returns	None

44.5 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 27.

44.6 MCQ

Q1. The tax payable in case of goods received in pursuance of an inward supply being

returned by the recipient to the supplier, shall be equal to the input tax credit availed of earlier, provided:

- (a) The supplier raises the appropriate debit note within 14 days of receipt returning the goods
- (b) The recipient notices the defect in the goods within six months from the date of the relevant invoice
- (c) The return is within a period of six months from the date of the relevant invoice
- (d) The condition of the goods is maintained by the recipient

Ans. (c) The return is within a period of six months from the date of the relevant invoice

Q2. 'A' supplied goods to 'B' in April 2017, these goods were returned by 'B' to 'A' on June 2017. The tax rate charged by 'A' on such goods was 18%. In May 2017, the rate was amended to 18.5%. What is the tax payable on return of such inward supply by 'B' to 'A'.

- (a) 18%
- (b) 18.5%
- (c) No need for payment of Tax by B to A
- (d) A shall take be entitled to adjust the tax paid in April 2017 as 'excess tax paid' .

Ans. (a) 18%

44A. 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 amount payable to the Central/State Government, consequent to the order for final assessment under subsection (3), at the rate specified under sub-Section (1) of Section 36, 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 (6) of Section 38, interest shall be paid on such refund as provided in Section 39.

44A.2 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.
- (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.

In other words, except for the above instances – value or rate of tax – does not enjoy the facility of provisional assessment. 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 passes 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

If the amount of tax determined to be payable under final assessment order, is more than amount specified in terms of provisional assessment order, the taxable person shall be liable to pay interest on the shortfall, at the rates specified in Section 36(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 39.

Any claim for refund of taxes paid in excess under this Section must be in accordance with Section 38 and except for authorizing refund, this Section does not itself permit grant of refund.

44A.3 Comparison with equivalent provisions under other laws:

Section 44A 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 as the case may be, Rule 6(4)/(4A)/(4B)/(5) of Service Tax Rules. Under both these Acts, Provisional Assessment is carried out only at the instance of the assessee.

Under the State VAT Acts, the concept of provisional assessment “at the instance of assessee”, is not prevalent. Some State Acts have used this term to cover the cases of best-judgment assessment done by the tax authorities, in the absence of returns or records. For example, refer Section 32 of Gujarat Value Added Tax Act or Section 40 of the Orissa Value Added Tax Act.

44A.4 Related Provisions:

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 36	Interest	
CGST	Section 38	Refunds	

44A.5 FAQ

Q1. When is a taxable person permitted to pay tax on a provisional basis?

Ans. Tax payments can be made on a provisional basis only when a proper officer 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 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.

44A.6 MCQs

Q1. Where the tax liability as per the final assessment is higher than in provisional assessment, 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 the 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) 6 months

45. 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 within a reasonable period, the proper officer may initiate appropriate action including those under Section 49, 50 or Section 60, or proceed to determine the tax and other dues under sub-Section (6) of Section 51 A or under subsection (6) of Section 51 B.

45.1 Analysis

Section 45 deals with a non-compulsory facility for a Proper Officer to scrutinize returns filed by tax persons 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 Section 51 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, no further action is to be taken in this regard. It may be noted that there is no provision for communicating to the tax payers. As such, there may be doubt whether the scrutiny has concluded or not.

In case, satisfactory explanation is not obtained or after accepting discrepancies, taxable person fails to take corrective measures, within a reasonable period, 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 49 of the Act;
- 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 50 of the Act;

- Undertake procedures of inspection, search and seizure under Section 60 of the Act
Reference may kindly be had to the discussions under Section 49, 50, 60 and 51 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 section 51.

In doing so, the Proper Officer, is also entitled to exercise his power under section 60 of the Act, which deals with power of inspection, search and seizure.

From language used in section 60, it appears that, these powers are required to be exercised not in routine manner but only under circumstances when there is reasonable belief of probable suppression or intention to evade tax.

It's important to note that, section 45 (2) 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.

45.2 Comparison with equivalent provisions in other laws

The provisions as to scrutiny of returns are presently also contained in Service Tax / Central Excise and State VAT laws. For example, Rule 12 of Central Excise Rules. Rule 12(3) provides that, the 'Proper Officer' may on the basis of information contained in the return filed by the assessee under rule 12(1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board. CBEC has issued guidelines for detailed scrutiny of Central Excise Returns vide Circular No. 1004/11/2015-CX, dated 21-7-2015.

45.3 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 49	Audit by tax authorities	None
CGST	Section 51	Determination of tax not paid, short paid, erroneously refunded	None
CGST	Section 60	Power of inspection, search and seizure	None

45.4 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, within a reasonable period, 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 49 of the Act;
- (b) Direct such taxable person by notice in writing to provide his records including audited books of account, etc.;
- (c) Undertake procedures of inspection, search and seizure under Section 60 of the Act; and
- (d) Issue notice under Section 51 of the Act.

Q2. What does Section 45 deal with?

Ans. Section 45 deals with scrutiny of returns filed by registered tax persons to verify the correctness of such returns.

Q3. What is the proper officer required to do, if the information obtained from assessee u/s 45 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

Q4. What procedure the proper officer shall follow, if taxable person fails to provide a satisfactory explanation?

Ans: In case explanation furnished by the taxable person is not found satisfactory by the proper officer, then he can take actions in following manner:

- Proceed to determine tax dues under section 51 of the Act.
- Conduct audit at the place of business of taxable person in a manner provided in section 49 of the Act and then proceed to determine taxes in accordance with section 51 of the Act.
- 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 50 of the Act, and then proceed to determine taxes in accordance with section 51 of the Act.

45.5 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 45 raising demand of disputed tax demand.

- (a) True
- (b) False

Ans. (b) False

Q3. What is the time limit after which action under section 45 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 51 of the Act.

Ans. (c) Time limit mentioned in Section 51 of the Act.

46. Assessment of non-filers of returns

Statutory Provision

- (1) Where a registered taxable person fails to furnish the return required under Section 27 or Section 31, even after the service of a notice under Section 32, the proper officer may, after allowing a period of fifteen days from the date of service of the notice, 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 (7) of Section 51B, 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. For removal of doubts it is clarified that nothing in this Section shall preclude the payment of interest under Sec. 36 or payment of late fee under Section 33

46.1 Introduction

Section 46 of the Act can be invoked only in case of registered taxable persons who have failed to file returns, as required, under Section 27 or as the case may be, under Section 31 of the Act. Issuing notice under Section 32 appears to be a pre-condition for initiating proceedings under Section 46 of the Act.

46.2 Analysis of Provisions

Non-compliance with the notice under Section 32 paves the way for the proceedings under this Section. If the assessee fails to furnish the return within 15 days, the Proper Officer may 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 27 can be revised not later than the following September or filing annual return under Section 31.

Therefore, issuance of notice under Section 32 is a necessity for commencing proceedings under Section 46. And non-issuance of notice under Section 32 closes the door on invoking Section 46 all though 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 per Section 2(106) to mean a return filed under Section 27(3) of the Act. As per Section 27(3), a return furnished under Section 27, without payment of full tax dues as per such return, is not regarded as valid return. 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 3 years (for cases covered under section 51A(7)), or as the case may be 5 years (extended period for cases covered under Section 51B(7)), is also applicable for issuing order under section 46. The due date for completion of assessment under section 46 is also linked to due date of filing of Annual return under section 30 or actual date of filing of such return whichever is earlier.

Explanation to Section 46 clarifies that, interest under section 36 on delayed payment of tax or payment of late filing fees u/s 33 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 33 and interest under Section 36 will both be application of the best judgement assessment made under this Section.

46.3 Comparison with equivalent provisions in other laws

It appears that Section 46 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.

46.4. Related Provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 2(106)	Valid return	None
CGST	Section 27	Returns	None
CGST	Section 31	Final return	None
CGST	Section 32	Notice to return defaulters	None
CGST	Section 33	Late fee	None
CGST	Section 36	Interest	None

46.5 FAQ's

Q1. Whether Proper Officer is required to give any notice to taxable person before completing assessment u/s 46?

Ans. As this provision relates to a best judgment assessment', giving a notice to the taxable person is not required.

Q2. If a taxable person files a return after receipt of notice u/s 32 but fails to make the payment disclosed by him in the return, can assessment order u/s 46 be passed in this case?

Ans. An assessment order u/s 46 is deemed to have been withdrawn if the taxable person furnishes a valid return (including payment of taxes).

46.6 MCQ's

Q1. What is the time limit for issuing order under section 46?

- (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) Yet to be prescribed

Q2. The proper officer is not required to give notice of hearing to the registered taxable person before passing assessment order, if such person fails to file the return within 30 days of service of assessment order.

- (a) True
- (b) False

Ans. (b) False

Q3. What is the time limit for issuing order under section 46?

- (a) months from the end of financial year.
- (b) years for cases covered U/s 51A(7) or 5 years for cases covered under 51B(7)
- (c) years for cases covered U/s 51A(7) or 3 years for cases covered under 51B(7)

Ans. (b) years for cases covered U/s 51A(7) or 5 years for cases covered under 51B(7)

Q4. The assessment order u/s 46 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 46 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. The proper officer is not required to give notice of hearing to the registered tax person before passing assessment order, if such person fails to file the return within 30 days of service of assessment order.

- (a) True
- (b) False

Ans. (a) True.

47. Assessment of unregistered persons

Statutory Provision

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

47.1 Introduction

Section 47 is applicable to unregistered taxable persons. That is, persons who are liable to obtain registration under Section 19 and have failed to obtain registration will come within the operation of this Section.

47.2 Analysis

Section 47 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 assessment needs to be completed on principles governing best judgment assessment. No order under this section can be passed after expiry of 5 years from due date of filing of annual return for the year to which tax not paid relates.

47.3 Comparison with equivalent provisions in other laws:

Section 23(4) of the MVAT Act contains similar provision as that in Section 47 of the GST Act.

47.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 19	Registration	
CGST	Section 51	Determination of tax not paid, short paid, erroneously refunded	

47.5 FAQs

Q1. What is the time limit for passing order u/s 47?

Ans. The proper officer has to pass an assessment order u/s 47 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.

47.6 MCQs

Q1. What is the time limit for passing order u/s 47?

- (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 47.

- (a) True
- (b) False

Ans. (b) False

Q3. Section 47 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. b) Assessment of registered taxable person who have filed returns as per the law.

48. 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 51.

48.1 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 grounds for resorting to summary assessment, unless there are factors indicating that such non-payment pertains to admitted or undisputed tax liability. However, it is important to note that upon grant of permission by the Additional / Joint Commissioner, it appears that the evidence available with the Proper Officer or his apprehension of possible loss of revenue, cannot be called into question.

The 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 51 were to be undertaken.

Now, this applicant must appeal to the Additional / Joint Commissioner and prove to his satisfaction that there is no such risk and an error will have been committed, if such summary assessment order were to be maintained. In this case, the order will be set aside. Further, the Additional / Joint Commissioner is also allowed the opportunity to suo motu direct withdrawal of the summary assessment order.

From the above, it appears that every summary assessment order so withdrawn under sub-Section (2), must be followed by a notice under Section 51. There may be very few occasions when notice under Section 51 does not follow every withdrawal of summary assessment order. This is because there cannot be such an error of judgement in commencement of the preparatory steps – Proper Officer securing evidence and permission granted by Additional / Joint Commissioner to proceed with summary assessment.

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.

Any person who is assessed summarily u/s 48, can apply to the Additional / Joint commissioner within 30 days of receipt of order for withdrawal of such order. The Additional / Joint Commissioner may, on his own motion, withdraw such order and follow the procedure laid down in Section 51 for determination of taxes not paid or short paid or erroneously refunded, if he considers that such order is erroneous.

48.2 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 51	Determination of tax not paid, short paid, erroneously refunded	

48.3 FAQ

Q1. When can Summary Assessment be initiated?

Ans. Summary Assessments can be initiated by a proper officer on seeking permission from the Additional Commissioner / Joint Commissioner and proving that the taxable person is liable to pay tax

48.4 MCQ

Q1. What is the time period within which a person can apply to the Additional/ Joint Commissioner for withdrawal of such order under this Section?

- (a) 30 days
- (b) 45 days
- (c) 60 days
- (d) No time limit.

Ans. (a) 30 days

Chapter – XIII

Audit

49. 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 the business transactions 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 carried out in a transparent manner and 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 without delay 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 erroneously availed, the proper officer may initiate action under Section 51.

49.1 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.

49.2 Analysis

- (a) Section 49 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.
- (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 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 50 may be invoked to conduct such extensive audit. Hence, under Section 49, 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. And in case any possible tax liability is identified during the audit, procedure under Section 51 is to be followed. Audit cannot conclude automatically resulting in a demand.

49.3 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.

49.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 51	Determination of tax not paid, short paid, erroneously refunded	

49.5 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 atleast 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.
- 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 without delay 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.

ICAI

50. 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 the 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 notice 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 erroneously availed, the proper officer may initiate action under Section 51.

50.1 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 50 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.

50.2 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.
- (j) As in the case of audit under section 49, 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 51 also is to followed.

50.3 Comparative Review

Law relating to Central Excise

- (a) Similar provision exists under the Central Excise law. However the availing or utilization of cenvat credit by reason of fraud, collusion or any wilful mis-statement or suppression of facts can also be the reason for issuing notice for special audit. Under GST law, no special audit will be directed for wrong utilization of the credit, but wrong availment alone without by reason of fraud, collusion or any wilful mis-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 wilful mis-statement or suppression of facts; or
 - (iii) has operations at multiple locations and true and complete picture of his accounts are not possible to get at his registered premises.
- (f) The special audit report shall be submitted within the period as may be specified by the Commissioner. The time limit of maximum 180 days is not applicable.
- (g) No provision exists regarding remuneration payable for the special audit, however, the same shall be paid by the Central Government.

50.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 49	Audit by tax authorities	The audit under Section 50 is a special audit whereas the audit under Section 49 is a routine audit by the tax office.

50.5 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 51 of the CGST Act.

Chapter – XIV

Demands and Recovery

51. Determination of tax not paid or short paid or erroneously refunded

Statutory Provision

A. 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

- (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 36 and penalty leviable under the provisions of this Act or the rules made thereunder.
- (2) 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.
- (3) 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 (2), pay the amount of tax along with interest payable thereon under section 36 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 (2), in respect of the tax so paid or any penalty leviable under the provisions of this Act or the rules made there under.
- (4) Where the proper officer is of the opinion that the amount paid under sub-section (3) 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.

- (5) Where any person chargeable with tax under sub-section (1) or under sub-section (2) pays the said tax along with interest payable under section 36 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.
- (6) 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 not exceeding ten percent of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.
- (7) The proper officer shall issue the order under sub-section (6) within three years from the due date or the actual date, whichever is earlier, 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, as the case may be, within three years from the date of erroneous refund

51.1 Introduction

Section 51 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 two different circumstances viz.,:

- (a) Cases **not** involving fraud, wilful misstatement or suppression of facts;
- (b) Cases involving fraud, wilful misstatement or suppression of facts to evade tax;

This section also provides the time limit within which the order can be issued for the determination/ recovery of tax payment defaulted by the assessee. As could be seen in the table below, all the proceedings up to the issue of an order are required to be taken within the limit of 3 or 5 years respectively.

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
Cases involving other than the above	3 years from the due date/ actual date of filing annual returns

Section 51 also applies for recovery of interest payable which is not paid or partly not paid or interest erroneously refunded.

51.2 Analysis

Section 51(A) covers 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 section provides for –
 - (a) Service of notice by proper officer¹;
 - (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 36 and penalty as specified.
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 under section 51(A) (1) on the condition that the grounds relied upon are the same as in the notice for the previous period.
3. **Voluntary payment of tax before issue of notice:** Voluntary payment of tax and interest as per section 36 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 is provided 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 30 days 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 to tax and the amount determined shall be tax+ interest + (penalty of 10% of tax or Rs. 10,000/-, whichever is higher).
7. When the default with regard to the tax is for reasons other than fraud, wilful

¹ 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 Board/Commissioner of SGST;

misstatement or suppression of facts, the time limit for issue of order is three years from the due date or actual date of filing of the annual returns (whichever earlier) for the year in which the tax was not paid, or short paid, or input tax credit wrongly availed or utilized or erroneously refunded.

Penalty implications in brief

If tax, interest and penalty (as indicated below is paid), 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
After 30 days of issuance of show cause notice or After the issuance of order	10% of the tax or Rs. 10,000 whichever is higher.

Section 51(B)

B. 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 36 and a penalty equivalent to the tax specified in the notice.
- (2) 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
- (3) 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 (2), pay the amount of tax along with interest payable under section 36 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 (2), in respect of the tax so paid or any penalty leviable under the provisions of this Act or the rules made there under.

- (4) Where the proper officer is of the opinion that the amount paid under sub-section (3) 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.
- (5) Where any person chargeable with tax under sub-section (1) or under sub-section (2) pays the said tax along with interest payable under section 36 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.
- (6) 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.
- (7) The proper officer shall issue the order under sub-section (6) within a period of five years from the due date or the actual date, whichever is earlier, 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, as the case may be, within five years from the date of erroneous refund.
- (8) Where any person served with an order issued under sub-section (6) pays the tax along with interest payable thereon under section 36 and a penalty equivalent to fifty percent of such tax within thirty days of the communication of order

Section 51(B) - Analysis

Section 51(B) covers determination of tax in cases of fraud, or any kind of wilful mis-statement or suppression of facts with intention to evade payment of tax.

1. Whenever the tax is
 - not paid or
 - short paid or
 - credit wrongly availed or utilized or
 - erroneously refundedon account of the following to evade tax,
 - Fraud;

- Wilful misstatement;
- Suppression of facts;

the proper officer can issue a notice for such amount along with interest as per section 36.

2. **Where no notice is required to be issued:** Similar to the provisions of section 51A explained above, this section also provides that a statement of demand may be issued instead of a detailed notice for the period other than the ones covered in the notice issued as per section 51(B)(1) on similar issue and it shall be deemed to be a notice as per section 51(A)(1) on the condition that the grounds relied upon are the same as the notice for the previous period.
3. Voluntary payment of tax with interest as per section 36 and 15% of tax as penalty, can be made before the 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 satisfied.
4. When the amount paid as per the ascertainment of the assessee falls short of the amount payable, the Department can issue a notice for the tax still payable.
5. Even after the notice has been issued, if the assessee, within 30 days of communication of notice, pays the tax along with interest and 25% of tax as penalty, the proceedings shall be closed.
6. The proper officer shall issue an order after considering the representation made by the person chargeable to tax and the amount determined shall comprise of tax plus interest and penalty.
7. Where 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 is earlier) for the year in which the tax was not paid, or short paid, or input tax credit wrongly availed or utilized or erroneous refund.
8. However, even after issue of the order, if the assessee pays the tax + interest+ 50% of taxes as penalty, within 30 days of communication of the order, all the proceedings are deemed to be concluded.

Penalty implications, in brief:

If tax, interest and penalty (as indicated below is paid), 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)

Section 51(C)**C. General provisions relating to demand of tax**

- (1) Where the service of notice or 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 three years or five years, as the case may be.
- (2) Where any Appellate Authority or Tribunal or Court concludes that the notice issued under sub-section B (1) or B (2) 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 A (1) or A(2).
- (3) 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.
- (4) 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.
- (5) The proper officer, in his order, shall set out the relevant facts and the basis of his decision.
- (6) 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.
- (7) 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.
- (8) Interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.

- (9) The adjudication proceedings shall be deemed to be concluded if the order is not issued within three years as provided for in sub-section A (7) or within five years as provided for in sub-section B(7)
- (10) 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 A (7) or sub-section B (7), as the case may be, where proceedings are initiated by way of issue of a show cause notice under this section.

Section 51(C) – Analysis:

These provisions are applicable irrespective of whether or not the notice has invoked the extended period 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 or Tribunal, such period of stay shall be excluded from the period of 5 or 3 years accordingly.
2. When a notice has been issued under clause (1) of sub-section (B) but the charges of fraud, suppression and misstatement of facts to evade tax are not sustainable or not established, the tax is to be determined only for the normal period of 3 years.
3. 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.
4. Personal hearing can be adjourned when sufficient cause is shown in writing. However, such adjournment can be granted for a maximum of 3 times.
5. The relevant facts and basis of the decision shall be set out in the order.
6. The amount of tax + interest + 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.
7. When the Tribunal/ Court/ Appellate authority modifies the amount of tax, correspondingly interest and penalty shall also be modified.
8. Interest shall be payable in all cases whether specifically mentioned or not.
9. If the order is not issued within the time limits as prescribed in sub-section A(7) or B (7),

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.

10. An issue on which

- The 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.

Section 51(D)

D (1) The provisions of sub-section A, B, C above shall apply, mutatis mutandis, to the recovery of interest where interest payable has not been paid or part paid or erroneously refunded.

The provisions for determination of tax liability when short paid, or not paid, or input tax credit wrongly availed or utilized or erroneously refunded in any other case or in the case of fraud, misstatement or suppression of facts, shall also apply to the recovery of interest short paid or not-paid or erroneously refunded.

51.3 Comparative Review

These provisions are much broader than the provisions contained in existing Central Indirect Tax laws.

Presently under the 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 under the Central Excise Law and 30 months under the 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.

51.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 36	Interest	Provides for levy of interest for delayed payment of tax
GST	Section 18	Manner of recovery of credit distributed in excess	Deals with the manner of recovery of credit disbursed in excess
GST	Section 45	Scrutiny of records	Enables scrutiny of returns by proper officer
	Section 46	Assessment of non-filers of returns	Empowers the proper officer to assess registered taxable person, who have failed to file returns
GST	Section 58	Provisional attachment to protect Revenue in certain cases	Provides for provisional attachment of property of taxable person during pendency of certain types of proceedings including those under section 51

51.5 FAQ's

1. Who has the power to issue a notice/ order?

Ans. "Proper officer" as defined under section 2(79) of the Act.

2. When can proceedings be initiated under section 51?

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

3. 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 51(B) would get covered under section 51(A) and 3 years time would be applicable for issue of the order.

4. What is the condition for issuing a repeat notice for a different period?

Ans. The condition is that the grounds relied upon should exactly be the same 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.

5. Is interest applicable in all cases, even if not specifically mentioned?

Ans. Yes, interest is applicable whenever the tax is payable irrespective of specific mention of it.

6. 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.

7. 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 under:

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

51.6 MCQ

Q1. 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

Q2. 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

Q3. Is it obligatory on the part of the Department to take on record the assessee's representation?

- (a) Yes
- (b) No,
- (c) At proper officer's discretion
- (d) If requested by notice

Ans. (a) yes

Q4. What is the maximum amount of demand for which the officer can issue an order under section 51(A)?

- (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

Q5. What is the maximum number of times an hearing can be adjourned?

- (a) 1
- (b) 3
- (c) 5
- (d) none

Ans. (b) 3

52. 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 36 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 and for such refund, the provisions of section 38 shall apply mutatis mutandis.

52.1 Introduction

This provision deals with payment of any amount collected as tax but not remitted to the Central/State Government. This section requires such person to make the payment forthwith regardless of whether the related supplies are taxable or not.

52.2 Analysis

- (i) This section makes it obligatory on every person who has collected from any other person any amount representing "as tax", 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 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 exchequer;
 - 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 him. The person is given an opportunity of being heard where a request is made by him in writing.
- (iv) After considering such representation, 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 36 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 38 of GST Act.
- (xi) There appears to be no time limit to commence proceedings under this section.

52.3 Comparative analysis

Under the present tax laws, similar provision exists in Central Excise Law¹, Customs Law² as well as Service Tax Law³.

Similar provision also exists in all most all the state VAT Acts.

52.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 36	Interest on delayed payment of tax.	Prescribes the provisions relating to the payment of interest in case of delay in payment of tax
GST	Section 38	Refund of tax.	Provision for claiming refund of tax
GST	Section 52	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.

52.5 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 36 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.

¹ Section 11D of Central Excise Act, 1944

² Section 28B of Customs Act, 1962

³ Section 73A of Finance Act, 1994

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.

52.6 MCQ

Q1. 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.

Q2. 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

53. 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, upon payment of IGST, be allowed to take the amount of CGST /SGST (in SGST Act) so paid as refund subject to the provisions of section 38 and subject to such other conditions as may be prescribed.

53.1 Introduction

This provision deals with a situation when any inter-state supply is wrongfully treated as intra-state supply and the refund of CGST/SGST.

53.2 Analysis

- (i) As per this provision, if a taxable person wrongly pays CGST/SGST on the intra-state supply, which is subsequently held to be inter-state supply, upon payment of IGST on such transaction, the CGST/SGST is required to be refunded.
- (ii) The refund of such CGST/SGST would be subject to provisions of unjust enrichment, limitation and other conditions contained in section 38 of GST Act and subject to further conditions as may be prescribed in this regard.

53.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 38	Refund of tax	Provision for claiming refund of tax.
GST	Section 53	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.

52.7 FAQs

- Q1. What is the remedy available when tax is paid wrongly as CGST/SGST and 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 38 and also subject to such other conditions as may be prescribed.
- Q2. What is the procedure to be followed by the applicant in case of CGST/SGST wrongfully collected and deposited with the Central or a State Government, whereas the transaction was an inter-state supply?

Ans. The applicant, after payment of IGST on such inter-state supply can make an application to the proper officer for refund of SGST/CGST.

52.8 MCQ

Q1. Which section deals with tax wrongly collected and deposited with Central or State Government?

- (a) Section 51
- (b) Section 52
- (c) Section 53
- (d) Section 54

Ans. (c) Section 53

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

54. 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 thereunder 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 thereunder 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 authorisation 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 thereunder as if it were an arrear of land revenue;
 - (f) Notwithstanding anything contained in the Code of Criminal Procedure⁽²⁾ Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.
- (2) 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 thereunder 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 thereunder 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)**54.1 Introduction**

The Departmental officers are empowered to collect/recover any amount payable under GST Act but not paid. Section 54 provides for the manner in which the recovery proceedings can be carried out.

54.2 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 54 for recovery of the amounts payable. The methods are :
- (a) Deduction out of any money owing to defaulter:**
- There should be some money which is 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 liable to pay money to the defaulter;
 - is likely to become liable 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 the 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, the proper officer in accordance with the rules framed for this purpose may,
 - distraint any movable or immovable property belonging to defaulter;
 - 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:**
- The 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 the Code of Criminal Procedure;
 - In such cases 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 54(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 the 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.

54.3 Comparative Review

Under the present tax laws, similar provision exists in Central Excise Law¹, Customs Law² as well as Service Tax Law³. In the context of section 87 of the Finance Act, 1994, the Karnataka High Court in UOI v. Prashanthi, 2016-TIOL-1127-HC-KAR-ST held that such recovery cannot be effected before determination of liability under section 73.

Similar provision also exists in all most all the state VAT Act.

54.4 FAQ

Q1. What are the methods of recovery as prescribed in Section 54?

Ans. The permitted methods of recovery are:

- Deduction out of any money owing to defaulter.
- 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 resort to more than one of the methods for the recovery proceedings?

Ans. Yes, they can resort to one or more methods at the option and choice of the proper officer.

¹ Section 11 of Central Excise Act, 1944

² Section 142 of Customs Act, 1962

³ Section 87 of Finance Act, 1994

54.5 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 51
- (b) even before issue of notice under section 51
- (c) any time
- (d) at the discretion of the proper officer.

Ans. (a) after determination of liability under section 51

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

55. 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 36 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.

55.1 Introduction

This section permits a taxable person to make payment of an amount due on installment basis, other than the amount due as per self-assessed return. The term 'installments' in general parlance would mean equated periodical payments (money due) spread over an agreed period of time. This provision happens to be beneficial piece of law to the tax payers to pay the demand in installments along with interest.

55.2 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 installment 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 Act on installment 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 installment 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** installment the taxable person would be required to pay the whole outstanding balance payable on such date of default itself without further notice.

55.3 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 installment is due. Further, the above provision is replicated in the GST Act, from the KVAT law. Under Central Indirect Taxes, it was allowed by the Department in exceptional cases although express provisions were not there.

55.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	36	Interest on delayed payment of tax	Related to the amount of interest applicable for delayed payment of tax

55.5 FAQs

Q1. Whether an 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.

Ans. 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 installment.

Q4. 'A' requested the Chief Commissioner to provide the benefit to pay Rs.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. The benefit of installment was granted by Chief Commissioner on 25.06.2016 to be paid w.e.f 02.06.2016 onwards over 5 installments. The instalments would be as under:

Payment date	Interest to be paid as per section 36 – No of days	Amount on which interest to be paid
1st Installment – 02.06.2016	06.06.2015 to 01.06.2016 = 361 days	Rs.1,00,000/-
2nd Installment – 02.07.2016	06.06.2015 to 01.07.2016 = 391 days	Rs.1,00,000/-
3rd Installment – 02.08.2016	06.06.2015 to 01.08.2016 = 422 days	Rs.1,00,000/-
4th Installment - 02.09.2016	06.06.2015 to 01.09.2016 = 453 days	Rs.1,00,000/-
5th Installment – 02.10.2016	06.06.2015 to 01.10.2016 = 483 days	Rs.1,00,000/-

Q5. What will happen if the taxable person fails to pay any one installment 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.

55.6 Multiple Choice Questions:

Q1. The following amounts due cannot be paid through installments,

- (a) Self-assessed tax shown in return
- (b) Short paid tax for which notice has been issued
- (c) Arrears of tax
- (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 installment?

- (a) Commissioner
- (b) Chief Commissioner
- (c) Assistant Commissioner
- (d) both (a) and (b)

Ans. (d) both (a) and (b)

56. Transfer of property to be void in certain cases

Statutory Provision

Where a person, after any tax 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.

56.1 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.

56.2 Analysis

- (i) The said provision would be applicable only when any tax would become due.
- (ii) The following acts done by a person, in favour of any another person, after the tax becomes due, would be void

Situations / cases – Void	Situations / cases – valid
<ul style="list-style-type: none"> ✓ Creates a charge on; or ✓ Parts with the property ✓ Belonging to him; or ✓ In his possession <p>By way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties.</p>	<p>Made for adequate consideration and</p> <ul style="list-style-type: none"> ✓ 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 act shall be void, when it is or was with an intention of defrauding the Government revenue.

Illustrations:

1. **Mr. Defrauder was served with a notice of demand for Rs. 20 Lakhs on 10th June 2018. He filed a reply for the said notice on 20th June 2018, stating that he was unable to deposit tax dues as he was financially stressed. On 15th June 2018, Mr. Defrauder transferred all the property worth Rs. 35 Lakhs under his name to the**

name of his wife for a consideration of Rs. 10,000/-. Is this act of Mr. Defrauder valid?

As per section 56, the said transfer would be void and the property worth Rs. 35 Lakhs would be considered still to be in the hands of Mr. Defrauders.

- 2. In the above illustration, if transfer of property was for a consideration of Rs. 42 lakhs to Mr.X who is unaware of the pending proceedings of Mr. Defrauder. The transfer took place on 15th June 2018. Is the act of Mr. Defrauder valid?**

In this case the transaction would be a valid act, .since the transfer was made for adequate consideration and also without notice of the pendency of proceeding

- 3. A notice was issued on 10th June 2018 to Mr. Perfect, However the same was received by Mr. Perfect on 20th June, 2018. Meanwhile the property of Mr. Perfect was sold to Mr. Perfectionist for Rs. 35 Crore. Is the sale void or valid?**

The sale is valid since on the date of sale there was no pending proceeding on Mr. Perfect.

56.3 Comparative review

This provision is new to Indirect Tax law. It is a concept borrowed from the Income-Tax law to safeguard the interest of revenue.

56.4 Related provisions

All the provisions relating to assessment and determination of tax would be applicable. The same is reflected in the table below:

Statute	Section	Description	Remarks
GST	46	Assessment of non-filers of returns	Provisions related to assessment of tax against non-filers of returns
GST	47	Assessment of unregistered persons	Provisions related to assessment of tax against unregistered persons
GST	48	Summary assessment in certain special cases	Provisions related to assessment of tax in certain special cases
GST	51	Determination of tax not paid or short paid or erroneously refunded	Provisions related to determination of tax not paid or short paid or erroneously refunded by taxable person or unregistered persons

56.5 FAQs

Q1. When the transaction in property is void as per section 56?

Ans. During the pendency of proceeding under GST Act, if the taxable person transfers his property to another person with an intent of defraud the Government, then such transfer would be considered as void.

56.6 Multiple Choice Questions:

Q1. Charge on which of the following is void during pending of proceedings,

- (a) Parts with the property belonging to him
- (b) Parts with the property in his possession
- (c) Creates a charge on Property
- (d) both (a) and (b)

Ans. (d) both (a) and (b)

Q2. What all modes of transfers are covered under section 56

- (a) Sale
- (b) Mortgage
- (c) Exchange
- (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. (a) Transaction is done to defraud the Govt. revenue

57. 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.

57.1 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.

57.2 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.

57.3 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

57.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 57	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.

57.5 FAQs

Q1. When can the charge on property of taxable person be created?

Ans. The charge can be created only when taxable person or any other person is liable to pay tax or interest or penalty to Central or State Government.

Q2. Are unregistered persons covered under the said provision?

Ans. 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(74) of the CGST Act would be covered, whether he is a taxable person or not.

57.6 MCQs

Q1. What liabilities can be recovered under this section?

- (a) Interest
- (b) Penalty
- (c) Tax
- (d) All of the above

Ans. (d) All of the above

Q2. Which of the following properties of Mr. Richie Poor, would be treated as attracting first charge.

- (a) Richie Nilaya, a mansion in the name of Mr. Richie
- (b) Mrs. Richie 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

58. Provisional attachment to protect revenue in certain cases

Statutory Provision

- (1) Where during the pendency of any proceedings under section 46, section 47, section 48 or section 51, 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 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).

58.1 Introduction

This section confers power to provisionally attach the property of the taxable person in certain situations to protect the interest of the Government.

58.2 Analysis

- (i) This section applies only during the pendency of any proceedings under
 - (a) Section 46 – Assessment of non-filers of returns.
 - (b) Section 47 – Assessment of unregistered persons.
 - (c) Section 48 – Summary assessment in certain special cases.
 - (d) Section 51 – Determination of tax not paid or short paid or erroneously refunded.
- (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.

58.3 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)

58.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	46	Assessment of non-filers of returns	Provisions related to assessment of tax against non-filers of returns
GST	47	Assessment of unregistered persons	Provisions related to assessment of tax against unregistered persons
GST	48	Summary assessment in certain special cases	Provisions related to assessment of tax in certain special cases
GST	51	Determination of tax not paid or short paid or erroneously refunded	Provisions related to determination of tax not paid or short paid or erroneously refunded by taxable person or unregistered persons

58.5 FAQs

Q1. To which proceedings provisional attachment shall be applicable?

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.

58.6 MCQ

Q1. Till what period does the order passed for provisional attachment is valid?

- (a) Infinite period
- (b) Ten years
- (c) One year
- (d) till the end of the such proceedings

Ans. (c) One year

Q2. Who is the competent authority for passing an order for provisional attachment?

- (a) The Deputy Commissioner
- (b) The Commissioner
- (c) The GST Council
- (d) The Assistant Commissioner

Ans. (b) The Commissioner

Q3. Attachment can be done under section 58:

- (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.

59. Continuation of certain recovery proceedings

Statutory Provision

1. 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 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 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 is 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.

59.1 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.

59.2 Analysis

- (i) The section refers to –
 - any notice of demand in respect of Government dues (tax, interest and penalty) served on taxable 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.

59.3 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.

59.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 54	Recovery of tax	Provision for recovering the tax dues from taxable person

59.5 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, 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.

59.6 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 – XV

Inspection, Search, Seizure and Arrest

60. 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 there under 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 or books or things:

Provided that the goods, 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 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.
- (4) The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts there from in the presence of an officer of CGST/SGST.
- (5) Where any goods are seized under sub-section (2) and no notice in respect thereof is

given within sixty days 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 sixty days may, on sufficient cause being shown, be extended by the [competent authority] for a further period not exceeding sixty days at a time subject to a maximum of six months.

- (6) 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.
- (7) Where any goods, being goods specified under sub-section (6), 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.
- (8) 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.

60.1. Introduction

This provision confers power of inspection, search and seizure to the Officers.

60.2. 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) 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'."*
- (e) The person from whose custody documents are seized is entitled to take photocopy or extract of such documents in the presence of GST officers.
- (f) The officer is bound to issue the notice within 60 days of such seizure and if he fails to do so then such seized goods are liable to be returned. However the competent authority can extend by another 60 days, the said notice period of 60 days, if sufficient cause exists.
- (g) 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.
- (h) The officer who seizes the goods is liable to maintain the inventory of the said goods.
- (i) 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'.

60.3. 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 Rs. 2,000/- on an officer who conducts vexatious search, inspection etc. This provision is conspicuously absent in the CGST Act.

60.4. 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'."*

60.6. 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

61. 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 fifty thousand rupees to carry with him such documents as may be prescribed in this behalf.
- (2) Where any vehicle 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 vehicle to produce such documents for verification and the said person shall be liable to produce the documents.

61.1. Introduction

This provision enables prescription of documents to be carried by the transporter and production for verification.

61.2. Analysis

- (a) The person in charge of the conveyance carrying any consignment of goods exceeding the value of fifty thousand rupees, shall carry with him such documents as may be prescribed by the Rules.
- (b) On interception of the vehicle by the proper officer, the said person should produce such documents for verification.

61.3. 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.

61.4. FAQs

Q1. What are the documents to be carried by a person in charge of a conveyance carrying goods?

Ans. He should carry the documents prescribed in the rules to be framed.

Q2. Does the officer have powers to inspect the documents carried in a conveyance?

Ans. In terms of section 61(2), the officer is conferred powers to inspect such documents.

61.5. MCQs

Q1. The person in charge of the conveyance carrying any consignment of goods exceeding the value of _____, shall carry prescribed documents.

- (a) Rs. 50,000
- (b) 1,00,000
- (c) 10,000
- (d) Rs.100 lakhs

Ans. (a) Rs.50,000

ICAI

62. 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 punishable under clause (i) or (ii) of sub-section (1) or under sub-section (2) of section 73, 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 authorised 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.

62.1. Introduction

This section deals with power of arrest.

62.2. 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, who has committed specified offences. There should be reason to believe that such person has committed the alleged offences.
- (b) The person committing an offence (tax evasion) as specified in –
 - Section 73(1) clause (i) tax evasion above Rs.250 Lakhs attracting imprisonment for a term upto 5 years and fine, or clause (ii) tax evasion above Rs.50 Lakhs upto Rs.250 Lakhs attracting imprisonment upto 3 years and fine or offence or
 - Section 73 (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.
- (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.

62.3. Comparative review

Similar power of arrest of tax evaders by officer is present in most of the indirect tax legislations.

However under the Finance Act, 1994 the power to arrest can be exercised only in cases where taxes collected and not deposited for an amount exceeding Rs. 200 lacs. Similar provision is not there under the Model GST Law.

62.4. Related provisions

Statute	Section or Rule	Description	Remarks
CGST Act	Section 73(1)(i)	Prosecution where tax evaded exceeds Rs.250 lakhs. Imprisonment upto 5 years with fine	Power of Arrest could be exercised under section 62(1)
CGST Act	Section 73(1)(ii)	Prosecution where tax evaded exceeds Rs. 50 lakhs but upto Rs.250 lakhs. Imprisonment upto 3 years with fine	Power of Arrest could be exercised under section 62(1)
CGST Act	Section 73(2)	Second or subsequent offence. Imprisonment upto 5 years with fine	Power of Arrest could be exercised under section 62(1)

62.5. 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 73(1) clause (i) tax evasion above Rs.250 Lakhs attracting imprisonment for a term upto 5 years and fine, or clause (ii) tax evasion above Rs.50 Lakhs upto Rs.250 Lakhs attracting imprisonment upto 3 years and fine or offence or
- Section 73 (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.

62.6. 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

63. Power to summon persons to give evidence and produce documents

Statutory provision

- (1) Any [CGST/SGST officer], duly authorised 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 authorised 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 of 1860).

63.1. Introduction

This provision deals with exercise of powers to issue summons for giving evidence and production of documents

63.2. Analysis

- (a) Any CGST/SGST officer duly authorized by the competent authority in this behalf, 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) Summons may be issued to a person 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 his control.
- (c) All persons so summoned shall be bound to attend, in person or by an authorised representative, as such officer may direct.
- (d) The persons summoned shall be bound to state the truth upon any subject in respect of which they are examined or make statements and produce such documents and other things as may be required.

- (e) Exemptions under sections 132¹ and 133² of the CPC shall be applicable to requisitions for attendance under this section.
- (f) Every inquiry is deemed to be a “judicial proceeding” within the meaning of section 193³ and section 228⁴ of the IPC.

63.3. Comparative review

The power to issue summons is conferred under Section 14 of the CE Act and the same provision is also applicable to the Finance Act, 1944 (Service Tax) by virtue of section 83. Similar powers exist in most of the State VAT laws.

63.4. FAQs

Q1. Who can issue summons and for what purpose?

Ans. Any CGST/SGST officer duly authorized by the competent authority can 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 the CGST Act.

Legend:

CPC – Civil Procedure Code

IPC – Indian Penal Code

¹It exempts certain women (like Pardanashin) from personal appearance.

²Exempts certain other persons like President, Vice President, Speaker, Union Ministers, Supreme Court Judges, Governors of States, Administrators of Union Territories, Speakers of State Legislatures, Chairman of State Legislative Councils, Ministers of States, High Court Judges and Rules of Former Indian States.

³Deals with punishment for false evidence

⁴Refers to intentional insult or interruption to public servant sitting in judicial proceeding

64. 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 business premises 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 premises, 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 premises 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 the Comptroller and Auditor General of India or a cost accountant or chartered accountant nominated under section 50, 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.

64.1. Introduction

This provision empowers the officer an access to business premises of a taxable person to conduct audit, scrutiny, verification and checks of books of accounts, software and other records, to safeguard the revenue.

64.2. 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 business premises 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 Chartered Accountant or Cost Accountant nominated by the department for conducting the audit or Comptroller Audit General.

64.3. 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.

64.4. Related provisions

Statute	Section or Rule	Description	Remarks
CGST Act	Section 49	Audit by tax authorities	For such purpose access to business premises is given under section 64
CGST Act	Section 50	Special Audit	-do-

64.5. 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, check, scrutiny?

Ans. Audit officer or Chartered Accountant or Cost Accountant nominated by the department for conducting the audit or Comptroller Audit General.

64.6. 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

ICAI

65. Officers required to assist CGST/SGST officers

Statutory provision:

- (1) All officers of Police, 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.

65.1. 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.

65.2. Analysis

- (a) All officers of other Governmental Departments like Police, Revenue, Customs, Village Officers, are empowered and are required to assist the CGST/SGST officers to carry out the provisions of the Act.
- (b) Even the Government may issue notification empowering or requiring any other class of officer to assist the CGST/SGST officers, if required by the Commissioner.

65.3. Comparative review

Section 65(1) of the CGST Act is similar to section 15 of the CE Act.

65.4. FAQs

- Q1. Which are the officers empowered or under an obligation to assist the CGST officers in execution of the Act?
- Ans. All officers of other governmental department like Police, Revenue, Customs, 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 65(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.

65.6. MCQs

Q1. The _____ officer is empowered to assist the CGST/SGST officer.

- (a) Police/Customs
- (b) Health
- (c) CBI
- (d) State Excise

Ans. (a) Police/Customs

INDIAN

Chapter – XVI

Offences and Penalties

66. 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 37, 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;
 - (va) fails to collect tax in terms of sub-section (1) of section 43C, 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 (4) thereof, the amount collected as tax;
 - (vi) 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;
 - (vii) fraudulently obtains refund of any CGST/SGST under this Act;
 - (viii) takes or distributes input tax credit in violation of section 17, or the rules made thereunder;
 - (ix) 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;

- (x) is liable to be registered under this Act but fails to obtain registration;
 - (xi) furnishes any false information with regard to particulars specified as mandatory, either at the time of applying for registration, or subsequently;
 - (xii) obstructs or prevents any officer in discharge of his duties under the Act;
 - (xiii) transports any taxable goods without the cover of documents as may be specified in this behalf;
 - (xiv) suppresses his turnover leading to evasion of tax under this Act;
 - (xv) 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;
 - (xvi) 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;
 - (xvii) supplies, transports or stores any goods which he has reason to believe are liable to confiscation under this Act;
 - (xviii) issues any invoice or document by using the identification number of another taxable person;
 - (xix) tampers with, or destroys any material evidence;
 - (xx) 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 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 repeatedly makes short payment of tax shall be liable to a penalty of rupees ten thousand or ten percent of the tax short paid, whichever is higher.
- Explanation.- For the purposes of this sub-section, a taxable person shall be deemed to have made short payments 'repeatedly', if there were short payments in three returns during any six consecutive tax periods.
- (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; shall be liable to a penalty which may extend to rupees twenty-five thousand.

66.1 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. Discussion at following paragraphs deal with punitive provisions of GST law

66.2 Analysis

At the outset, the section declares the offences that attract penalty as the final 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 73 but that is due to the gravity of the offence defined in that section.

There are 21 specific offences listed in sub-section 1. Each of the clauses in this sub-section may not be the central purpose of the taxable person's actions. But, if the actions of the taxable persons results in any of these as one of the consequences, then penalty prescribed under this section would apply.

While this section describes the offence and prescribes the penalty applicable, the procedure for adjudicating the imposition of this penalty is only under section 51 about which there is no express statement in this section. The provisions of Section 51 A (6) or 51 A (8) provides the maximum penalty wherein there is no mention about separate penalty covering these situations.

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 or short deducted/ tax deducted but not paid whichever is higher in the following case:
 - 1. Supplies any goods/services:
 - (a) Without issue of any invoice
 - (b) Issues an incorrect/false invoice
 - 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/deduct appropriate tax, as per Section 37 (Section 37 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 ten lakh) or
 - (b) deposit the tax deducted with the appropriate Government
6. Fails to
 - (a) collect tax as per provisions of Section 43C (Section 43C is applicable to electronic commerce operator to collect tax from the supplier of goods at the time of payment to such supplier at rates to be notified)
 - (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
8. fraudulently obtains refund of any CGST/SGST
9. takes or distributes input tax credit in violation of section 17, or the rules made thereunder (Section 17 prescribes manner of distribution of credit by input service distributor)
10. with an intention to evade payment of tax
 - (a) falsifies or substitutes financial records, or
 - (b) produces fake accounts 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. Short payments in three returns during any six consecutive tax periods (called as “repeatedly makes short payment”): Penalty will be equal 10% of the tax short paid or rupees 10,000/- whichever is higher.
- C. Penalty of rupees upto 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

The discussion on the same may be referred.

66.3 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

66.4 Related provisions

Statute	Section or Rule	Description	Remarks
CGST/SGST	Section 9	Definition of taxable person	
CGST/SGST	Section 23	Tax Invoice	
CGST/SGST	Section 153	Supplementary Invoice	
CGST/SGST	Section 27(2)	Tax to be deposited with the Government on or before the due date of submission of return	
CGST/SGST	Section 37(1)	Tax to be deducted at source (TDS)	
CGST/SGST	Section 43C (1)	Tax to be collected at source by the electronic commerce operator	
CGST/SGST	Section 8, 9, 16, 16A, 17, 18 and 37A	Input tax credit	
CGST/SGST	19, 19A, 20, 21, 22	Registration	
CGST/SGST	38, 39, 40 and 41	Refund	

66.5 FAQs

1. Whether the penalty becomes automatically payable without any adjudication?

Ans. No, the said Section provides that penalties should not be imposed unless a proper

show cause notice is served or an adequate opportunity of being heard has been provided.

2. What is meant by 'short payments made repeatedly'?

Ans. a taxable person shall be deemed to have made short payments 'repeatedly', if there were short payments in three returns during any six consecutive tax periods

3. Can there be any liability even if he person is not a taxable person?

Ans. Yes, penalty under sub-section (3) can be levied from any person even if he is not a taxable person

66.6 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 Rs. 10,000
- d. the amount of tax or Rs. 10,000 whichever is higher

Ans. d. the amount of tax or Rs. 10,000 whichever is higher

Q2. If a person fails to appear before GST officer, the maximum penalty that can be levied:

- a. amount of tax
- b. 10% of tax
- c. upto Rs. 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 not appeared before GST officer for 3 times
- b. 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. none of the above

Ans. d. none of the above

Q4. There is no penalty for not carrying invoice during transportation of goods

- i. true
- ii. false

Ans. ii false

67. 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 rupees twenty five thousand.

67.1 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. Where any offence that does not have a specific penalty prescribed cannot be let off. This is general penalty provision under the GST law for cases where no separate penalty is prescribed under the Act or rules.

67.2 Analysis

Penalty upto rupees twenty five thousand is imposable where a taxable person who contravenes:

- (a) any of the provisions of the Act; or
- (b) rules made thereunder

for which no penalty is separately prescribed under the Act

67.3 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 Rs. 10,000/- and 5,000/ respectively-. There is substantial increase in maximum limit of penalty as prescribed under the Act.

67.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 68	General disciplines related to penalty	The principals and disciplines related to impose of penalty

67.5 FAQs:

1. Which are the cases when general penalty can be levied?

Ans. The instances where there is no specific penalty prescribed under any other section or rule general penalty can be levied

2. What is the amount of general penalty leviable under the Act?

Ans. An amount upto Rs. 25,000/-

67.6 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 there is no specific penalty is prescribed, then general penalty applies.

Q2. if the assessee identifies any default on his own then he must pay penalty along with tax and interest

(i) Yes

(ii) No

Ans. (ii) No. Not required

68. 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 establishing 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.

68.1 Introduction

While penalties are not new in tax laws, this section lays down certain guiding principles that tax administration can be held accountable for to the tax paying citizenry. It is salutary that such a well-reasoned 'general disciplines' relating to penalty are provided in the Act.

68.2 Analysis

The following guiding disciplines in certain circumstances apply to substantial penalties:

- (a) Cause for imposition of penalty where the tax involved is less than Rs.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.
- (c) Person liable to penalty must be issued a notice laying down the cause of action, breach and provisions invoked. And that a speaking order be passed for imposing such penalty.
- (d) Voluntary disclosure by a person to a tax authority by the (not merely in his own books and records) about the circumstances of the breach may be considered as a mitigating factor for the imposition 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.

68.3 Comparative review

In the Finance Act, 1994; 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.

68.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 66	Offences	Specifies the gist of offences under the Act
GST	Section 67	General penalty	

68. FAQs

1. What are the discretionary powers of the officers to waive the penalties?
 Ans. Section 68(2) prescribes 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.
2. 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.
3. 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.

68.6 MCQs

Q1. For minor breaches of tax regulations or procedural requirements, tax authority -

- (a) Shall not impose substantial penalties
- (b) Shall impose nominal penalty
- (c) Shall not impose any penalty.
- (d) None of the above.

Ans. (a) Shall not impose substantial penalties

INDIAN

69. Detention of goods and conveyance, and levy of penalty

Statutory provision

Where any person –

- (i) transports any goods or stores such goods while they are in transit in violation of the provisions of this Act; or
 - (ii) stores or keeps in stock goods or supplies goods which have not been accounted for in the books or records maintained by him in the manner required by this Act;
all such goods and the conveyance used as a means of transport for carrying the said goods shall be liable to detention, in the manner prescribed, by the proper officer and shall be released only after payment of applicable tax, interest and penalty leviable thereon or upon furnishing a security, in such form as may be prescribed, equivalent to the amount of the applicable tax, interest and penalty.
- (2) No tax, interest or penalty shall be determined under sub-section (1) without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

69.1 Introduction

Procedure for imposition of penalty is not complete without addressing the issue of detention of goods and conveyances.

69.2 Analysis

1. Detention of goods or conveyance can be done by the officer and/or penalty can be levied in the following situations:
 - Where any person transports any goods or stores such goods while they are in transit in violation of the provisions of the Act
 - Where any person stores or keeps in stock goods or supplies goods which have not been accounted for in the books or records maintained by him in the manner required by the Act
2. Goods/conveyances so detained can be released only after payment of tax, interest and penalty
3. Such goods/conveyances can be released even on furnishing of security in prescribed format
4. Show cause notice will have to be served and opportunity of being heard to be granted before levy of tax, interest and penalty
 - Articles liable for detention have been stated to be unaccounted goods and any conveyance used in their supply or transportation. Both these offending articles are liable to detention to recover payment of tax, interest and applicable penalty.

- Opportunity to furnish security of equivalent amount is also permitted.
- The proceeding for detention and subsequent recovery of dues must be by issuing a notice to the person.
- The steps to detain articles are required to be specified in due course.
- However, process of making this determination, that is, that the goods and / or conveyance are liable to detention under this section is left open to the officer detaining them. Therefore, care should be taken to comply with provisions of section 61(1) to establish no cause for detention. Documentation deficiency could lead to presumption of cause for detention.
- It is important to note that while the process specified after detention is long winded, there is no maximum duration for which the articles can be under detention. It therefore appears that recourse to furnishing security may be the only remedy even in bona fide cases with deficient documents during transit.

69.3 Related provision

Statute	Section / Rule / Form	Description	Remarks
GST	Section 61(1)	Inspection of goods in movement	Requires to carry prescribed documents along with the goods being transported in conveyance.

69.4 FAQs

Q1. In which circumstances the conveyance can be detained?

Ans. In violation of the provisions of GST Act, the conveyance—

- Transports any goods or
- Stores such goods while they are in transit

The conveyance can be detained.

Q2. In which circumstances the goods in can be detained?

Ans. Where any person –

- In violation of the provisions of GST Act,
 - transports any goods or
 - stores such goods while they are in transit
- Without accounting for goods in the books or records maintained –
 - stores or
 - keeps in stock goods or

- supplies goods
- can be detained.

69.5 MCQs

Q1. The detained goods shall be released only after payment of –

- (a) Applicable tax, interest and penalty;
- (b) Only tax;
- (c) Tax and Interest;
- (d) Payment of only penalty.

Ans. (a) Applicable tax, interest and penalty

70. Confiscation of goods and levy of penalty

Statutory provision

- (1) If any person –
- (i) supplies any goods in contravention of any of the provisions of this Act or rules made thereunder leading to evasion 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,
- then, all such goods shall be liable to confiscation and the person shall be liable to penalty under section 66.
- (2) Whenever 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, 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 price of the goods confiscated, less the tax chargeable thereon.
- (3) Where any fine in lieu of confiscation of goods 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 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 are confiscated under this Act, the title of such goods 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

70.1 Introduction

Property in goods confiscated vests with the Government. This section provides for specific causes leading to confiscation of goods. The nature of authorization to confiscate and opportunity to release goods liable for such confiscation are detailed in this section.

70.2 Analysis

There are four precise causes for confiscation of goods specified in this section and they are:

Action	Consequence
Supply goods in contravention of Act or rules made thereunder	Resulting in actual evasion of tax
Not accounting goods	Carrying a liability to payment of tax
Supply of goods liable to tax	Without obtaining registration
Contravene provisions of Act or rules made thereunder	With intent to evade payment of tax

- The precision on laying down the action warranting confiscation must be demonstrably leading to the consequence stated alongside. In such cases, the goods are liable for confiscation and the person responsible is liable for penalty under section 66.

Confiscation of goods of person/owner

- Goods can be confiscated by the department from owner of goods or from a person other than the owner, if owner is not known
- When the cause of action for confiscation (and not penalty under section 66) is identified as above, opportunity to pay fine in-lieu of confiscation is provided in the section.
- It is clearly stated that seizure precedes confiscation so as to allow time to issue notice and adjudicate with regard to occasion for confiscation as well as opportunity to pay fine in-lieu.
- The quantum of this fine in-lieu of confiscation ought to be the financial loss that actual confiscation may bring to the person. As such the fine has a limit of market value of the goods reduced by the tax due in the normal course.
- It is clarified that payment of all other dues including tax is not dispensed with when confiscation is involved. Tax, interest and any other charges along with fine in-lieu must be recovered in cash from the person or else suitable recovery measures need to be taken. Details of the same may be referred in the discussion under section 54. Opportunity to confiscate cannot be given up unless recoverability of the dues (as above) is not certain.
- In effecting seizure, proper officer is to retain control over the goods and may avail assistance from officer of Police in this regard.

70.3 Comparative review

The provision as discussed above for confiscation of goods and levy of penalty is akin to current confiscation provisions under Section 33 and 34 under Central excise Act, 1944.

70.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 66	Offences and Penalties	Specifies the gist of offences under the Act
GST	Section 68	General disciplines related to penalty	The principals and disciplines related to impose of penalty

70.5 FAQs

1. Is all cases of contraventions of any of the provisions of the act or rules with an intent to duty are liable for confiscation?
 Ans. No, if contravention of the provisions leading to evasion of taxes only leads to confiscation of goods.
2. What is the maximum amount of fine in lieu of confiscation which can be levied?
 Ans. Maximum amount of fine in lieu of confiscation shall not exceed the market price of the goods confiscated, less the tax chargeable thereon
3. Can the option to pay redemption fine in lieu of confiscation of goods be given to any person other than owner of the goods?
 Ans. Yes, in case where owner is not known, the person from whose possession or custody such goods have been seized.
4. Is option to pay fine in lieu of confiscation of goods is to be granted in each case or at the instance of the officer?
 Ans. It has to be provided in each case

70.6 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

71. Confiscation of Conveyances

Statutory provision

Any conveyance used as a means of transport for carriage of taxable goods without the cover of documents as may be prescribed in this behalf shall be liable to confiscation, 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:

Provided 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.

71.1 Introduction

Offending articles are not only those which represent the evasion but also conveyances employed in committing the act. This section separately addresses the process of confiscation of conveyances employed.

71.2 Analysis

Confiscation of conveyances

Confiscation of conveyances used in transportation of taxable goods shall be made if goods are carried without the cover of the documents as may be prescribed in this behalf.

However, said confiscation shall not be applicable when usage of conveyance was made without the knowledge of the owner or the person in charge of the conveyance.

Furthermore, in case of confiscation in respect of conveyances used for the carriage of the goods or passengers for hire, the owner of such conveyance shall be given an option to pay fine in lieu of confiscation which shall be equal to tax payable on goods being transported therein.

Unless satisfactorily established that the owner had no knowledge of the conveyance being employed in the act of tax evasion, all conveyances are liable to confiscation under this section.

All goods supplied in a conveyance must therefore be accompanied by documents prescribed to accompany supplies. Section 61 specifies that documents required are to be prescribed in due course.

Where the conveyance is used for transportation of passengers or goods for hire, then option to pay fine in lieu of confiscation is to be allowed to its owner. It is important to note that this eventuality will arise only if the owner is unable to satisfactorily prove his non-involvement in the evasion.

Although not stated, process of seizure and issuing notice allowing opportunity to adjudicate with regard to occasion for confiscation as well as opportunity to pay fine in-lieu must be

afforded to the owner. Further, quantum of fine in-lieu is not expressly stated but may be inferred from section 70(2).

71.3 Comparative review

The confiscation of conveyances is provision similar to existing provision contained in customs Act. This provision specifies confiscation of conveyances not having specified documents while carriage of transportation of goods as may be prescribed.

71.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 66	Offences and penalties	Specifies the gist of offences under the Act

71.5 FAQs

1. When does confiscation of conveyances shall be made by the department?
 Ans. The conveyance is liable for confiscation when it is used as a means of transport for carriage of taxable goods without the cover of documents as is prescribed.
2. Is there is any exception to confiscation of conveyances of owner of conveyances?
 Ans. The exception to confiscations of conveyances would be when the owner of the conveyance proves that it was so used without the knowledge or connivance.
3. Confiscation of vehicles given on hire shall be ought to be made or any other option is available to owner of such conveyances?
 Ans. The option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.

71.6 MCQs

1. When any conveyance used as a means of transport for carriage of taxable goods without the cover of prescribed documents is –
 - (a) The conveyance is liable for confiscation;
 - (b) The owner of conveyance is liable for penalty;
 - (c) The taxable person is liable to pay penalty;
 - (d) None of the above.
 Ans. (a) The conveyance is liable for confiscation

72. 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.

72.1 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.

72.2 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 otherwise, viz., in addition to confiscation of goods or penalty already imposed, all / any other proceedings may also be initiated 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.

72.3 Comparative review

This provision is similar to Section 34A of the Central Excise Act, 1944.

Chapter– XVII

Prosecution and Compounding of Offences

73. Prosecution

Statutory provision

- (1) Whoever commits any of the following offences, namely—
 - (a) supplies any goods and/or services without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
 - (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;
 - (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) fraudulently obtains refund of any CGST/SGST;
 - (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) fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or

- (l) attempts to commit, or abets the commission of, any of the offences mentioned in clauses (a) to (k) of this section;
shall be punishable –
- (i) in cases where the amount of tax evaded 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 exceeds fifty 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 exceeds twenty five lakh rupees but does not exceed fifty lakh rupees, with imprisonment for a term which may extend to one year and 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 sub-section (4) shall be non-cognizable and bailable.
- (4) The offences relating to taxable goods and/or services where the amount of tax evaded exceeds two hundred and fifty lakh rupees shall be cognizable and non-bailable.
- (5) A person shall not be prosecuted for any offence under this section except with the previous sanction of the designated authority.

73.1. Introduction

This provision deals with prosecution of offenders and the punishment inflicted on them.

73.2. Analysis

- (a) The following offences shall be liable for prosecution:
- supplies any goods and/or services without invoice or issues incorrect or false invoice;
 - issues any invoice or bill without supply of goods and/or services;
 - 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;
- fraudulently obtains refund of any CGST/SGST;
- 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;
- 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	Period of Maximum Imprisonment & Fine	In case of repetition of offence
Exceeding Rs. 250 Lakhs	5 Yrs and Fine	5 Yrs and Fine
Exceeding Rs. 50 Lakhs upto Rs. 250 Lakhs	3 Yrs and Fine	
Exceeding Rs. 25 Lakhs upto Rs. 50 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) All offences mentioned in this section are ¹non-cognizable and bailable except the cases where tax evasion is more than Rs. 250 Lakhs.

73.3. Comparative review

Even in the present central indirect tax laws, there are prosecution powers. The CGST Act seems to have widened the scope of prosecution.

73.4. Related provisions

Statute	Section or Rule	Description	Remarks
CGST Act	Section 62	Power of Arrest	Authorised CGST/SGST Officer can arrest a person who has committed an offence specified in section 73(1)(i) or (ii) and (2)

73.5. FAQs

Q1. What are offences liable for prosecution?

- Ans. — Supplies any goods and/or services without invoice or issues incorrect or false invoice;
- issues any invoice or bill without supply of goods and/or services;
- 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;
- fraudulently obtains refund of any CGST/SGST;
- 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

¹Non-cognizable connotes arrest should be with warrant.

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;

- 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.

Q2. What is the punishment inflicted on the offenders?

- Ans. (i) If the amount of tax evaded exceeds Rs. 250 lakhs then the punishment is 5 years imprisonment and fine.
- (ii) If the amount of tax evaded exceeds Rs. 50 lakhs but does not exceed Rs.250 lakhs then the punishment is 3 years imprisonment and fine.
- (iii) If the amount of tax evaded exceeds Rs. 25 lakhs but does not exceed Rs.50 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.

73.6. 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

74. 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.

74.1. Introduction

This provision sets out the manner of taking cognizance of offences.

74.2. 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.

74.3. Comparative review

Prosecution under some of the VAT legislations can be conducted only before the First Class Metropolitan Magistrate.

74.4. 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

74.6. 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

75. 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.

75.1. Introduction

This section deals with presumption by Court of culpable mental state of the accused in prosecution proceedings.

75.2. 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 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.

75.3. 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.

75.4. FAQs

1. 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.

2. 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.

75.6. 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

76. 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.

76.1. Introduction

This provision deals with relevancy of statements recorded/deposed during investigation.

76.2. Analysis

- (a) A statement recorded during the course of 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 if it is Court proceedings.

76.3. Comparative review

Similar provisions could be found in the existing indirect tax legislations also. To illustrate, refer section 9D of the CE Act, 1944.

76.4. 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.

77. 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 was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of 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 karta 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.

77.1. Introduction

This provision specifies the persons to be prosecuted in case the offence is committed by a company, firm, LLP, HUF or trust.

77.2. 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.

77.3. 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.

77.4. 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.

77.6. 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

78. 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 73 and the offences described under clause (l) 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 rupees one crore;
- (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) 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 rupees ten thousand or fifty per cent of the tax involved, whichever is greater, and the maximum amount not being more than rupees thirty thousand 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.

78.1. Introduction

This provision deals with compounding of offence by paying prescribed compounding fees.

78.2. Analysis

- (a) Compounding of offence means payment of monetary compensation instead of undergoing prosecution.
- (b) The Hon'ble AP High Court in the case of State of Andhra Vs. Ballamkonoda Venkata Subbaiah and Another, 1957 (8) STC 309 (AP), has observed as under:
"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."
- (c) The competent authority can compound an offence either before or after institution of prosecution proceedings if the accused person pays the compounding amount.
- (d) 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.
- (e) The compounding provision is available only one time in respect of certain specified offences.
- (f) The compounding amount should be minimum 10,000/- rupees or 50% of tax involved whichever is higher.
- (g) However, the said compounding amount cannot exceed 30,000/- rupees or 150% of tax whichever is higher.
- (h) Upon payment of the compounding amount the proceedings already initiated would abate and no criminal proceedings could be initiated.
- (i) Any compounding allowed under this section shall not affect the proceedings under any law.
- (j) Compounding would not apply to certain types of offences:
 - A person who has been allowed compounding in respect of offences described in section 73(1)(a) to (g) and (l).
 - A person allowed to compound once in respect of any offence other than offences described in section 73(1)(a) to (g) and (l), under the CGST/SGST/IGST Acts w.r.t. supplies of value exceeding Rs.1 Crore.
 - The person is also an offender under Narcotics Act, FEMA or any other law.
 - Any prescribed class of persons.

78.3. 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.

78.4. Related provisions

Statute	Section or Rule	Description	Remarks
CGST Act	Sec.73(1)(a)	Supply of goods/services without invoice or with false/incorrect invoice	Compounding in respect of such offence cannot be twice – refer section 78(1) proviso
CGST Act	Sec.73(1)(b)	Issuance of bills/invoices without supply of goods/services	-do-
CGST Act	Sec.73(1)(c)	Failure to pay tax collected beyond 3 months from due date	-do-
CGST Act	Sec.73(1)(d)	Collection of tax and non-remittance beyond 3 months from due date	-do-
CGST Act	Sec.73(1)(e)	Taking credit without receipt of goods/services (fully or partially)	-do-
CGST Act	Sec.73(1)(f)	Obtaining refund fraudulently	-do-
CGST Act	Sec.73(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.73(1)(l)	Attempt to commit or abetment of offences listed above	-do-

78.5. 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 73(1)(a) to (g) and (l).
- (ii) A person allowed to compound once in respect of any offence other than offences described in section 73(1)(a) to (g) and (l), under the CGST/SGST/IGST Acts w.r.t. supplies of value exceeding Rs.1 Crore.
- (iii) The person is also an offender under Narcotics Act, FEMA or any other law.
- (iv) Any prescribed class of persons.

78.6. 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 – XVIII

Appeals

79. Appeals to first appellate authority – CGST Law

Statutory provision:

- (1) Any person aggrieved by any decision or order passed against him under this Act by an adjudicating authority, may appeal to the prescribed First Appellate Authority.
- (2) The Commissioner of GST may, of his own motion, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this 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 for the determination of such points arising out of the said decision or order as may be specified by the Commissioner of GST 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) Every appeal under this section shall be filed within three months from the date on which the decision or order sought to be appealed against is communicated to the Commissioner of GST, or, as the case may be, the person preferring the appeal:
Provided that 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, 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 sum equal to ten percent of the amount in dispute arising from the said order, in relation to which the appeal has been filed.
Explanation.- For the purposes of this sub-section, the expression “amount in dispute” shall include –
 - (i) amount determined under section 46 or 47 or 48 or 51;
 - (ii) amount payable under rule-----of the GST Credit Rules 201...; and
 - (iii) amount of fee levied or penalty imposed.

- (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:
Provided that 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 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:
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 51.
- (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 83, 87 or 88, be final.

79.1 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.

79.2 Analysis

- (a) Any person aggrieved by any decision or order passed against him by an adjudicating authority is permitted to file an appeal to First Appellate Authority.
- (b) On the other hand, the Commissioner of GST may direct by order, any GST officer subordinate to him to file appeal to first appellate authority for determination of such points arising out of the said decision or order.
- (c) For doing so, the Commissioner of GST should have examined the records of such proceedings (called on own motion) to satisfy himself as to the legality or propriety of the decision or order being examined.
- (d) Consequent to such order directing to file appeal the authorised officer, has to make an application to the First Appellate Authority. Such application has to be dealt by the First Appellate Authority as though the same an appeal filed against the order of adjudication authority and all the provisions of appeal would become application for the said application as well.
- (e) The appeal by the aggrieved person or application by authorised officer or application by the authorised officer is to be filed within a period of 3 months of the date of communication of decision or order to aggrieved person or Commissioner of GST as the case may be.
- (f) The first appellate authority is empowered to condone the delay in filing appeal upto a further period of 1 month on sufficient cause for such delay in filing is established.
- (g) Appeal to be filed in prescribed form duly verified in prescribed manner along with pre-deposit of sum equal to 10% of amount in dispute. The term "amount in dispute" is defined to include
 - tax dues determined during assessment of non-filers of returns, assessment of unregistered persons, summary assessment in special cases and determination of tax not paid/short paid/erroneously refunded;
 - Amount payable under GST Credit Rules; and
 - Amount of fees / penalty
- (h) The appellant has to be given opportunity of being heard if he so desires. During such hearing, Maximum 3 adjournments shall be granted to a party on showing reasonable cause to be recorded in writing.

- (i) First appellate authority may allow at the hearing of the appeal, any additional grounds not specified in the grounds of appeal if authority is satisfied that the omission was not wilful or unreasonable.
- (j) First appellate authority has to pass the order after making further enquiry if necessary as he thinks just and proper wherein the order/decision appealed against is –
 - (a) Confirmed; or
 - (b) Modified; or
 - (c) annulled.
- (k) Opportunity of being heard to be granted to the appellant in case of order for enhancing fees or penalty or fine in lieu of confiscation of goods or reducing amount of refund/input tax credit.
- (l) If the First Appellate authority is of the opinion that any tax is not paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, before passing any order in this regard he has to serve a show cause notice to that effect. Further any such order has to be passed within the time limit set out in Section 51 for adjudication.
- (m) First appellate authority to hear and decide the appeal, wherever possible, within a period of 1 year from the date of filing excluding the period of stay if any ordered by Court or Tribunal.
- (n) First appellate authority to communicate the copy of order to the appellant and the adjudicating authority with a copy to jurisdictional Commissioner of CGST and SGST.

79.3 Comparative review

- (a) Similar provisions are contained in Section 84 & 85 of the Finance Act, 1994 & Section 35 of the Central Excise Act, 1944.
- (b) After examining the records of proceedings related to decision or order passed by adjudicating authority subordinate to him, Principal Commissioner of Central Excise or Commissioner of Central Excise may pass an order

79.4 Related provisions

Statute	Section	Description	Remarks
GST	46	Assessment of non-filers of returns	Provisions related to assessment of tax against non-filers of returns
GST	47	Assessment of unregistered persons	Provisions related to assessment of tax against unregistered persons
GST	48	Summary assessment in certain special cases	Provisions related to assessment of tax in certain special cases

GST	51	Determination of tax not paid or short paid or erroneously refunded	Provisions related to determination of tax not paid or short paid or erroneously refunded by taxable person or unregistered persons
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79.5 FAQ

Q1. Whether the any person aggrieved by any order or decision passed against him has right to appeal?

Ans. Yes. Any person aggrieved by any order or decision passed against him has right to appeal.

Q2. When commissioner of GST feels that the order passed is not legal and proper, whether he can revise the order himself?.

Ans. No. The commissioner has to pass an order setting out the points for determination where he is of the view that the order is not legal and proper and directing the officer sub-ordinate to him to file an application to First Appellate Authority.

Q3. What is the time limit to file appeal to First Appellate Authority?

Ans. The time limit is fixed as 3 months from the date of communication of order or decision.

Q4. Whether this time limit applies even for the departmental appeal/application filed consequent to order of commissioner of GST?

Ans. Yes. It applies even for such applications filed which will be treated as appeal and all the provisions of appeal would be application for such application as well.

Q5. Whether the first appellate authority has any powers to condone the delay in filing appeal?

Ans. Yes. However the condonation of delay only upto 1 month is only permitted and beyond the same.

Q6. Whether the first appellate authority has any powers to allow additional grounds not specified in the appeal memo?

Ans. Yes. He has powers to allow additional grounds if he is satisfied that omission was not wilful or unreasonable.

Q7. The order passed by First Appellate Authority has to be communicated to whom?

Ans. First appellate authority to communicate the copy of order to the appellant and the adjudicating authority with a copy to jurisdictional Commissioner of CGST and SGST.

79.6 MCQ

Q1. Appeal to the first appellate authority is to be filed within

- (a) 3 months from date of order,

- (b) 3 months from date of communication of order,
- (c) 90 days from date of order,
- (d) 90 days from 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% of amount payable as tax
- (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. (b) 10% of amount payable as tax, fees & penalty

ICAI

80. Not Applicable under CGST Act

81. Constitution of the National Appellate Tribunal

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, the State Presidents, and the Members shall be such as may be prescribed on the recommendations of the Council.
- (7) 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.
- (8) 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.

81.1 Introduction

- (a) This section deals with constitution of National GST Appellate Tribunal

81.2 Analysis

- (a) Upon recommendation of GST Council, Central Government shall constitute National Goods & Service Tax Appellate Tribunal. It is commonly termed as 'Tribunal'
- (b) The features of the said Tribunal will be as follows:
 - It will be headed by a National President.
 - It will have one branch for each state, called as the 'State GST Tribunal'.
 - Every State GST Tribunal will be headed by a State President.

- Such State GST Tribunal to discharge its functions will consist of prescribed number of
 - Members (Judicial),
 - Members (Technical - CGST) and
 - Members (Technical - SGST)
- It is provided that on ceasing to hold office, they shall not be entitled to appear, act or plead before the Appellate Tribunal.
- On the recommendation of the Council, the qualifications, eligibility conditions and the manner of selection and appointment of the National President, the State Presidents, and the Members; powers and functions of National president and the state presidents would be prescribed.

81.3 Comparative review

Under the present Central Indirect Taxes Law, Section 129 of Customs Act, 1962, provide for constitution of Customs, Excise and Service Tax Appellate Tribunal, which is having Similar provisions to some extent.

However in the GST law it is guided by the recommendation of GST Council on various aspects.

81.4 FAQ

Q1. Who will constitute National Goods & Service Tax Appellate Tribunal?

Ans. Central Government will constitute the same on the recommendation of GST Council. It is also called as 'Tribunal' commonly.

Q2. What are the different types of members in the Tribunal?

Ans. The tribunal will have, Members (Judicial), Members (Technical-CGST) and Members (Technical-SGST).

81.5 MCQ

Q1. The Tribunal will be headed by -

- (a) State President
- (b) Senior Member of all the members
- (c) National President
- (d) None of the above

Ans. (c) National President

Q2. On ceasing to hold office by Members of Tribunal, they are –

- (a) Permitted to appear before Tribunal
- (b) Permitted to appear before Tribunal only after 3 years
- (c) Not permitted to appear before Tribunal
- (d) None of the above

Ans. (c) Not permitted to appear before Tribunal

82. Appeals to Appellate Tribunal

Statutory Provisions

- (1) Any person aggrieved by an order passed against him under section 79 may appeal to the Appellate Tribunal against such order.
- (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 Board may by order constitute such Committees as may be necessary for the purposes of filing appeals against the orders of the First Appellate Authority. Every such Committee shall consist of two designated officers of GST.
- (4) The Committee of designated officers of GST may, if it is of the opinion that an order passed by the First Appellate Authority under sub-section (10) of section 79, is not legal or proper, direct any GST Officer authorized by it in this behalf to apply to the Appellate Tribunal for the determination of such points arising out of the order passed by the First Appellate Authority as may be specified by the Committee in its order:
Provided that where the Committee of designated officers of GST 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 of the First Appellate Authority 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) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the Commissioner of GST, or, as the case may be, the person preferring the appeal.
- (7) 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 (6).
- (8) 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 (6) or sub-section (7) respectively, if it is satisfied that there was sufficient cause for not presenting it within that period.

- (9) 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 referred to in sub-section (5) or a memorandum of cross-objections referred to in sub-section (7).
- (10) No appeal shall be filed under sub-section (1) unless the appellant has deposited a sum equal to ten percent of the amount in dispute arising from the said order, in relation to which the appeal has been filed.
 Explanation.- For the purposes of this sub-section, the expression "amount in dispute" shall include –
- (i) amount determined under section 46 or 47 or 48 or 51;
 - (ii) amount payable under rule-----of the GST Credit Rules 201...; and
 - (iii) amount of fee levied or penalty imposed.
- (11) 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 under sub-section (5).

82.1 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.
- (b) This section also provides for appeal to be filed by revenue against decision or order passed by 1st appellate authority.

82.2 Analysis

- (a) Any person aggrieved by an order of First Appellate Authority passed against him is entitled to file appeal to the Appellate Tribunal against such order.
- (b) In cases where the in the appeal involves –
 - tax amount or
 - input tax credit or
 - the difference in tax or
 - the difference in input tax credit involved or
 - amount of fine,

— amount of fees or

— amount of penalty ordered

is less than Rs. 1,00,000/-, the Tribunal has discretion to refuse to admit such appeal.

- (c) As far as the appeal by revenue is concerned,
- (i) the Board to constitute committee for the purpose of filing appeal before Appellate Tribunal against the order passed by First Appellate Authority. Such committee shall consist of 2 designated officers of GST.
 - (ii) The Committee has to form the opinion whether order of the First Appellate Authority is legal and proper. If it is of the opinion that it is not legal and proper, it has to direct by order GST officer to file appeal to Appellate Tribunal.
 - (iii) Since the provision says that if difference of opinion, it is deemed that the order is not legal and proper, it gives a proposition that unless the order passed by First Appellate Authority is unanimously accepted by the said committee, it has to direct to file appeal before Appellate Tribunal.
 - (iv) The order of the committee has to set out points for determination which are arising out of the order passed by the First Appellate Authority.
 - (v) Consequent to such order directing to file appeal the authorised officer, has to make an application to the Appellate Tribunal. Such application will be dealt by the Appellate Tribunal as though the same an appeal filed against the order of First Appellate Authority and all the provisions of appeal would become application for the said application as well.
- (d) Every appeal to Appellate Tribunal to be filed within 3 months from the date of communication of order or decision appealed against.
- (e) On filing of appeal by one party, the other party is permitted to file Memorandum of Cross objection within 45 days from the receipt of notice of filing of such appeal. This cross objection can be filed even if the other party had not filed the appeal. Such cross objection will be treated as appeal filed by such person and will be dealt accordingly.
- (f) Appellate Tribunal empowered to condone the delay (without any time limit) in filing appeal or memorandum of cross objection.
- (g) Appeal to Appellate Tribunal has to be filed in prescribed form duly verified in prescribed manner along with prescribed fees. No fees required to be paid for filing memorandum of cross objection.
- (h) Also the appeal cannot be filed unless pre-deposit of sum equal to 10% of amount in dispute. The term “amount in dispute” is defined to include
- tax dues determined during assessment of non-filers of returns, assessment of unregistered persons, summary assessment in special cases and determination of tax not paid/short paid/erroneously refunded;

- Amount payable under GST Credit Rules; and
- Amount of fees / penalty

- (i) No fees & pre-deposit shall be payable in case of appeal filed by department.
 (j) Every miscellaneous application shall be filed along with prescribed fees.

82.3 Comparative review

- (a) Similar provisions are contained in Section 86 of the Finance Act, 1994 & Section 35B of the Central Excise Act, 1944

82.4 Related provisions

Statute	Section	Description	Remarks
GST	46	Assessment of non-filers of returns	Provisions related to assessment of tax against non-filers of returns
GST	47	Assessment of unregistered persons	Provisions related to assessment of tax against unregistered persons
GST	48	Summary assessment in certain special cases	Provisions related to assessment of tax in certain special cases
GST	51	Determination of tax not paid or short paid or erroneously refunded	Provisions related to determination of tax not paid or short paid or erroneously refunded by taxable person or unregistered persons
GST	79	Appeals to First Appellate Authority	Provisions relating First Appellate Authority against which order the appeal is preferred under this section.

82.5 FAQ

Q1. When the Tribunal is having powers to refuse to admit the appeal?

Ans. In cases where the in the appeal involves –

- tax amount or
- input tax credit or
- the difference in tax or
- the difference in input tax credit involved or
- amount of fine,
- amount of fees or

— amount of penalty ordered

is less than Rs. 1,00,000/-, the Tribunal has discretion to refuse to admit such appeal.

Q2. Whether any filing fee is required to be paid while filing Memorandum of Cross Objection?

Ans. No. There is no fee payable when memorandum of cross objection is filed.

82.6 MCQ

Q1. The Appellate Tribunal has no discretion to admit any appeal –

- (a) True
- (b) False

Ans. (b) False

Q2. Appeal to the Appellate Tribunal is to be filed within _____ from date of communication of order –

- (a) 2 months
- (b) 3 months
- (c) 4 months
- (d) 90 days.

Ans. (b) 3 months from date of communication of order.

Q3. Memorandum of Cross Objection is to be filed within a period of _____ of communication of filing appeal:

- (a) 30 days
- (b) 45 days
- (c) 60 days
- (d) 75 days

Ans. (b) 45 Days of communication of filing appeal

Q4. The Appellate Tribunal can condone the delay in filing appeal for a period upto:

- (a) 1 month
- (b) 2 months
- (c) without time limit
- (d) no condonation powers

Ans. (c) Without any time limit

83. 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 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 to the original adjudicating authority, as the case may be, the appellant, the jurisdictional Commissioner of CGST and the jurisdictional Commissioner of SGST.
- (6) Every order passed under this section shall, subject to the provisions of section 87 or 88, be final.

83.1 Introduction

- (a) This section pertains for the manner in which the to the orders by Appellate Tribunal be passed.

83.2 Analysis

- (a) The Appellate Tribunal has to give hearing for the parties to appeal to present their case.
- (b) During the course of hearings, maximum 3 adjournments shall be granted to a party on showing reasonable cause to be recorded in writing.
- (c) After hearing parties Appellate Tribunal may pass such orders therein as it thinks fit, wherein the orders appealed against is –
 - (i) Confirmed; or
 - (ii) Modified; or
 - (iii) Annulled.
- (d) Also the Appellate Tribunal has power to remand the case back to the first appellate authority or the original adjudicating authority as it thinks fit.
- (e) The Appellate Tribunal is empowered to amend its order within 3 months from the date of order, to rectify any mistake apparent from record if such mistake is
 - (i) Noticed by it on its own accord; or
 - (ii) Brought to its notice by the CGST; or
 - (iii) Brought to its notice by the other party to appeal;
- (f) If such amendment is having the effect of
 - (i) enhancing an assessment or
 - (ii) reducing a refund or
 - (iii) reducing input tax credit or
 - (iv) otherwise increasing the liability of the other party.opportunity of being heard to be granted to other party as to such intention.
- (g) The Appellate Tribunal to hear and decide the appeal, wherever possible, within a period of 1 year from the date of filing.
- (h) The Appellate Tribunal to communicate the copy of order to
 - (i) first appellate authority / original adjudicating authority,
 - (ii) the appellant,
 - (iii) the jurisdictional commissioner of CGST &
 - (iv) the jurisdictional commissioner of SGST.

83.3 Comparative review

- (a) This provision is similar to Section 129B of Customs Act, 1962 and Section 35C of the Central Excise Act, 1944.

- (b) As per existing provisions, the time limit for rectification of mistake apparent from records is 6 months of date of order.

83.4 FAQ

Q1. In what manner the appeal filed against the order of the First Appellate Authority be disposed off?

Ans. After hearing parties Appellate Tribunal may pass such orders therein as it thinks fit, wherein the orders appealed against is –

- (a) Confirmed; or
- (b) Modified; or
- (c) Annulled.

Also the order can be set aside and matter remanded back to First Appellate Authority.

83.5 MCQ

Q1. The order passed by First Appellate Authority has to be communicated to whom?

Ans. The Appellate Tribunal has to communicate the copy of order to the First Appellate 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.

79. Appeals to first appellate authority – SGST Law

Statutory provision:

- (1) Any person aggrieved by any decision or order passed against him under this Act by an adjudicating authority, may appeal to the prescribed First Appellate Authority.
- (2) Every appeal under this section shall be filed within three months from the date on which the decision or order sought to be appealed against is communicated to the person preferring the appeal:

Provided that 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, allow it to be presented within a further period of one month.

- (3) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.
- (4) 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 in dispute arising from the said order, in relation to which the appeal has been filed.

Explanation.- For the purposes of this sub-section, the expression “amount in dispute” shall include –

- (i) amount determined under section 46 or 47 or 48 or 51;
- (ii) amount payable under rule-----of the GST Credit Rules 201...; and
- (iii) amount of fee levied or penalty imposed:

Provided that 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 fifty percent of the amount in the dispute, 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 involving a disputed tax liability of not less than Rupees Twenty Five Crores an where the Commissioner of GST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.

- (5) The First Appellate Authority shall give an opportunity to the appellant of being heard, if he so desires.
- (6) 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:

Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.

- (7) The First Appellate Authority may, at the 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.
- (8) 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:

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 51.

- (9) 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.
- (10) 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.
- (11) On disposal of the appeal, the First Appellate Authority shall communicate the order passed by him to the appellant and to the adjudicating authority.
- (12) 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.
- (13) Every order passed under this section shall, subject to the provisions of sections 80, 83, 87 or 88, be final.

79.7 Introduction

- (a) This section pertains to appeals to first appellate authority by any person including revenue who is aggrieved against decision or order passed by adjudicating authority under SGST Act.

79.2 Analysis

- (i) The provisions under Section 79 of SGST Act for appeal by any person aggrieved by the order or decision passed against him are essentially similar to provisions contained in Section 79 of CGST Act and discussions made therein are equally applicable to section 79 of SGST as well.
- (ii) However the provisions relating to appeal by the revenue against the order of adjudicating authority as CGST Act is not provided in SGST Act. Instead the provisions relating to revision of order of adjudicating authority is separately set out in Section 80 of SGST Act.
- (iii) The additional points as to appeal by any person aggrieved person under SGST Act, are as follows:
 - (a) As regards to pre-deposit of 10% of amount in dispute, it is provide that in a case which is considered by the Commissioner of GST 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 50% of the amount in dispute.
 - (b) For the purpose of the same, the term “serious case” is defined to mean a case involving a disputed tax liability of not less than Rs. 25 Crores and where the Commissioner of GST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.

This provision confers power of inspection, search and seizure to the Officers.

79.3 Comparative review

- (i) Similar provisions are contained in Section 84 & 85 of the Finance Act, 1994 & Section 35 of the Central Excise Act, 1944.
- (ii) Also provisions of certain state VAT laws are considered for deviating from the provision of pre-deposit..

79.4 Related provisions

Statute	Section	Description	Remarks
CGST	79	Appeal to First Appellate Authority	Provisions related to Appeal to First Appellate Authority under CGST.
GST	46	Assessment of non-filers of returns	Provisions related to assessment of tax against non-filers of returns
GST	47	Assessment of unregistered persons	Provisions related to assessment of tax against unregistered persons
GST	48	Summary assessment in certain special cases	Provisions related to assessment of tax in certain special cases

GST	51	Determination of tax not paid or short paid or erroneously refunded	Provisions related to determination of tax not paid or short paid or erroneously refunded by taxable person or unregistered persons
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79.5 FAQ

Q1. What is the provision relating to pre-deposit before filing appeal to file appeal to First Appellate Authority?

Ans. 10% of the amount in dispute has to be paid before filing appeal. However the Commissioner of GST considers any case 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 50% of the amount in dispute.

Q2. What is the meaning of “serious case”?

Ans. It means a case involving a disputed tax liability of not less than Rs. 25 Crores and where the Commissioner of GST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.

79.6 MCQ

Q1. Revenue can file appeal against the order of SGST adjudicating authority to First Appellate Authority.

- (a) True
- (b) False

Ans. (b) False

80. Revisionary powers of Commissioner

Statutory provision:

- (1) Subject to the provisions of section 93 and any rules made thereunder, the Commissioner may on his own motion or upon information received by him, call for and examine the record of any proceeding under this Act, and if he considers that any decision or order passed under this Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue, 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 Commissioner shall not exercise any power under sub-section (1), if -
 - (a) the order has been subject to an appeal under section 79 or under section 82 or under section 87 or under section 88; or
 - (b) more than three years have expired after the passing of the decision or order sought to be revised.
- (3) Notwithstanding anything contained in sub-section (2), the 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 83, 87 or 88, be final.
- (5) If the decision or order passed under this Act by an officer subordinate to the Commissioner involves an issue on which 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 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 the 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 clause (b) of sub-section (2).
- (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 of three years under 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 Commissioner.
- (8) For the purposes of this section, 'decision' shall include intimation given by any officer subordinate to the Commissioner.

80.1 Introduction

- (i) This section pertains to revisionary powers of Commissioner. Unlike the CGST, wherein the department also is required to file appeal to First Appellate Authority, in SGST law the revisionary powers are given to Commissioner which is presently being followed in most of the state VAT laws.

80.2 Analysis

- (i) The Commissioner may call for and examine the records of any proceeding in which the order or decision is passed by his subordinate. It can be done by the Commissioner either on his own motion or upon information received by him.
- (ii) On such examination by the commissioner if he considers that such decision or order is erroneous in so far as it is prejudicial to the interest of the revenue may proceed to revise the order.
- (iii) If it is felt necessary, Commissioner may stay the operation of such decision or order for such period as he deems fit.
- (iv) After giving the person concerned an opportunity of hearing and after making such further inquiry as may be necessary, pass the revisionary order, as he thinks just and proper.
- (v) The revisionary order may be for enhancing or modifying or annulling the said decision or order under review.
- (vi) Orders passed by any GST officer with respect to any one of more of the matters set out section 93, the same cannot be reviewed.
- (vii) The order cannot be revised after expiry of 3 years from date of passing of the decision or order.
- (viii) The Commissioner shall not exercise such revisionary powers if the order has been subject to appeal to -
 - first appellate authority U/s.79 or
 - Appellate Tribunal U/s.82
 - High Court U/s.87
 - Supreme Court U/s.88
- (ix) The Commissioner may pass an order on any point which has not been raised & decided in an appeal, referred to hereinabove, within 1 year from the date of order in such appeal or within 3 years from the date of such orders sought to be revised, whichever is later.

81. Constitution of the National Appellate Tribunal

Statutory provision:

- (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, the State Presidents, and the Members shall be such as may be prescribed on the recommendations of the Council.
- (7) 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.
- (8) 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.

81.1 Introduction

- (i) This section deals with constitution of National GST Appellate Tribunal

81.2 Analysis

- (a) The provisions under Section 81 of SGST Act same as to similar to provisions contained in Section 81 of CGST Act and discussions made therein are equally applicable to section 81 of SGST as well.

81.3 Comparative review

The provisions of Appellate Tribunal under the existing state VAT laws are different from the one which is set out in SGST Law.

81.4 Related provisions

Same as discussed in Section 81 of CGST Act.

81.5 FAQ

Same as discussed in Section 81 of CGST Act.

81.6 MCQ

Same as discussed in Section 81 of CGST Act.

82. Appeals to Appellate Tribunal

Statutory provision:

- (1) Any person aggrieved by an order passed against him under section 79 or under section 80 may appeal to the Appellate Tribunal against such order.
- (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) Every appeal under this section shall be filed within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.
- (4) 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 (3).
- (5) 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 (3) or sub-section (4) respectively, if it is satisfied that there was sufficient cause for not presenting it within that period.
- (6) 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 (4).

- (7) (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 in dispute arising from the said order, in relation to which the appeal has been filed.

Explanation.- For the purposes of this sub-section, the expression “amount in dispute” shall include –

- (i) amount determined under section 46 or 47 or 48 or 51;

- (ii) amount payable under rule-----of the GST Credit Rules 201...; and
- (iii) amount of fee levied or penalty imposed:

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 fifty percent of the amount in the 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 involving a disputed tax liability of not less than Rupees Twenty Five Crores and where the Commissioner of GST is of the opinion (for reasons to be recorded in writing) that the department has a very good case against the taxpayer.

- (b) The provisions of clause (a) shall also apply mutatis mutandis to cross objections filed under sub-section (4).
- (8) 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.

82.1 Introduction

- (a) This section pertains to appeals to Appellate Tribunal by any person who is aggrieved against order passed by 1st appellate authority.
- (b) This section also provides for appeal to the Appellate Tribunal by any person who is aggrieved against revisionary order passed by the Commissioner.

82.2 Analysis

- (i) The provisions under Section 82 of SGST Act for appeal by any person aggrieved by the order or decision passed against him by First Appellate Authority are essentially similar to provisions contained in Section 82 of CGST Act and discussions made therein are equally applicable to section 82 of SGST as well.
- (ii) In addition to the above the provision of Section 82 of SGST Act also covers an appeal to be filed to Appellate Tribunal against the revisionary order passed by Commissioner.
- (iii) However the provisions relating to appeal by the revenue against the order of first appellate authority as CGST Act is not provided in SGST Act since the revisionary powers is provided to Commissioner to SGST.

- (iv) The additional points as to appeal by any person aggrieved under SGST Act as to pre-deposit, are as follows:
 - (a) Full deposit of admitted tax, interest, fine, fee and penalty arising from the impugned order.
 - (b) 10% of the remaining amount in dispute. The term 'amount in dispute' is as discussed in Section 82 of CGST.

82.3 Comparative review

Similar provisions are contained in Section 84 & 85 of the Finance Act, 1994 & Section 35 of the Central Excise Act, 1944.

Also provisions of certain state VAT laws are considered for deviating from the provision of pre-deposit.

82.4 Related provisions

Same as discussed in Section 82 of CGST Act.

82.5 FAQ

Same as discussed in Section 82 of CGST Act.

82.6 MCQ

Same as discussed in Section 82 of CGST Act.

83. Orders of Appellate Tribunal

Statutory provision:

- (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 the revisional authority, or 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 87 or section 88, orders passed by the Appellate Tribunal on an appeal shall be final.

83.1 Introduction

- (a) This section pertains for the manner in which the orders by Appellate Tribunal be passed.

83.2 Analysis

- (a) The provisions under Section 83 of SGST Act same as to similar to provisions contained in Section 83 of CGST Act and discussions made therein are equally applicable to section 83 of SGST as well.

83.3 Comparative review

The provisions of Appellate Tribunal under the existing state VAT laws are different from the one which is set out in SGST Law.

83.4 Related provisions

Same as discussed in Section 83 of CGST Act.

83.5 FAQ

Same as discussed in Section 83 of CGST Act.

83.6 MCQ

Same as discussed in Section 83 of CGST Act.

84. 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).

84.1 Introduction

This section pertains to the powers & functioning of the Appellate Tribunal

84.2 Analysis

- (i) The National President or the State Presidents to constitute Benches which may exercise and discharge the powers & 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 Rs.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:
- (viii) discovery and inspection;
- (ix) enforcing the attendance of any person and examining him on oath;
- (x) compelling the production of books of account and other documents; and
- (xi) issuing commissions.
- (xii) 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.

85. Interest on delayed refund of pre-deposit

Statutory Provisions

Where an amount deposited by the appellant under sub-section (6)/(4) of section 79 or under sub-section (10)/(7) of section 82 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 39 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

85.1 Introduction

This section provides for interest on delayed refund of pre-deposit made while filing the appeal.

85.2 Analysis

Interest at the rates specified in Section 39 shall be payable on refund of pre-deposit from the date of its payment until date of grant of refund

86. 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) any person who has acquired such qualifications as the Central Government (or the State Government) may, on the recommendation of the Council, prescribe for this purpose.
- (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 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 thenceforth 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.

86.1 Introduction

- (i) This section provides for appearance by authorised representative in proceedings or appeals except in circumstances where personal appearance is required for examination or oath or affirmation.

86.2 Analysis

- (i) “Authorised representative” means –
- relative or regular employee
 - Practising Advocate
 - Practising CA, CWS or CS
 - Any person acquiring qualification prescribed by Central/State Government Authorized representatives have the following further disqualifications:
 - 1 year disqualification for a person, who has retired or resigned after serving more than 2 years in the indirect tax departments of appropriate Government
 - Permanent disqualification for a person, who has been dismissed or removed from such service.
 - Permanent disqualification, unless revoked by Commissioner or a Competent Authority, for a person convicted of an offence connected with any proceeding indirect tax statutes
 - Permanent disqualification for an insolvent
 - Permanent disqualification for a person found guilty of misconduct under any indirect tax statutes which will be ordered after issuing notice before passing such order and lapse of period allowed for appeal against such order

86.3 Comparative review

- (i) Section 35Q of the Central Excise Act, 1944

87. 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 83 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 83 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.

87.1 Introduction

This section provides for appeal to High Court by any person aggrieved by an order passed by Appellate Tribunal. There is no requirement for issuance of certificate of fitness or inquiring into presence of 'question of law' that merits the attention of the High Court.

87.2 Analysis

Appeal against the order of the Tribunal will lie with the High Court which is to be filed by the Commissioner or the other party and the High Court may admit such appeal if it is satisfied that the case involves a substantial question of law.

No appeal shall lie to 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.

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. High Court empowered to condone the delay in filing appeal.

The question of law stated in the appeal may be examined and the High Court shall formulate that substantial question of law that it will proceed to inquire into and answer 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. 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. The High Court may determine any issue which has not been determined or has been wrongly determined by the Appellate Tribunal.

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. Difference of opinion on any point shall be referred to one or more of the other Judges of High Court and such point shall be decided according to the opinion of majority of Judges who have heard the case including those who first heard it. The effect of judgment of High Court shall be given on the basis of a certified copy of the judgment. The provisions of Code of Civil Procedure relating to appeals to High Court shall apply to appeals under this section.

87.3 Comparative review

Section 35G of the Central Excise Act, 1944

88. 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 87, 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 83 where such order is of the nature referred to in sub section (2) of section 87.

88.1 Introduction

This section provides for appeal to Supreme Court.

88.2 Analysis

An appeal against any judgement or order passed by High Court shall lie to Supreme Court. Certificate of fitness is required of the High Court which may be granted by suo moto or on application made by either party during passing of judgement.

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.

88.3 Comparative review

Section 35L of the Central Excise Act, 1944

89. 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 88 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 90.
- (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 87 in the case of a judgment of the High Court.

89.1 Introduction

This section provides for procedure for hearing in appeal before Supreme Court.

89.2 Analysis

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.

The Supreme Court may, at its discretion, award costs of the appeal.

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.

89.3 Comparative review

Section 35M of the Central Excise Act, 1944

90. 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 83 or an order passed by the High Court under section 87, as the case may be, shall be payable in accordance with the order so passed.

90.1 Introduction

This section provides for payment of sums due pending appeal.

90.2 Analysis

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. That substantive justice will evade the appellant unless the recovery of the amount determined in the order appealed against is a valid ground under CPC for the High Court or Supreme Court to admit an application under inherent powers of Court under section 151 of CPC to consider grant of stay operation of the order involving payment of disputed amounts.

90.3 Comparative review

Section 35N of the Central Excise Act, 1944

91. 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.

91.1 Introduction

This section provides for exclusion of time taken for obtaining copy of order while computing the limitation for filing appeal.

91.2 Analysis

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.

91.3 Comparative review

Section 350 of the Central Excise Act, 1944

92. Appeal not to be filed in certain circumstances

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).

92.1 Introduction

This section provides for non-filing of appeal by revenue in certain cases.

92.2 Analysis

A certain procedure is prescribed for regulating the filing of appeal or application by GST Officer such as monetary limits by the Board or State Government based on recommendations of GST Council..

In case an appeal has not been filed by the GST Officer:

- Appeal in other cases involving same issue is not barred
- Amount to acquiescence – admission or consent – on the disputed issue

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.

92.3 Comparative review

Section 35R of the Central Excise Act, 1944

93. 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 55.

93.1 Introduction

This section lists the decisions or orders which are non-appealable.

93.2 Analysis

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 under section 55 related to payment of tax & other amount in installments.

Chapter– XIX

Advance Ruling

94. 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 97 or sub-section (1) of section 99, 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 97;
- (d) “Authority” means the Authority for Advance Ruling, constituted under section 95;
- (e) "Appellate Authority" means the Appellate Authority for Advance Ruling constituted under section 96.

94.1. Introduction

This Section provides 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.

94.2. 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 register under the Act.
- (iii) The term “application” refers to the application made for advance ruling under section 97(1).
- (iv) The word “authority” refers to the AAR constituted under section 95 in each State.

- (v) The expression “Appellate Authority” refers to the Appellate Authority for Advance Ruling constituted under section 96 in each State.
- (vi) Advance ruling decision can only be in respect of matters or questions specified in section 97(2) or section 99(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 97(1) stating the question on which he seeks advance ruling. The term ‘Person’ has been defined in section 2(74) of the Act.
- (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 97(2) of the Act..
- (ix) Under current laws, advance ruling can be sought by an applicant on an activity of production or manufacture of goods or import or export of goods proposed to be undertaken or a service proposed to be provided by him. However, under the GST laws, advance ruling can also be sought on a present activity of supply of goods and or services being undertaken by the applicant.

94.3. 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.

94.4. Related Provisions:

Statute	Section / Rule / Form	Description	Remarks
GST	Section 94	Definitions	Contains definition of various terms like Advance Ruling, Applicant, Application, Authority and Appellate Authority.
GST	Section 2(74)	Person	Contains an inclusive list of 12 different types of persons.
GST	Section 97(2)	Question on advance ruling	Provides a list of questions on which advance ruling can be sought by the applicant.
GST	Section 99(1)	Appeal to the	Prescribed or jurisdictional CGST/SGST

Statute	Section / Rule / Form	Description	Remarks
		Appellate authority	officer or applicant can appeal to the appellate authority, if aggrieved by the advance ruling pronouncement of the authority.

94.5. FAQss

Q1. Can the 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 97(2) or section 99(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

95. 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.

95.1. Introduction

This Section introduces the AAR, its composition and qualification and eligibility criteria of members of AAR and their appointment process.

95.2. 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, 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.

95.3. 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 and has its office in Delhi. Under the GST law, there will be one AAR in each state because of concept of advance ruling 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.

95.4. Related Provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 94 (d)	Authority	Defines the meaning of 'Authority'.
GST	Section 94 (a)	Advance Ruling	Defines 'Advance Ruling' as a written decision on matters or questions specified in section 97(2) or section 99(1).

95.5. FAQs

Q1. AAR shall comprise of how many members?

Ans. AAR shall comprise of two members, one member from CGST and 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.

95.6. 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

96 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.

96.1 Introduction

This Section provides for an appellate authority for advance ruling, his location and constitution.

96.2 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 CBEC and Commissioner of SGST having jurisdiction over the applicant.

96.3 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 seems to be a 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.

96.4 Related Sections

Statute	Section / Rule / Form	Description	Remarks
GST	Section 96	Appellate Authority for Advance Ruling	Describes the constitution of Appellate Authority for Advance Ruling.
GST	Section 94 (e)	Appellate Authority	Defines the meaning of 'Appellate Authority' as the one constituted under section 96.

96.5 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.

96.6 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. 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

Legend:

CBEC – Central Board of Excise and Customs

97 Application for advance ruling

Statutory provision:

- (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.

97.1 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.

97.2 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;

- Any work done by the applicant is in the nature of supply of goods and / or services.

97.3 Comparative review

The questions on which AAR could be sought is quite comprehensive as compared to that before the introduction of GST 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.

97.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 97	Application for advance ruling	This section deals with making of an application for advance ruling and questions on which such a ruling can be sought.
GST	Section 94 (b)	Applicant	Defines applicant as a person who is registered or is desirous of obtaining registration under the GST Act.

97.5 FAQs

Q1. Who can make application to 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. Can an issue relating to valuation be referred to AAR?

Ans. No, issue relating to valuation cannot be referred to AAR

Q6. 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 97(3):

- (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.

98 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 86.
- (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.

98.1. Introduction

This section sets out the procedure to be followed by the Advance Ruling Authority (AAR) on receipt of an application for advance ruling by an applicant.

98.2. Analysis

Receipt of Application

- (i) On receipt of an application, the AAR shall ensure 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;
 - Decided by the First Appellate Authority, Appellate Tribunal or any Court;
 - Pending in any proceedings in the applicant's own case under any of the provisions of the Act;
 - 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.

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 ¹section 86.

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 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.

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.

98.3. Comparative review

- (i) The provision has some similarities with the Advance Rulings provision in Central Indirect Tax laws.
- (ii) There is no restriction on nature of issues, which could be referred for advance ruling.

¹Section 86 is a part of the chapter on adjudication and appellate proceedings and the litigant has an option to appoint an authorized representative as defined therein to appear on his behalf and to represent his case. For more details please refer the concerned chapter.

- (iii) In case of difference of opinion, the matter would be directly referred to the appellate authority, which is a new development.

98.4. Related Provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 98	Procedure on receipt of application	This section states the procedure to be followed by the authority on receipt of an application or by the Appellate authority on a reference made to it by the authority.
GST	Section 86	Appearance by authorised representative	This section defines the meaning of authorised representative (AR), who can be appointed as an AR, disqualification of AR etc.

98.5. FAQs

Q1. 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.

Q2. 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 98(5), then it shall be deemed that no advance ruling can be issued in respect of the question covered by the reference application.

98.6. MCQS

Q1. The AAR can refuse to give a ruling when:

- It relates to classification of goods or services
- If the issue is already decided by the Tribunal
- If the applicant is a resident
- If there is a difference of opinion between members of AAR.

Ans. (b) If the issue is already decided by the Tribunal

Q2. The AAR should pronounce the ruling within:

- 30 days
- 90 days
- 60 days
- 45 days.

Ans. (b) 90 days

Q3. 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

Legend:

- 1. AAR - Authority for Advance Rulings
- 2. AR - Authorized Representative
- 3. CGST - Central Goods and Service Tax
- 4. SGST - State Goods and Service Tax

99. 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 98, may appeal to the Appellate Authority.
- (2) Every appeal under this section shall be filed within a period of thirty days from the date on which the ruling sought to be appealed against is communicated to the prescribed or the jurisdictional CGST/SGST officer or, as the case may be, the applicant.
- (3) Every appeal under this section shall be in the prescribed form and shall be verified in the prescribed manner.

99.1 Introduction

This section deals with the procedure to be followed for filing of an appeal before the appellate authority against the order of the authority under section 98(4).

99.2 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.
- (iii) The appeal should be in prescribed form and verified in the manner prescribed by the Rules.
- (iv) The appellate authority as mentioned in section 96, 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.
- (v) The appeal shall be in the prescribed form.
- (vi) The appeal shall be verified in the prescribed manner.
- (vii) There is no mention of the fee to be paid by the appellant. This may be prescribed in the rules.

99.3 Comparative review

This is a new mechanism evolved hitherto was not prevalent in the pre-GST regime.

99.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 99	Appeal to the Appellate	This section describes who can file an appeal and the time limit within which it can

Statute	Section / Rule / Form	Description	Remarks
		Authority	be filed.
GST	Section 96	Appellate authority for advance ruling	This section discuss about constitution of appellate authority in each state and who will be its members.

99.5 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 98(4).

Q2. What is the time limit for filing an appeal before the appellate authority for advance ruling?

Ans. The time limit for filing an appeal before the appellate authority is 30 days from the date of communication of the advance ruling to the aggrieved party.

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.

99.6 MCQ

Q1. The appeal should be filed within _____ days of communication of the advance ruling

- (i) 30 days
- (ii) 60 days
- (iii) any time
- (iv) 90 days.

Ans. (i) 30 days

100. 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 99.
- (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.

100.1 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 99.

100.2 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, 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.

100.3 Comparative review

Under current tax laws, there is no provision for constitution of an appellate authority.

100.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 100	Orders of the Appellate	This section talks about passing of the order by the appellate authority, it's time limit,

Statute	Section / Rule / Form	Description	Remarks
		Authority	communication of the order and the situation where no advance ruling can be issued.

100.5 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 99(1), then it shall be deemed that no advance ruling can be issued in respect of the question covered under the appeal.

100.6 MCQS

Q1. Order should be passed within

- (i) 30 days
- (ii) 90 days
- (iii) 45 days
- (iv) 60 days, from the date of filing 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

101. 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 98 or section 100, 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.

101.1 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.

101.2 Analysis

- (i) 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 mistaken apparent on record.
- (ii) The rectification can be done within six months.
- (iii) The rectification cannot result in substantial amendment of the order.
- (iv) 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.
- (v) The authority may, within six months from the date of an order passed by it under section 98(4) on a question specified in the application, amend such an order.
- (vi) The Appellate authority may, within six months from the date of an order passed by it under section 98(6) on a reference made to it by the authority or under section 100 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.
- (vii) 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

101.3 Comparative review

Under current laws, there is no provision for rectification of advance ruling

101.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 101	Rectification of advance ruling	This section deals with the rectification of advance ruling, time limit within which it can be done and issue of 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.
GST	Section 98	Procedure on receipt of application	This section states the procedure to be followed by the authority on receipt of an application or by the Appellate authority on a reference made to it by the authority. Section 98(6) provides for time limit of 90 days for pronouncement of advance ruling.
GST	Section 100	Orders of the Appellate Authority	This section talks about passing of the order by the appellate authority, its time limit, communication of the order and the situation where no advance ruling can be issued.

101.5 FAQs

Q1. When an advance ruling order may be rectified?

Ans. An advance ruling order 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 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? What is the time limit for amendment 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:

- (a) enhancing the tax liability or
- (b) reducing the amount of admissible input tax credit.
- (c) 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.

Q3. Can the rectification be done upon request of public?

Ans. No provision for rectification on request of public.

101.6 MCQS

Q1. Rectification should be done within _____ 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

102. 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 97 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.

102.1 Introduction

It states the binding effect of an advance ruling.

102.2 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 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.

102.3 Comparative review

The provision is quite similar with the applicability of Advance Rulings provision 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.

102.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 102	Applicability of advance ruling	This section deals with the applicability of advance ruling and specifies the person on whom such ruling shall be binding.

102.5 FAQs

Q1. Is the advance ruling binding on other assesseees?

Ans. No, advance ruling is binding only on the assessee who as an applicant has sought advance ruling in relation to any of the matters specified in subsection (2) of section 97.

Q2. Are the tax authorities bound by the advance ruling?

Ans. It is 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 jurisdiction tax authorities in respect of the matter specified in section 97(2) till the time there is no change in the laws, facts or circumstances supporting the original advance ruling.

102.6 MCQS

Q1. The advance ruling is binding on the following persons:

- (a) AAR
- (b) appellate authority
- (c) Applicant
- (d) all assesseees.

Ans. (c) Applicant

103. 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 98 or under sub-section (1) of section 100 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 (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) 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.

- (2) A copy of the order made under sub-section (1) shall be sent to the applicant and the prescribed officers.

103.1 Introduction

It states the circumstances under which the ruling would be considered as void and hence would lose its binding value.

103.2 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 (after excluding the period beginning with the date of such advance ruling and ending with the date of order under this sub-section) 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) A copy of the order so made shall be sent to the applicant and the prescribed officers.

103.3 Comparative review

The provision relating to the circumstances when an advance ruling can be declared *void ab initio* are more or less same with the respective provision 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 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*.

103.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 103	Advance ruling to be void under certain circumstances	This section deals with the circumstances when an advance ruling shall be held void.

103.5 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 declared

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.

103.6 MCQS

Q1. The advance ruling can be withdrawn under 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

104. 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).

104.1 Introduction

It states in clear terms the powers conferred on the AAR and appellate authority in the discharge of its functions.

104.2 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 ¹section 195, but not for the purposes of ²Chapter 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 ³sections 193, 196 and 228 of the Indian Penal Code, 1860.

104.3 Comparative review

The powers remain exactly the same as has been specified in section 23G of Central Excise Act, section 28L of Customs Act and section 96G of the Finance Act.

104.4 FAQs

- Q1. What are the powers vested with the authority and the appellate authority?

¹Section 195 of CRPC deals with prosecution for contempt of lawful authority of public servants, for offences against public justice and for offences relating to documents given in evidence.

²This chapter deals with provisions as to offences affecting the administration of justice.

³Section 193 refers to punishment for false evidence. Section 196 refers to usage of evidence known to be false. Section 228 deals with intentional insult or interruption to public servant sitting in judicial proceeding.

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 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)

Q3. Whether the proceeding before the authority shall be deemed to be a judicial proceeding?

Ans. Every proceeding before the authority shall be deemed to be a 'judicial proceeding' within the meaning of section 193 and 228 and for the purposes of section 196 of the Indian Penal Code.

104.5 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

105. 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.

105.1 Introduction

It states the procedure to be followed by the AAR and the appellate authority in discharging its functions.

105.2 Analysis

The Authorities shall have the power to regulate its own procedure.

105.3 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.

105.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 105	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.

105.5 FAQs

Q1. Who should regulate the powers of AAR and appellate authority?

Ans. It is the Authority for advance ruling or, as the case may be Appellate authority have 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 – XX
Settlement of Cases

Chapter – XXI
Presumption as to Documents

106. Presumption as to documents in certain cases

107. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence

Statutory Provision

Section 106: 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 within or 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 107: Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence

- (1) Notwithstanding anything contained in any other law for the time being in force, —
- a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
 - b) a facsimile copy of a document; or
 - c) a statement contained in a document and included in a printed material produced by a computer (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 sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.
- (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.

106 / 107.1 Introduction

This chapter "Presumption as to Documents" (Chapter- XXI) of the Model GST law has two sections Section 106 dealing with " Presumption as to Documents in Certain Cases and Section 107 deals with "Admissibility of micro films, facsimile copies of documents and computer printouts as documents and evidence"

106 / 107.2 Analysis

As per the Webster Dictionary presumption means "a belief that something is true even though it has not been proved." Presumption, is an inference of fact drawn from other known facts, unless there is contrary evidence.

This presumption is rebuttable, since, any contrary evidence provided by the assessee, negates such presumption and such presumption is not a conclusive proof. The words "shall presume" in the Act suggest that the judge cannot refuse to draw the presumption.

In general practice the onus of proving relevance and genuineness of documents produced as evidence is on the person producing the said documents. This chapter deals with documents produced as evidence by prosecution. Further, this section has placed the onus of proving the contrary on the assessee i.e. the assessee has to prove that the documents provided by prosecution are not proper evidence.

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.

106 / 107.3 Comparative Review

Comparison to Central Excise

Sections 106 and 107 of the 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 print out 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 Act.

- 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.

106 / 107.6 MCQ

Q1. Document includes:

- (a) Written record
- (b) Printed Record
- (c) Electronic
- (d) all of the above

Ans. (d) all of the above

Chapter – XXII

Liability to Pay in Certain Cases

108. 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.

108.1 Introduction

This section deals with tax liability of a taxable person in case of transfer of business along with interest and penalties due in the following situations: –

- Arising before the transfer of business as a whole or in part; and
- Arising post transfer of business as a whole or in part.

108.2 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; or

- In any other manner
- Both transferor and transferee are jointly and severally liable for payment of amounts due upto the time of transfer of business (wholly or partly) –
 - tax liability;
 - Interest; or
 - penalty
 upto the time of transfer of the business (wholly or partly).
- Such amounts payable may have been determined and due before the transfer or determined after the transfer.
- 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

- As far as the liability to pay tax is concerned on the supply of goods and/or services made after transfer of business is clearly fastened on the transferee or the lessee of business.
- The business might be continued in his own name or in some other name.
- 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).

108.3. Comparative analysis with the present regime

In the present law under Central Excise¹, Customs² or Service Tax³ and also in any state VAT law there is no provision to make both the transferor and transferee jointly and severally liable for the taxes/other dues, even if it is determined after the transfer of business.

108.4. 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.

¹ Section 11 of CEA ' 1944

² Section 142 of Customs Act, 1962

³ Section 87 of Finance Act, 1994

Q3. What are the types of business transfers covered in Section 108?

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.

108.5 MCQs

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

109. 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 upto 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).

109.1 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.

109.2 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) 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.
- (iii) For GST purpose, this provision provides that such transactions effected shall be included in the turnover of supply or receipt of the respective companies and shall be liable to tax accordingly.
- (iv) In other words, till the date of order of amalgamation/merger, those companies shall be treated as distinct companies and should discharge their respective tax liabilities. .
- (v) Thus, this provision would eclipse the order of the Court/Tribunal/CG and its legal effect. 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.

109.3 Comparative analysis with the present regime

Under the present law there is no equivalent provision.

109.4 Related provisions

Statute	Section / Rule / Form	Description
Companies Act, 2013	Section 18	For words and expressions not defined in CGST Act reference may be made to the Companies Act, 2013

109.5 MCQs

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

110. 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).

110.1 Introduction

This section deals with the tax and other dues of a company in case it is wound up or liquidated.

110.2 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.

110.3 Comparative review

Under the present law there is no equivalent provision.

110.4 MCQs

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

111. 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.

111.1 Introduction

This section deals with the liability of a partner of a firm to pay any tax, interest or penalty.

111.2 Analysis

- (i) As per the provision, all the partners of a firm are liable severally and jointly for liability to pay tax, interest and penalty of the firm.
- (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.
- (iii) However, 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).
- (iv) The liability of the retired partner shall continue till the date of intimation is received by the Commissioner, unless intimation is given within one month from the date of retirement.

111.3 Comparative review

Under the present law there is no equivalent provision.

111.4 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.

111.6 MCQs

Q1. Retiring partner should intimate the retirement to

- a) Department
- b) Government
- c) Commissioner
- d) All of the above

Ans. c) Commissioner

Q2. 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

Q3. If the intimation is delayed to the Commissioner then the retiring partner is liable to pay tax dues till:

- a) the date of intimation to the Commissioner
- b) till the date of acceptance of intimation by the Department
- c) till the date of retirement
- d) till the date of show cause notice

Ans. a) the date of intimation to the Commissioner

112. Liability of guardians, trustees etc.

Statutory Provision

Where the business in respect of which any tax, 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.

112.1 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.

112.2 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) the person shall be liable to tax in respect of supplies is:
 - Guardian; or
 - Trustee; or
 - Agent;
- (ii) The tax, interest, penalty or any other dues which are recoverable from the minor or any such incapacitated person are
 - levied, assessed in the hands of guardian, trustee or agent.
 - collected from the 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.
- (v) 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.

112.3 Comparative review

Under the present law there is no equivalent provision.

112.4 FAQs

Q1. Who is liable for tax dues etc., in case of a business of minor or incapacitated person?

Ans. The Guardian, or the Trustee; or the Agent as the case may be who is conducting the business for the benefit of minor or incapacitated person

Q2. Whether the minor for whom the business is carried out by Guardian can escape liability on the ground of minority of the beneficiary?

Ans. The minor is deemed to be 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.

112.6 MCQs

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

113. 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.

113.1 Introduction

This section empowers collection of tax, interest or penalty from Court of Wards, Administrator General, Official Trustee or any receiver or manager, who controls the estate or any portion thereof in respect of the taxable person who owns a business and whose estate is being controlled.

113.2. Analysis

- (i) The following persons liable to discharge the tax, interest or penalty payable of the business of the taxable person whose estate or part thereof is under their control:
- 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 Rs. 20,00,000/- of CGST, interest and penalty to the Government. The department can recover such dues from Mr. ABC who is managing the estates of Mr. X., by invoking this provision.

- (ii) The dues are recoverable from the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager as if he is only conducting the business for himself.

113.3 Comparative review

Under the present law there is no equivalent provision.

113.4 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.

113.5 MCQs

Q1. If the estate or any portion of the estate of a taxable person is under the control of the Court of Wards, Administrative General etc., the tax due from such taxable person is liable to be paid by -

- a) Court of Wards.
- b) Taxable Person
- c) Legal representative of taxable person
- d) None of the above

Ans. a) Court of Wards

Q2. The Court of Wards, Administrative General, etc., must be appointed by-

- a) Supreme Court
- b) High Court
- c) Any court
- d) None of the above

Ans. c) Any Court

Q3. The dues recoverable under this section includes

- a) Only Interest
- b) Any dues which are recoverable under this Act
- c) Only tax
- d) Only Penalty

Ans. b) Any dues which are recoverable under this Act

114. Special Provisions regarding liability to pay tax in certain cases

Statutory Provision

- (1) Where a person, liable to pay tax 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 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 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 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.

114.1 Introduction

This section discusses about the person liable to pay taxes in certain situations viz., death of taxable person, partition of HUF/AOP, termination of guardianship or trust, dissolution of firm.

114.2 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 death¹

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.

¹ 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.

Termination of Guardianship or Trusteeship

- (i) In case the guardian is carrying the business on behalf of a guardian of a ward or the trustee who carries the business under the trust on behalf of beneficiary, then on the termination of guardianship or trusteeship,
- The ward or the beneficiary is liable to pay tax, interest or penalty upto the time of such termination.
 - The ward or the beneficiary is liable to pay tax, interest or penalty
 - determined before the termination of guardianship or trusteeship but not paid **or**
 - determined after such termination.

114.3 Comparative review

Under the present law there is no equivalent provision.

114.4 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 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. 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.

114.6 MCQs

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
- e) 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

115. 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 111, 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.

115.1 Introduction

This section discusses the liability of partners of firm or members of AOP or HUF on discontinued of business.

115.2 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 111.
- (iv) Discontinuance includes dissolution of firm or association and partition in case of HUF.
- (v) For the purpose of this section even an LLP is treated as a firm. For the purposes of other sections of this chapter such an explanation has not been given.

115.3 Comparative review

Under the present law there is no equivalent provision.

115.4 F AQs

- 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

115.5 MCQs

1. 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
2. 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 – XXIII

Miscellaneous Provisions

116 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.

116.1. 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.

116.2. 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

116.3. Comparative Review

Currently there is no rating system under any of the indirect tax laws.

116.4. 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.

116.5. 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.

117. 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

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.

117.1. Introduction

This is an administrative provision. This Section requires specified persons to furnish an information return with the prescribed authority.

117.2. 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:
<ul style="list-style-type: none"> • Taxable Person. • Local Authority, Other Public Body or Association. • Authority responsible for collecting VAT, Sales Tax, State Excise Duty, Central Excise Duty or Customs Duty. • Authority appointed under Income Tax. • Banking Company • State Electricity Board 	<ul style="list-style-type: none"> • 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

<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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.
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The periodicity, form and manner of filing such returns will be prescribed by way of Rules / Regulations.

Implications of non-compliance

1. If the details filed are defective:
 - Defect should be intimated to the person who has furnished such information return.
 - Reasonable opportunity should be given to rectify the defect in the return
 - Defect should be rectified within a period of 30 days from the date of such information or within such further period.

If the defect in the return is not rectified within the time prescribed, the information return should be treated as not submitted and penalty of Rs.100/- per day for each day during which the failure continues, would be payable.

2. If no return is filed:
 - May serve a notice requiring him to furnish such information return
 - Should then be filed within a period not exceeding 90 days from the date of service of notice

117.3. Comparative Review

The provision is similar to Section 15A of Central Excise Act, 1944.

117.4. Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 118	Penalty for non filing of Information Return	None

117.5.FAQs

Q1. What type of persons would be required to file the information return?

Ans. Any person who is responsible for maintaining any of the following would be required to file the information return.

- Records of registration
- Statement of accounts
- Periodic returns
- Details of payment of tax
- Any other details of transaction of goods or services
- Transaction relating to bank account
- Transaction relating to consumption of electricity
- Transaction of purchase
- Sales
- Exchange of goods or property
- Right or interest in a property

Q2. Is this return required to be filed by every taxable person?

Ans. No, only the persons responsible for maintaining any of the above mentioned records / details would be required to file this return.

118. Penalty for failure to furnish information return

Statutory provision

If a person who is required to furnish an information return under Section 117 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.

118.1. Introduction

This Section would be relevant where the information return as prescribed under Section 117 is not filed.

118.2. Analysis

If the person who is required to file an 'information return' as prescribed under Section 117 has not filed the return within the stipulated period of 90 days from the date of issue of show cause notice, a penalty of Rs.100/- per day shall be levied for each day for which the failure continues.

118.3. Comparative Review

The provision is similar to Section 15B of Central Excise Act, 1944.

118.4. Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 117	Filing of Information Return and issue of notice for non filing	None

118.5. FAQs

Q1. What would be the penalty for not filing the information return?

Ans. Penalty of Rs. 100 per day would be applicable for each day for which the failure continues.

Q2. Would penalty under this Section be payable for defective returns?

Ans. No, penalty for defective information returns would be payable under Section 117.

119. Power to collect statistics

Statutory provision

- (1) The Board/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 authorised 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

119.1. Introduction

This Section authorises the Board or Commissioner for the purpose of administration of the Act, to collect any statistics relating to any matter that may be required.

119.2. Analysis

- The Board or 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.

119.3. Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 120	Disclosure of information collected under Section 119	None

120. Disclosure of Information required under Section 119

Statutory provision

- (1) No information of any individual return or part thereof, with respect to any matter given for the purposes of Section 119 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 119,-
 - (a) without reasonable cause fails to furnish such information or return as may by that Section be required, or
 - (b) willfully 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 119 or compilation or computerization thereof willfully 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.

120.1.Introduction

This Section discusses about the way in which the information obtained under Section 119 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.

120.2.Analysis

— Any information obtained under Section 119 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 Rs.100/- for each day for which the offence continues upto a maximum of Rs.1,000/- would be applicable.

— Any person who is engaged in connection with collection of statistics under Section 119 or compilation or computerisation 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 Rs.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.

120.3.Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 119	Provisions for collection of statistics and filing of returns	None

121. Test purchase of goods and or services

Statutory provision

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 paid towards the goods after cancelling any tax invoice or bill of supply issued.

121.1. Introduction

This Section enables Commissioner or any person authorised by him to effect test purchase goods and services from the business premises of any taxable person for specified purposes.

121.2. Analysis

In order to check the issue of tax invoice or bills of supply by a taxable person, the Commissioner or any person authorised by him may purchase goods or services on a test basis from the business premises of a taxable person.

Further, in respect of goods, on return of the goods which were purchased by the officer, the taxable person would be required to refund the amount paid towards the purchase of goods and cancel the tax invoice or bill of supply issued for the same.

121.3. FAQs

1. For what purposes can test purchases be made?

Ans. Test purchases can be effected only for the purposes of checking the issue of tax invoice or bill of supply, as the case may be.

2. Will test purchases be applicable for both, goods and services?

Ans. Yes, it will be applicable for both, goods and services.

3. Who can effect test purchases?

Ans. The Commissioner or any other person who is authorised by the Commissioner may effect test purchases.

122. 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.

122.1. Introduction

This Section discusses about authority of the GST officers to draw sample of goods.

122.2. 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.

122.3. FAQs

Q1. For what purposes can test purchases 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 test purchases?

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.

123. Burden of Proof

Statutory provision

If any person claims that he is not liable to pay tax under the Act in respect of any supply of goods and/or services, or that he is eligible for input tax credit under Section 16, the burden of proving such claim or claims shall lie on him.

123.1 Introduction

This provision places the burden on the taxable person to prove his claims.

123.2 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.

123.3 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.

123.4 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

124. 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).

124.1 Introduction

This provision designates all the persons under this Act are public servants.

124.2 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.

124.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 125	Indemnity for all officers for anything done under this Act	None
CGST	Section 126	Disclosure of information by a public servant	None

125. Indemnity

Statutory provision

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.

125.1 Introduction

This Section protects the GST officers from legal proceedings for acts done in good faith.

125.2 Analysis

For anything done by any GST officer in good faith under the provisions of this Act, they would be made immune from any legal proceedings.

125.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 124	Deemed as public servants	All officers performing any function under this Act are designated as 'public servants'.
CGST	Section 126	Disclosure of information by a public servant	None

126. 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.

126.1 Introduction

- (i) 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.
- (ii) It also lays down the penal clauses for the violation of the confidentiality.

126.2 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 appear 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 11 – 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).

126.3 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.

126.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 124	Deemed as public servants	All officers performing any function under this Act are designated as 'public servants'.
CGST	Section 125	Indemnity from legal proceedings	None

126.5 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.

126.6 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. (d) All of the above

127. 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 79 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.

127.1 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.

127.2 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 79¹) has expired and the persons involved, did not present any appeal (OR)
 - The appeal is presented and it is disposed of (against such persons).

127.3 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.

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)

Law	Distinction in the proposed GST draft
	In fact, there is a Circular No.1009/16/2015 – CX dt. 23.10.15, which insists that the power to publish information is being exercised very sparingly by the Courts and has given a clear direction that in deserving cases, the department should make a prayer to the Court to invoke this Section in respect of all persons who are convicted under the Act. However, this has been omitted in the new draft.
Service Tax (Sec.73D)	<p>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).</p> <p>In the above rules, the situations for publication and the detailed process flow along with documentation are prescribed.</p> <p><i>The words “as prescribed” do not find place in the draft GST law.</i></p> <p><i>This leaves the decision to publish solely to the discretion of the Competent Authority. Further, there are no enabling provisions u/s 132 to confer powers to the Governments to frame rules for such publication. Sec.132A has also not listed out the specific areas wherein the Board / Commissioner SGST can frame regulations.</i></p>
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 <i>subject to such conditions as may be prescribed.</i> (For e.g. Sec.79 of the TNVAT Act, 2006)

127.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 79	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.79 is relevant.

127.5 FAQs

Q1. Should prosecution proceedings alone be published?

Ans. No, Sec.127 uses 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.127, 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.127 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.127 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.127 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.

127.6 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. (d) 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

128. 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.

128.1 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.

128.2 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.

129. Rectification of mistakes or errors apparent from record

Statutory provision

Without prejudice to the provisions of Section 128, 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.

129.1 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.

129.2 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.

129.3 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.

129.4 Related provisions

Statute	Section / Rule / Form	Description
Central Excise Act, 1984	Section 35C. Orders of Appellate Tribunal.	The Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it
Chapter V of the Finance Act, 1994	Section 74. Rectification of mistake	With a view to rectifying any mistake apparent from the record, the 4[Central Excise Officer] who passed any order under the provisions of this Chapter may, within two years

Statute	Section / Rule / Form	Description
		of the date on which such order was passed, amend the order.
Income-tax Act, 1961	Section - 154	With a view to rectifying any mistake apparent from the record an income-tax authority referred to in Section 116 may,— (a) amend any order passed by it under the provisions of this Act; (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

129.5 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.

129.6 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. 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

130. Bar of jurisdiction of civil courts

Statutory provision

Save as provided by Section 87 and 88, 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;

130.1 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 87 and 88, 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.

130.2 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 87 relates to appeal on substantial question of law to High Court and Section 88 a leave to appeal therefrom.

130.3 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.

131. 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.

131.1 Introduction

This provision empowers the Central Government to collect fees for supplying photo copy of the orders / documents.

131.2 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.

131.3 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.

131.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	131	Powers to Levy	Fees to be collected for giving copies of any order / document.

131.5 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.

131.6 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

132. Power of Central (or State) Government to make rules

Statutory provision – S. 132

- (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) provide for the remission of tax leviable on any taxable supplies, which due to any natural causes are found to be deficient in quantity, the limit or limits of percentage beyond which no such remission shall be allowed and the different limit or limits of percentage for different varieties of the same taxable supply or for different areas or for different seasons;
 - (ix) specify the persons who shall get themselves registered under Section 19 and the time, manner and form in which application for registration shall be made;

- (x) provide for the manner of verification of application and issue of registration under the Act and the fees, if any, to be charged therefor;
- (xi) provide for the situations and manner of grant of deemed registration under the Act;
- (xii) provide for the manner of migration, amendment, surrender, revocation, suspension, cancellation of registration under the Act;
- (xiii) 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;
- (xiv) 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;
- (xv) 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;
- (xvi) provide for charging or payment of interest under the various provisions of the Act;
- (xvii) 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;
- (xviii) authorise and regulate the composition of offences against, or liabilities incurred under the Act or the rules made thereunder;
- (xix) provide for the amount to be paid for compounding and the manner of compounding of offences under Section 78;
- (xx) 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;
- (xxi) provide for the manner of recovery of any amount due to the Central Government (or state government) under Section 54;
- (xxii) 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;
- (xxiii) specify the form and manner in which application for refund shall be made under Section 38;
 - (xxiv) 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;
 - (xxv) specify the forms in which appeals, applications and memoranda of cross objections shall be filed and verified under Chapter XVIII of the Act;
 - (xxvi) 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 81 of the Act, and other matters related or incidental thereto;
 - (xxvii) provide for the settlement of cases, in accordance with Chapter of this Act;
 - (xxviii) 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;
 - (xxix) 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;
 - (xxx) 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;
 - (xxxi) 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;
 - (xxxii) 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;
 - (xxxiii) 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;
 - (xxxiv) 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 38;

- (xxxv) 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;
 - (xxxvi) 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;
 - (xxxvii) provide for the manner of provisional attachment of property under Section 58;
 - (xxxviii) make provisions for determining export of taxable supply of services;
 - (xxxix) provide for grant of exemption to, or rebate of tax paid on, taxable supply of services which are exported out of India;
 - (xl) provide for manner of administering of payment of taxes under the compounding of tax;
 - (xli) provide for dealing with situations where goods are returned;
 - (xlii) provide for specifying the details to be given in the invoices, the maintenance of accounts, the furnishing of audit reports, and matters related thereto;
 - (xliii) provide for the qualifications and the manner of appointment of the Advance Ruling authority under Section 95 of the Act, and other matters related to functioning of the authority;
 - (xliv) 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; (xlv) provide for matters relating to tax deducted at source; (xlvi) provide for matters covered by Chapter XXV; (xlvii) 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; and (xlviii) 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

132.1 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 132A regarding regulations. While under this Section the Government is given the power to make rules, under Section 132A 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.

132.2 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 than 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 Rs.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.

132.3 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.

132.4 Related provisions

Statute	Section / Rule / Form	Description
Central Excise Act, 1984	Section 37. Power of Central Government to make rules.	(1) The Central Government may make rules to carry into effect the purposes of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may - (i) provide for determining under Section 4 the nearest ascertainable equivalent of the normal price
Chapter V of the Finance Act, 1994	94. Power to make rules. -	(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter. 7(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

132.5 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.

132.6 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

132A. General Power to make Regulations

132A.1 Introduction

While topics for rule making are listed under Section 132 leaving the domain to the appropriate Government, topics for making regulation listed under Section 132A are reserved for the Board or Commissioner of SGST. These are mutually exclusive domains

132A.2 Analysis

The Board or 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.

132A.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

133. 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.

133.1 Introduction

This enables the Competent Authority to delegate the power exercisable by one authority to another.

133.2 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.

133.3 Comparative review

Delegation of powers for administrative exigencies is part of laws dealing with administrative powers

133.4 Related provisions

Statute	Section / Rule / Form	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;

Statute	Section / Rule / Form	Description
		<p>b) any power exercisable by a Commissioner of Central Excise under this Act may be exercisable also by a Joint Commissioner of Central Excise or an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise empowered in this behalf by the Central Government;</p> <p>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</p> <p>d) any power exercisable by an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise under this Act may be exercisable also by a gazetted officer of Central Excise empowered in this behalf by the Board.</p>

133.5 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.

133.6 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

134. Instructions to GST Officers

Statutory provision

The Competent Authority 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.

134.1 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.

134.2 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 than 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.

134.3 Comparative review

Central Excise, Customs, majority of the State VAT enactments and Income Tax contain similar provisions.

134.4 Related provisions

Statute	Section / Rule / Form	Description
Central Excise Act, 1984	Section 37B. Instructions to Central Excise Officers. -	<p>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 :</p> <p><i>Provided</i> that no such orders, instructions or directions shall be issued) so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or</p> <p>b) so as to interfere with the discretion of the Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.</p>

134.5 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

3. 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

135. 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, by general or special order published in the Gazette, do anything not inconsistent with the provisions of the Act 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.

135.1 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.

135.2 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.

135.3 Comparative review

The above provisions are present across almost all tax legislations, to ensure that any practical difficulties in implementation can be addressed.

135.4 Related provisions

This is an independent Section and would be applicable for implementation of all provisions of the GST Law.

135.5 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 135?

Ans. The Maximum time limit is 2 years from the date of effect of relevant provision.

Q4. Whether prior approval of the Parliament / State Legislature is required?

Ans. No, the order must be placed before the Parliament / State 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.

135.6 MCQs

Q1. Who can issue the Order?

- (a) Central Government
- (b) State Government
- (c) Either
- (d) None

Ans. (c) Either

Q2. Whether Prior approval of the Parliament is necessary?

- (a) Yes
- (b) No

Ans. (b) No

Q3. 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

136. 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 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 facsimile message, if such address is furnished, or
 - (d) by sending a communication to his e-mail address, or
 - (e) on dashboard of the taxpayer if available on the web-site, or
 - (f) by sending a message on his registered mobile number, or
 - (g) 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
 - (h) 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
 - (i) if the mode prescribed under (h) 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, 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.

136.1 Introduction

Service of communication is an essential step of any process of law. This Section details the mode of service that is considered valid.

136.2 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 – Post or Courier with acknowledgement due:**
 - It can be sent to the person for whom it is intended or his authorised agent, if any, at his last known place of business or residence
 - (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).

136.3 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	<ul style="list-style-type: none"> - 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)	<p>Delivery through messenger or by courier to following persons are accepted:</p> <p>A person regularly employed by him in connection with the business /</p> <p>Any adult member of family residing with the taxpayer</p>
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	<p>The proposed Section covers any communication issued under the law.</p> <p>In the present Central Excise Law, Section 37C covers decision / order / summons / notice.</p> <p>Any communication might include intimation letters sent under the law, trade letters issued, acknowledgments issued etc.</p>

136.4 Related provisions

Section 136 relates to all communications issued under the law and hence any communication given under any provision, shall be governed by this provision,

136.5 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.

136.6 MCQs

Q1. Among the following, which method is not approved?

- (a) Post
- (b) Courier
- (c) Email
- (d) Notice to Addressee's Debtors

Ans. (d) Notice to Addressee's Debtors

Q2. Among the following, to whom the notice cannot be served?

- (a) Authorised Agent
- (b) Family Member
- (c) Employee
- (d) Partner

Ans. (d) Partner

Q3. In case of registered post, if acknowledgment is not received within time, what shall be the date of service of notice?

- (a) Reasonable Time
- (b) Not considered as delivered
- (c) 30 days from sending the registered post
- (d) 45 days from sending the registered post

Ans. (a) Reasonable Time

137. 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.

137.1 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.

137.2 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.

137.3 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.

137.4 Related provisions

This provision shall apply to any amount calculated under the other provisions of the Act.

137.5 FAQs

- Q1. If the Show Cause Notice mentions the tax as Rs.102.30 and penalty as Rs.102.30, then what is the amount payable?
- Ans. As per Sec.137, if the paise is less than 50 then that part has to be ignored. Total amount payable is Rs.102 + Rs.102 = Rs.204.
- Q2. Whether the rounding off provision applies to Pre-deposit?

Ans. Yes, any amount payable under the act is subject to rounding off provisions. Hence, even Pre-Deposit is rounded off as per the above Section.

Q3. If the assessee has raised multiple invoices, then the rounding off is to be made for the consolidated amount of tax or for the tax amount mentioned in each invoice?

Ans. Rounding off must be made for the tax payable under the Act. It applies to each invoice as tax is payable on each invoice. Further, the rounding off must be made for each part of tax (CGST and SGST separately).

137.6 MCQs

Q1. If the amount of tax is Rs.2,15,235.50, then the amount shall be rounded off as:

- (a) 2,15,236
- (b) 2,15,235
- (c) 2,15,235.50
- (d) 2,15,240

Ans. (a) 2,15,236

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) All of the above

Q3. Which of the following shall be rounded off?

- (a) CGST
- (b) SGST
- (c) Both
- (d) None of the above

Ans. (c) Both

138. 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.

138.1 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.

138.2 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.

138.3 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.

138.4 Related provisions

This provision shall apply to any amendment / cancellation of any rule / notification / order (issued under the Act / rules).

138.5 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.

138.6 MCQs

Q1. Any amendment made in a rule will have Effect?

- (i) Prospective
- (ii) Retrospective
- (iii) No
- (iv) Overriding

Ans. (i) Prospective

Q2. Penalty for the period prior to change shall be decided as per law

- (i) New
- (ii) Old
- (iii) Both
- (iv) None

Ans. (ii) Old

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) Allowed

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
- (iii) Applied subject to discretion of the department
- (iv) Partially applied

Ans. (ii) No

139. 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.

139.1 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.

139.2 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.

139.3 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.

139.4 Related provisions

Such Provision is applicable for any order / notification / rule made under the provisions to be specified in the above Section.

139.5 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.

139.6 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) Rules

Q2. How many days the notifications / rules / order must be placed?

- (a) 45
- (b) 30
- (c) 60
- (d) 100

Ans. (b) 30

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) Both modify and annul

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) All of the above orders

Chapter – XXIV

Repeal and Saving

140. Repeal and Saving clause

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, 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, 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.

140.1 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.

140.2 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 Amendment in 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 during the pendency of the appeal.*
 - 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, 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.*

140.3 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 CGST 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.

140.4 FAQ

- 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. For the said purpose, the 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 law, Central Excise Act, 1944 and Central Excise 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

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 Constitutional Amendment in 2016 would continue to apply to certain goods. Consequently VAT laws would continue to that extent.

Q7. After introduction of GST what is the fate of all departmental appeals filed during the pre-GST regime?

Ans. It would continue and would not abate.

Q8. After introduction of GST whether Department can continue to investigate the offences allegedly committed under the old regime?

Ans. Investigation can continue and SCN can be issued later.

Q9. Can the Supreme Court dismiss all indirect tax appeals pending before it on the ground that GST Act has been introduced?

Ans. The appeals already instituted would be heard by the Supreme Court and would not abate or be dismissed.

140.5 MCQ

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 – XXV

Transitional Provisions

141. 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 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 need to take care of matters not specifically covered hereinbefore so long as such matters are not in conflict with the purposes of the Act.

141.1 Introduction

This transition provision enables 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.

141.2 Analysis

Through this provision, the Officers who would be 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:

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. For eg: 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 is not answered.

141.3 Comparative review

There are no equivalent provisions relating to appointment of Officers under the existing laws, for the reason that current tax laws have not gone through any such transition at the national level.

141.4 FAQs

Q1. Who can be appointed as GST officer?

Ans. The Officers who would be administering the current tax / levies that are being subsumed into GST would be appointed as GST officers

Q2. Can a food inspector under the State law be appointed as GST Officer?

Ans. No, as he is not an officer administering the VAT law currently.

141.5 MCQs

Q1. This transition provision enables the VAT Officers under the current tax regime (that are being subsumed into GST) to continue as _____

- (a) VAT Officers
- (b) GST Officers
- (c) Central Excise Officers
- (d) Income Tax Officers.

Ans. (b) GST Officers

142. Migration of existing Tax Payers to GST

Statutory provision

- (1) On the appointed day, every person registered under any of the earlier laws 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 sub-section (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 sub-section (1) shall, subject to the provisions of section 19, 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 sub-section (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 19.

142.1 Introduction

This transition provision deals with migration of existing registrants into the GST laws. All existing registrants 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.

142.2 Analysis

As a part of implementation of GST, the existing tax payers / registrants 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) Person who holds a provisional certificate of registration is required to furnish certain information as prescribed within prescribed time period;
- (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.

142.3 Comparative review

This provision is broadly comparable to the provisions relating to migration of registrations from the erstwhile Sales Tax Law into the Value Added Tax Laws at the time of introduction of VAT law, primarily in 2004/2005.

It is 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.

142.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 19	Registration	Liability of taxable persons to register
GST	Section 20(1) & 20(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 that 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.

142.5 MCQ

Q1. What will be the process for verification of premises?

Ans. GST regime proposes to move towards a paperless administration where Information Technology would play the major part in administration. Thus, physical verification of premises might not be intended to by the Government. However, the Department may reserve all rights to make such inspection, especially in cases of new registrants.

142.6 MCQ

Q1. A Certificate of registration issued to the existing dealers shall remain valid for:

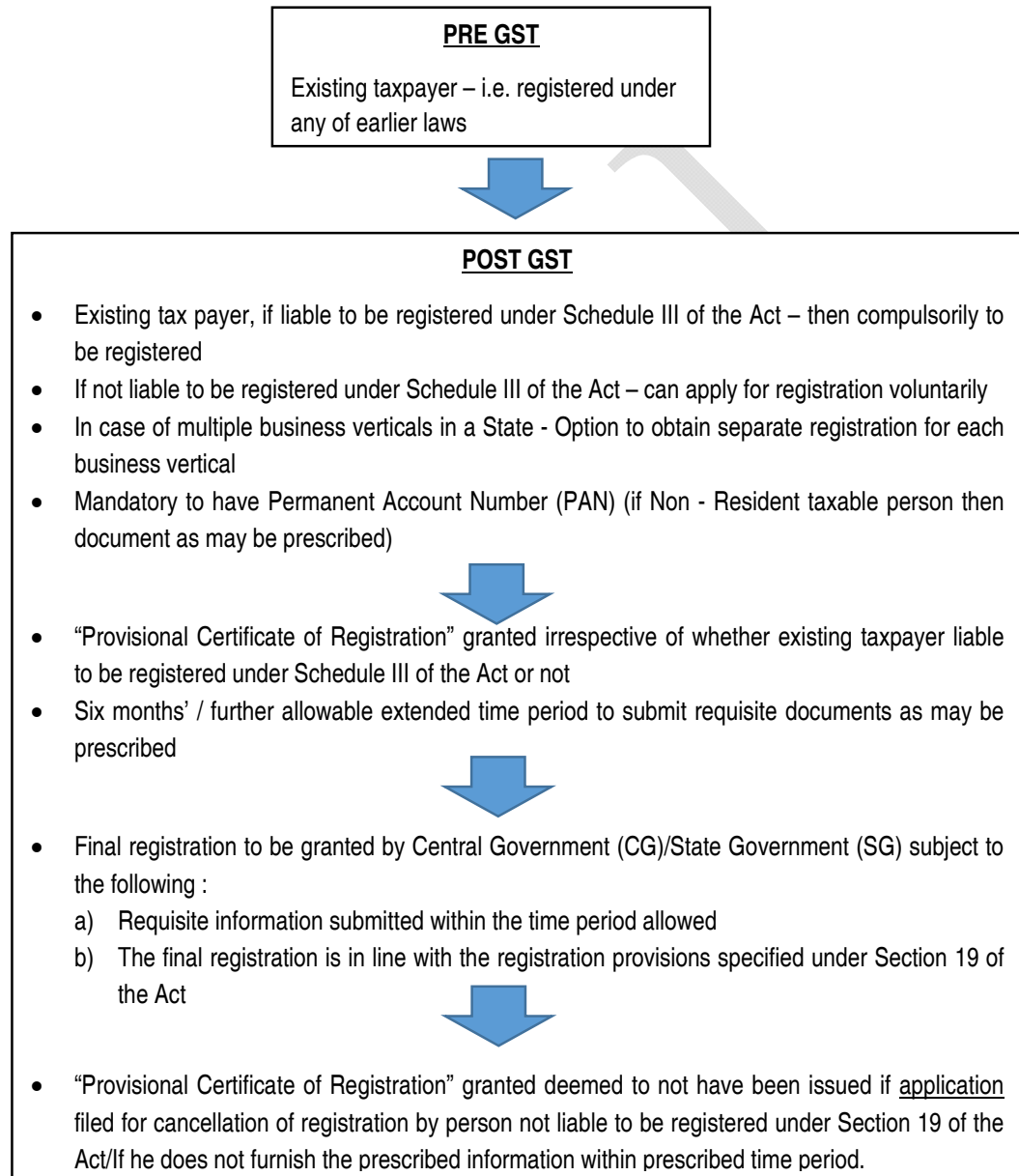
- (a) 6 months
- (b) 12 months

(c) 3 months

(d) 9 months

Ans. (a) 6 months

Pictorially, Analysis of this transition provision can presented as follows



143. Amount of CENVAT credit carried forward in a return to be allowed as input tax credit

Statutory provision

- (1) A registered taxable person shall be entitled 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 the taxable person shall not be allowed to take credit unless the said amount was admissible as CENVAT credit under the earlier law and is also admissible as input tax credit under this Act.

- (2) The amount taken as credit under sub section (1) shall be recovered as an arrear of tax under this Act from the taxable person if the said amount is found to be recoverable as a result of any proceeding instituted, whether before or after the appointed day, against such person under the earlier law.

CGST law

- (1) A registered taxable person shall be entitled to take, in his electronic credit ledger, a credit of the amount of Value Added Tax 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 the taxable person shall not be allowed to take credit unless the said amount was admissible as credit of input tax under the earlier law and is so admissible under this Act.

- (2) The amount taken as credit under sub section (1) shall be recovered as an arrear of tax under this Act from the taxable person if the said amount is found to be recoverable as a result of any proceeding instituted, whether before or after the appointed day, against such person under the earlier law.

SGST law

143.1 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.

143.2 Analysis

The amount of any input credit carried forward in a return, which is unutilized under the current tax regime may be carried forward into the GST regime. It is important to note that such credit carried forward under the earlier law is also ADMISSIBLE AS INPUT CREDIT UNDER GST LAW.

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
Details of credit to be carried forward	<ul style="list-style-type: none"> - Central Excise paid on 'inputs' /capital goods - Countervailing duty paid on 'inputs'/capital goods - Special Additional Duty paid on 'inputs' /capital goods - NCCD paid on 'inputs' - AED paid under AED (TTA) Act, 1978 on 'inputs' - AED paid under AED (GSI) Act, 1957 on 'inputs' - Service tax paid on 'input services' – both direct or reverse charge 	<ul style="list-style-type: none"> - VAT paid on 'inputs' - VAT paid on 'capital goods'
Conditions	<ul style="list-style-type: none"> - Should/Must qualify for input credit under both, the existing law and the GST law - Should/Must have been reflected as input credit carried forward in the return filed for the last month / period under the existing law, viz., last monthly return or quarterly return or the or half yearly return, as the case may be 	
Form in which the credit would be availed under the GST Law	<ul style="list-style-type: none"> - Would be available as a balance in the electronic credit ledger of the tax payer 	
In case of incorrect claim under the old law	<p>Will be recovered as an arrear of tax under the GST Act. Applicable interest and penalties will apply under GST laws.</p> <p>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 this credit can be interchanged.</p>	

It is 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.

Illustration 1: Assume that GST is applicable from 1st April, 2017 and the amount of credit as per the return for the period ending 31st March, 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 April, 2017?

Ans. The amount of CGST and SGST to be brought forward on 1st April, 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	40,000
Additional Duty u/s 3(5) of CTA	30,000
Total CGST	390,000

143.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 9 read with Schedule III	Meaning of 'taxable person'	Only taxable person is allowed to carry forward Input Tax Credit from the last return under the earlier law.
GST	Section 2(41)	Definition of 'Electronic Credit Ledger'	Input tax credit will be taken in this document.
GST	Section 16	Manner of taking input tax credit	This is for determining the admissibility of Input tax credit under the GST law
GST	Section 54	Recovery of tax	For recovery of arrears of tax under GST for demand arising from proceedings under earlier law

143.4 FAQs

Q1. Will the credit be available if the Invoice is made on or before 31st March, 2017 but is received by the supplier on or after 1st April, 2017 assuming the applicability of GST from 1st April, 2017?

Ans. The GST law does not talk about the allow ability of input tax credit if the invoice has

been made on or before 31st March, 2017 where the tax has been charged under the earlier law and the same has not been taken as input tax credit in the return furnished.

Q2. Will Education Cess and Secondary and Higher Education Cess which is being carried forward as per the return be allowed to be carried forward as CGST?

Ans. Yes, all the input tax credit allowable as per Rule 3 of the CENVAT Credit Rules, 2004 will be eligible as CGST. This includes Education Cess and Secondary and Higher Education Cess.

Q3. Will there be any differential treatment of Swachh Bharat Cess and Krishi Kalyan cess w.r.t. carry forward as CGST?

Ans. Yes, for service providers, Krishi Kalyan Cess is allowable as CENVAT Credit under the CENVAT Credit Rules, 2004 while Swachh Bharat Cess is not. So, Swachh Bharat Cess will not be carried forward while Krishi Kalyan Cess will be carried forward as CGST. However for Manufacturer even KKC will not be allowed.

Q4. If the amount of duty, tax or cess carried forward as per the accounts is different from the return, which amount will be allowed to be carried forward?

Ans. The amount of duty, tax or cess carried forward as per the accounts will be immaterial. The input tax credit carried forward as per the last return under the earlier law for the period ending with the day preceding the day when the GST becomes applicable will only be taken into account.

143.5 MCQs

Q1. What will be the amount carried forward as CGST/SGST from the earlier law And shown in the return filed for the period ending as on appointed date?

- (a) No amount will be carried forward from the earlier law
- (b) Amount which is admissible under earlier law but may not be admissible under GST
- (c) Amount which is admissible under GST but may not be admissible under earlier law
- (d) Amount which is admissible under both the GST and earlier law

Ans. (d) Amount which is admissible under both the GST and earlier law

Q2. Which amount will be carried forward as CGST under GST law (Assuming applicability of GST from 1st April, 2017)?

- (a) Input tax credit as per the CENVAT Credit Register on 31st March, 2017
- (b) Input tax credit as per the Balance Sheet as on 31st March, 2017
- (c) Input tax credit as per the return furnished for the period ending 31st March, 2017
- (d) Input tax credit as per the last available return furnished under the earlier law

Ans. (c) Input tax credit as per the return furnished for the period ending 31st March, 2017

Q3. Input tax credit as per the VAT law will be carried forward as:

- (a) CGST
- (b) SGST
- (c) IGST
- (d) CGST or SGST at the option of the supplier

Ans. (b) SGST

Q4. Which among the following is not admissible as Opening CGST?

- (a) Krishi Kalyan Cess
- (b) Education Cess
- (c) Service Tax
- (d) Swachh Bharat Cess

Ans. (d) Swachh Bharat Cess

144. Unavailed CENVAT Credit on capital goods, not carried forward in a return, to be allowed in certain circumstances.

- (1) A registered taxable person 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 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.

- (2) The amount taken as credit under sub-section (1) shall be recovered as an arrear of tax under this Act from the taxable person if the said amount is found to be recoverable as a result of any proceeding instituted, whether before or after the appointed day, against such person under the earlier law.

(CGST Law)

- (1) A registered taxable person 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 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.

- (2) The amount taken as credit under sub-section (1) shall be recovered as an arrear of tax under this Act from the taxable person if the said amount is found to be recoverable as a result of any proceeding instituted, whether before or after the appointed day, against such person under the earlier law.

144.1 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.

144.2 Analysis

This provision is applicable only for capital goods. It is only in respect of such capital goods which were purchased or received (as relevant under the current law – explained below) and there remains an unavailed portion of credit. (meaning of unavailed portion is provided under Explanation 1 to sub Section (1)), of the respective law i.e., CGST or SGST laws.

Thus, in the above cases, there could be unavailed portion of Credit / input credit which in the normal course would have been claimed in the year 2017 (after GST Law is implemented). This Section enables the claim of such unavailed credit. However, if there are no capital goods in respect of which any credit is remaining to be claimed, this provision would not be applicable.

Most States in India have meanings assigned to the words “capital Goods” in their respective local statutes. Capital goods have been defined under GST laws in terms of section 2(20) and it is therefore important to avail such credit after due consideration of the definition under the old and new laws.

To explain further:

- 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 paid ought to be claimed in the same financial year in which the capital goods are received and the balance of the 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.

Eg 1: A manufacturer purchased a capital asset worth Rs. 11,25,000 (including excise duty of Rs. 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. Rs. 62,500. The unavailed CENVAT Credit on capital goods as on 1st April, 2017 will be Rs. 125,000 – 62,500 = Rs. 62,500.

Eg 2: CENVAT Credit on Capital Goods used outside the factory of manufacturer is not allowable²². So, it will not be admissible as input tax credit in the GST Law either.

²² Madras Cement v. CCE 2003 (158) ELT 293 = 56 RLT 978 (CESTAT 3 member bench)

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.

A supply which was taxable under the earlier law becomes exempt as per the GST law. Since, Input Tax Credit in respect of exempt supplies is not admissible under the GST law, the unavailed credit on capital goods will not be allowed.

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 carried forward	<ul style="list-style-type: none"> - Central Excise paid on 'capital goods' - Countervailing duty paid on 'capital goods' - Special Additional Duty paid on 'capital goods' 	<ul style="list-style-type: none"> - VAT paid on 'capital goods'
Conditions	<ul style="list-style-type: none"> - 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	<ul style="list-style-type: none"> - Would be available as a balance in the electronic credit ledger of the tax payer 	
In case of incorrect claim under the old law	It will be recovered as an arrear of tax under the GST Act. Applicable interests and penalties will apply under GST laws.	

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. It is thus 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.

144.3 Comparative review:

The closest comparison would be to the migration from the Sales Tax Law into the VAT law. However, since the Sales Tax Laws did not provide for any credit mechanism, the question of transfer of unutilized credit as on the date of migration did not arise.

144.4 Related provisions:

Statute	Section / Rule / Form	Description	Remarks
GST	Section 9 read with Schedule III	Meaning of 'taxable person'	Only the taxable person will be allowed to take the unavailed Input Tax Credit on capital goods under GST law
GST	Section 2(41)	Definition of 'Electronic Credit Ledger'	Input tax credit will be taken in this document.
GST	Section 16	Manner of taking input tax credit	This is for determining the admissibility of Input tax credit under the GST law
GST	Section 54	Recovery of tax	For recovery of arrears of tax under GST for demand arising from proceedings under earlier law

144.5 FAQs

Q1. Can Input Tax Credit under GST be availed on 1st April, 2017 if Capital Goods were purchased during the year 2016-17 but no CENVAT Credit was availed during the year 2016-17? If yes, then what percentage of credit will be available? Assume applicability of GST from 1st April, 2017.

Ans. Yes, the full Input tax credit will be available for Capital Goods under GST.

Unavailed CENVAT credit = Aggregate entitlement of CENVAT Credit on capital goods - Input Tax Credit already availed under the earlier law

Here, the Input Tax credit already availed will be zero. As per Rule 4(2)(b) of the CENVAT Credit Rules, the balance CENVAT Credit on capital goods which has not been availed in the first year will be available in any financial year subsequent to the financial year in which it was purchased. Therefore, the unavailed CENVAT Credit in this case will be the full amount of duty paid on Capital goods.

Therefore, the full unavailed CENVAT Credit can be taken as CGST on 1st April, 2017 if the same is admissible as per the earlier law and the GST law.

Q2. Can Input Tax Credit under GST be availed on 1st April, 2017 if Capital Goods were purchased before 1st April, 2016 but no CENVAT Credit or partial CENVAT Credit was availed till the year 2016-17? Assume applicability of GST from 1st April, 2017.

Ans. Unavailed Input Tax Credit on Capital Goods will be allowed if the same is admissible both under the earlier law as well as the GST law.

As per Rule 4(2)(b) of the CENVAT Credit Rules, the balance CENVAT Credit on capital

goods which has not been availed in the first year will be available in any financial year subsequent to the financial year in which it was purchased.

Also, the CENVAT Credit Rules does not prescribe any time limit for availment of CENVAT Credit on Capital Goods.

Even, the GST law does not contain any time limit for availment of Input Tax Credit on Capital Goods.

Therefore, the Input Tax Credit on Capital Goods which has not been availed till 1st April, 2017 will be allowed without any time limit.

Q3. Will the answer in Q(b) above be applicable if instead of Capital Goods, inputs had been purchased before 1st April, 2016?

Ans. If inputs had been purchased before 1st April, 2016, then no Input tax Credit would be available under GST. The CENVAT Credit Rules, 2004 clearly provide for a time period of one year from the date of issue of invoice for allowability of CENVAT Credit. If this period of one year elapses, no Input Tax Credit will be admissible under the CENVAT Credit Rules. Hence, the same would not be available under GST either.

Q4. Can unavailed Input Tax credit on inputs and input services be taken in GST law if the same was not taken in the earlier law?

Ans. The GST law specifically allows unavailed Input Tax credit in respect of only capital goods and not inputs and input services. So, Prima facie, the Input tax credit on inputs and input services which has not been availed cannot be taken in GST. However, the conditions and restrictions for admissibility of input tax credit may be prescribed by the Central Government under Section 16(1) and other relevant provisions of Chapter V of the GST Law which may state otherwise.

144.6 MCQ

Q1. Which of the below is the condition for taking the unavailed CENVAT Credit on Capital Goods?

- (a) Unavailed CENVAT Credit should have been carried forward in the return
- (b) Unavailed CENVAT Credit should not have been carried forward in the return
- (c) Treatment of unavailed CENVAT Credit under the return is immaterial
- (d) Availed CENVAT Credit should not have been carried forward in the return

Ans. (b) Unavailed CENVAT Credit should not have been carried forward in the return

Q2. Unavailed CENVAT Credit on Capital Goods will be carried forward as?

- (a) CGST
- (b) SGST
- (c) IGST

(d) CGST or SGST at the option of the supplier

Ans. (a) CGST

Q3. What is the condition for taking unavailed CENVAT Credit on Capital Goods?

(a) The CENVAT Credit should have been admissible under earlier law but not under GST

(b) The CENVAT Credit should have been admissible under GST but not under earlier law

(c) The CENVAT Credit should not have been admissible under GST or the earlier law

(d) The CENVAT Credit should have been admissible under both the earlier law and GST

Ans. (d) The CENVAT Credit should have been admissible under both the earlier law and GST

Q4. If the unavailed Input Tax Credit on Capital Goods under the earlier law which has been subsequently availed under the GST law is found to be inadmissible as per the proceedings of the Department, then what will be the course of action for the Department?

(a) Such amount will be recovered under the GST law

(b) Such amount will be recovered under the earlier law

(c) Such amount cannot be recovered

(d) Such amount may be recovered under the GST law or the earlier law at Department's option

Ans. (a) Such amount will be recovered under the GST law

145. 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 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 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 was eligible for CENVAT credit on receipt of such inputs and/or goods under the earlier law but for his not being liable for registration or the goods remaining exempt under the said law;
 - (iii) the said taxable person is eligible for input tax credit under this Act;
 - (iv) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty / 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
 - (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 accordance with generally accepted accounting principles in such manner as may be prescribed.
- (3) The amount taken as credit under sub-section (1) shall be recovered as an arrear of tax under this Act from the taxable person if the said amount is found to be recoverable as a result of any proceeding instituted, whether before or after the appointed day, against such person under the earlier law.

Explanation.— For the purpose of this section and section 146, 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 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 was eligible for input tax credit on purchase of such inputs and/or goods under the earlier law but for his not being liable for registration or the goods remaining exempt under the said law;
 - (iii) the said taxable person is eligible for input tax credit under this Act;
 - (iv) 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
 - (v) 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 accordance with generally accepted accounting principles in such manner as may be prescribed.
- (3) The amount taken as credit under sub-section (1) shall be recovered as an arrear of tax under this Act from the taxable person if the said amount is found to be recoverable as a result of any proceeding instituted, whether before or after the appointed day, against such person under the earlier law.

145.1 Introduction

This transition provision sets out the conditions and procedure for availing input credit in respect of a registered taxable person under the GST Law, who was not required to be registered under the earlier law or he was a manufacturer of exempt goods under the earlier Central / State laws but became taxable under the GST Laws. In such a situation 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 has also been dealt with.

Registration under the GST law is mandatory, else, the discussion on claim of transitional credit would not be relevant.

145.2 Analysis

This provision is applicable only for inputs (not capital goods) held in stock or in respect of inputs contained in semi-finished / finished goods held in stock on the appointed day on ELIGIBLE DUTIES & TAXES. The claim of transitional credit under this Section is only in the following conditions:

- (i) The taxable person has not been registered under the earlier law. The person must be a registered taxable person under the GST laws;
- (ii) The person must not have been liable for registration under the earlier laws;
- (iii) He must have been engaged in the manufacture of exempted goods under the earlier Laws but those goods must be liable to tax under GST laws;

Eg 1: An unregistered manufacturer in Mumbai having a turnover of Rs. 70 lakhs in the current financial year was availing SSI exemption. He will now be liable to tax under GST as his turnover is greater than the threshold of Rs. 10 lakhs which has been prescribed under GST.

Eg 2: A trader supplying goods on e-commerce having an aggregate turnover of Rs. 1 lakhs was not required to be registered as per the State VAT law earlier. Now, as per the definition of the taxable person as per Section 9 read with Schedule III, there is no threshold for such category of persons. Therefore, he will be liable to pay tax under GST though he was below the taxable turnover earlier

- (iv) The goods must have been exempted under the State level VAT / CST laws;
- (v) Specified taxes / duties paid on 'inputs' would be allowed as transitional credit;
- (vi) Such goods and / or services should be taxable under the GST law;
- (vii) The inputs should be intended for use in making taxable supplies under the GST law;
- (viii) Such inputs should be held in stock on the date of introduction of GST;
- (ix) Inputs may be in 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

- (x) Such goods (held in stock) should have qualified as inputs and therefore should have been eligible as credit under the existing laws but for the condition that the goods were exempt or the person was not liable to be registered;
- (xi) Such goods should qualify as eligible inputs under the GST law;
- (xii) 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
- (xiii) 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	<ul style="list-style-type: none"> - 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. 	<ul style="list-style-type: none"> - 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	

Particulars	CGST	SGST
In case of incorrect claim under the old law	It will be recovered as an arrear of tax under the GST Act. Applicable interests and penalties will apply under GST Laws.	

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 is 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.

145.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 9 read with Schedule III	Meaning of 'taxable person'	Only the taxable person will be allowed to take the credit of eligible duties and taxes.
GST	Section 2(41)	Definition of 'Electronic Credit Ledger'	Input tax credit will be taken in this document.
GST	2(97)	Definition of Taxable supply	Only inputs intended to be used for taxable supplies are allowed as credit.
GST	Section 16	Manner of taking input tax credit	This is for determining the admissibility of Input tax credit under the GST law
GST	Section 54	Recovery of tax	For recovery of arrears of tax under GST for demand arising from proceedings under earlier law
CENVAT Credit Rules, 2004	Rule 9(1)	Documents and Accounts	Contains the list of documents on the basis of which CENVAT Credit can be taken
CENVAT Credit Rules, 2004	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
CENVAT Credit	Proviso to Rule 4(7)	Time limit for admissibility of CENVAT Credit	Similar time limit prescribed under one of the conditions for

Rules, 2004			availment of credit under GST law
Central Excise Rules, 2002	Rule 9	Registration under Central Excise	One of the possible preconditions in respect of category of persons is non registration in earlier law.
Finance Act, 1994 and Service Tax Rules	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.

145.4 FAQs

Q1. If the taxable person was engaged in the provision of exempt services which becomes taxable in GST, will he be allowed the credit in respect of the inputs in his stock?

Ans. Yes. However, for taking the credit of inputs in stock in whatever form, it should be noted that such inputs are actually used for provision of taxable supplies under the GST law.

Q2. What will happen if the inputs which are intended for use for making taxable supplies are ultimately only used for exempt supplies?

Ans. If the inputs in stock in respect of which credit was allowed, is ultimately used for exempt supplies instead of taxable supplies, then so much of the credit on inputs as is used for exempt supplies will be disallowed in the electronic credit ledger. If there is no credit remaining as per the electronic credit ledger, then the same will have to be paid in cash by the taxable person.

Q3. Will the GST officer issue any order based on which such credit are availed?

Ans. There is no such pre-condition. Credit can be availed suo-motu based on enabling provisions.

145.6. MCQs

Q1. Which of the following will be allowed as credit under section (145)?

- (a) Input services
- (b) Total input purchased during the year
- (c) Capital goods
- (d) Inputs held in stock

Ans. (d) Inputs held in stock

Q2. The inputs in stock should be used or intended to be used for making:

- (a) Taxable supplies
- (b) Exempt supplies
- (c) Either taxable or exempt supplies
- (d) Both taxable and exempt supplies

Ans. (a) Taxable supplies

Q3. For credit to be allowable, invoices should not be issued earlier than:

- (a) Three months before the appointed day
- (b) Six months before the appointed day
- (c) Nine months before the appointed day
- (d) Twelve months before the appointed day

Ans. (d) Twelve months before the appointed day

146. 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 and taxes 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 8;
 - (iii) the said taxable person was eligible for CENVAT credit on receipt of such inputs and/or goods under the earlier law but for his being a composition taxpayer under the said law;
 - (iv) the said taxable person is eligible for input tax credit under this Act;
 - (v) the said taxable person is in possession of invoice and/or other prescribed documents evidencing payment of duty / 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 accordance with generally accepted accounting principles in such manner as may be prescribed.
- (3) The amount taken as credit under sub-section (1) shall be recovered as an arrear of tax under this Act from the taxable person if the said amount is found to be recoverable as a result of any proceeding instituted, whether before or after the appointed day, against such person under the earlier law.

(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 8;
 - (iii) the said taxable person was eligible to claim input tax credit on purchase of such inputs and/or goods under the earlier law but for his being a composition taxpayer under the said law;
 - (iv) the said taxable person is eligible for input tax credit under this Act;
 - (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 accordance with generally accepted accounting principles in such manner as may be prescribed.
- (3) The amount taken as credit under sub-section (1) shall be recovered as an arrear of tax under this Act from the taxable person if the said amount is found to be recoverable as a result of any proceeding instituted, whether before or after the appointed day, against such person under the earlier law.

(SGST Law)**146.1 Introduction**

This transition 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.

146.2 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 transitional 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 8 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 (held in stock) should have qualified as inputs and the taxable person should have been eligible for input credit under the existing laws but for the condition that the taxable person was under composition scheme.
- (ix) Such goods should qualify as eligible inputs under the GST law.
- (x) 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.

The details 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	<ul style="list-style-type: none"> - 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 	<ul style="list-style-type: none"> - VAT paid on 'inputs'

Particulars	CGST	SGST
	on 'inputs' - AED paid under AED (GSI) Act, 1957 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	
In case of incorrect claim under the old law	Will be recovered as an arrear of tax under the GST act. Applicable interests and penalties will apply under GST Laws.	

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 interchanged. It is 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.

146.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 9 read with Schedule III	Meaning of 'taxable person'	Only the taxable person will be allowed to take the credit on switchover to composition scheme
GST	Section 2(41)	Definition of 'Electronic Credit Ledger'	Input tax credit will be taken in this document.
GST	2(97)	Definition of Taxable supply	Only inputs intended to be used for taxable supplies are allowed as credit.
GST	Section 16	Manner of taking input tax credit	This is for determining the admissibility of Input tax credit under the GST law
GST	Section 54	Recovery of tax	For recovery of arrears of tax under GST for demand arising from proceedings under earlier law
GST	Section 8	Composition Scheme	Persons who opt to pay tax as a fixed percentage of turnover under this law will be covered here.
GST	Section 145	Credit of Eligible duties & taxes	The list of eligible duties & taxes is given as per section 145. The same list is to be followed for this section as well.

146.4 FAQs

Q1. What will happen if the inputs, which are intended for use for making taxable supplies are ultimately used for exempt supplies?

Ans. If the inputs in stock in respect of which credit was allowed, is ultimately used for exempt supplies instead of taxable supplies, then so much of the credit on inputs as is used for exempt supplies will be disallowed in the electronic credit ledger. If there is no credit remaining as per the electronic credit ledger, then the same will have to be paid in cash by the taxable person.

Q2. If a person paying under composition scheme under VAT continues to pay under composition scheme on 1st April, 2017 as per Section 8 of the GST law but later decides to pay under the normal scheme, will this section be applicable? Assume the applicability of GST from 1st April, 2017.

Ans. If he starts paying taxes under the composition scheme in GST law and then wants to switch to normal scheme, this scheme will not be applicable. This is irrespective of the fact that he was paying under the composition scheme in VAT.

Under this situation, he needs to refer to Section 16(3) of the GST law which specifically deals with transition from payment of taxes under the composition scheme in the GST law to the normal scheme.

146.5 MCQs

Q1. Which of the following conditions for allowability of the amount of Input tax credit is correct?

- (a) Such amount should be allowable as credit under the earlier law except for the reason that the person was a composition taxpayer only
- (b) Such amount should be allowable as credit in the GST law only
- (c) Such amount should not be allowable in either of the laws
- (d) Such amount should be allowable as credit under both the earlier and GST law

Ans. (d) Such amount should be allowable as credit under both the earlier and GST law

Q2. Which of the following will not be considered as eligible duties and taxes?

- (a) Additional duty leviable u/s 3(5) of the CTA
- (b) Basic Customs Duty
- (c) Central Excise
- (d) Service Tax

Ans. (b) Basic Customs Duty

Q3. Which of the following will be allowable as credit under this section?

- (a) Inputs held in Finished goods in stock
- (b) Credit relating to Building
- (c) Capital goods
- (d) Inputs consumed during the year

Ans. (a) Inputs held in Finished goods in stock

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147. Amount payable in the event of a taxable person switching over to the composition scheme

Statutory Provision

- (1) Where a taxable person who has carried forward the amount of eligible credit in a return, furnished under the earlier law, in respect of the period ending with the day immediately preceding the appointed day, switches over to the composition scheme under section 8, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of such switch over:

Provided that after payment of such amount, the balance of input tax credit, if any lying in his electronic credit ledger shall lapse.

(CGST Law)

- (1) Where a taxable person who has carried forward the amount of eligible credit on account of Value Added Tax in a return, furnished under the earlier law, in respect of the period ending with the day immediately preceding the appointed day, switches over to the composition scheme under section 8, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of such switch over:

Provided that after payment of such amount, the balance of input tax credit, if any lying in his electronic credit ledger shall lapse.

(SGST Law)

147.1 Introduction

This transition provision sets out the conditions and procedure for payment of input credit carried forward in a return, in case of a taxable person, who is switching over from regular scheme under the old law, to the composition scheme under the GST law.

147.2 Analysis

This provision would be applicable only in situations where the registered person under the old law who is under regular scheme, has not only availed input credit but has an unutilized portion to be carried forward into the GST regime.

This is an exception to Section 143. In other words, normally, the taxable person who has an unutilized portion of input credit under the old law is eligible to carry forward the same into the GST regime, but for the exception in this section. This is to ensure that a person working under the composition scheme under the GST law does not carry forward credit from the old regime.

This would be applicable as follows:

- (i) The taxable person should be registered under the regular scheme in the old law.
- (ii) The taxable person should have an unutilized portion of input credit under the old law and should be eligible to carry forward the same under Section 143 of the CGST Act in the return.
- (iii) must have opted for composition scheme under the GST law in terms of section 8.
- (iv) Credit should be paid or will lapse as follows:
 - (a) **To be paid:** Credit attributable to the goods (held in stock) should be paid. The payment should be by way of debit in the electronic credit ledger or the electronic cash ledger.

This It implies that the amount of unutilized credit under the old law would automatically stand debited into the electronic credit ledger or electronic cash ledger under the GST law in terms of Section 143. To the extent payable under this Section, a debit would have to be made in the corresponding electronic ledgers.

- (b) **Balance if any:** Balance of the input credit after repaying the amount attributable to the goods held in stock will lapse and the taxable person will not be eligible to carry forward the same into the GST regime.

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 is 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.

Other details are as follows:

Particulars	CGST	SGST
Relevant credit	CENVAT credit	Input credit under the relevant State VAT law
Relevant law	CENVAT Credit Rules, 2004	Relevant State VAT law
Specified duties which are remaining as unutilised credit for carry forward into GST	<ul style="list-style-type: none"> - Central Excise paid on 'inputs' specified in schedule I & II of CETA, 1985 - Countervailing duty paid on 'inputs' under Customs Tariff Act - Special Additional Duty paid on 'inputs' 	<ul style="list-style-type: none"> - VAT paid on 'inputs'

Particulars	CGST	SGST
	<ul style="list-style-type: none"> - 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' - AED paid under AED (GSI) Act, 1957 on 'inputs' 	

147.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 143	Amount of CENVAT credit carried forward in the return to be allowed	Since the taxable person would opt for composition scheme under the GST Act, he would not be entitled to any credit from the old regime in terms of section 147.
GST	Section 9 read with Schedule III	Meaning of 'taxable person'	The taxable person carrying forward the credit will have to pay upon switchover from normal scheme to composition scheme.
GST	Section 2(41)	Definition of 'Electronic Credit Ledger'	Input tax credit will be taken in this document.
GST	2(40)	Definition of 'Electronic Cash Ledger'	Any payments/receipts as tax to/from the Government is recorded in this document

147.4 FAQs

Q1. Will a taxable service provider in the earlier law be required to make the payment on inputs in stock on the date of switchover to composition scheme under GST law if such inputs are used for providing services?

Ans. Yes, this section covers taxable service providers under the earlier law who pay taxes under the composition scheme in the GST law. So if the taxable service provider under

the earlier law was using inputs for providing services and was thereby availing credit in this respect, he will have to pay the amount of input tax availed while opting for the composition scheme. This amount can be paid either through the electronic credit ledger or the electronic cash ledger.

147.5 MCQs

Q1. After paying taxes on inputs under this section, what will happen to the rest of the Input tax credit as per the electronic credit ledger?

- (a) Carry forward the rest of the credit
- (b) Credit kept in abeyance till the taxable opts for normal scheme once again
- (c) Credit lapses
- (d) Electronic credit ledger will freeze with the credit available

Ans. (c) Credit lapses

Q2. The amount of credit of input tax will be paid by:

- (a) Debiting the electronic cash ledger mandatorily
- (b) Debiting the electronic credit ledger mandatorily
- (c) Debiting the electronic cash ledger or electronic credit ledger or both
- (d) None of the above

Ans. (c) Debiting the electronic cash ledger or electronic credit ledger or both

Q3. On which category of person will this section be applicable?

- (a) A person who opts for composition scheme under the GST law
- (b) A person who pays under the normal scheme under the GST law
- (c) A person who was paying under the composition scheme under the earlier law
- (d) A person who was exempt in the earlier law

Ans. (a) A person who opts for composition scheme under the GST law

Q4. On what portion of the stock does the taxable person need to pay tax?

- (a) Inputs held in stock only
- (b) Input within semi-finished/finished goods held in stock only
- (c) Both (a) and (b)
- (d) None of these

Ans. (c) Both (a) and (b)

148. Exempted goods returned to the place of business on or after the appointed day

- (1) 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.

(CGST Law)

- (1) 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.

148.1 Introduction

This transition 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.

148.2 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 Rs. 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 Rs. 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 Eg 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 Rs.1,00,000 because 6 months elapses from the date of applicability of GST.

If the above conditions on timelines are not satisfied, 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 is 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.

148.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 149	Duty paid on goods returned to the place of business on or after the appointed day	While section 148 deals with exempted goods, section 149 refers to duty paid goods, which are returned to the place of business on or after the appointed day.

148.4 FAQs

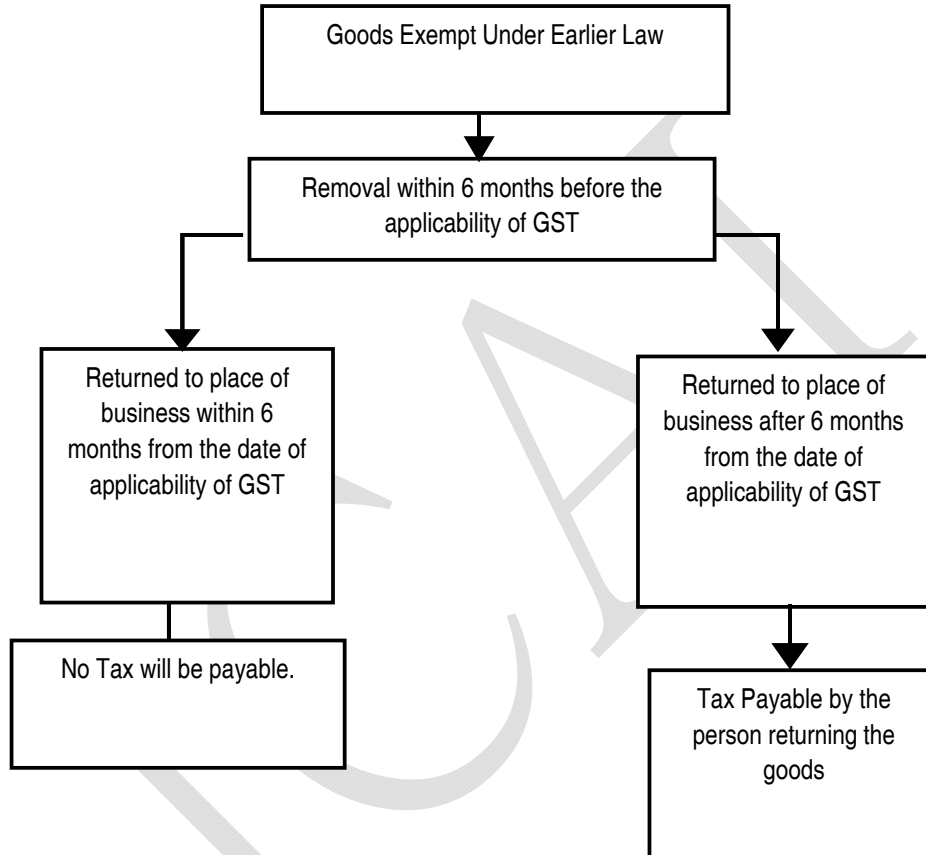
Q1. What are the conditions for removal of exempted goods under the transitional provisions on or after the appointed date of GST?

Ans. As per section 148 of GST, the exempted goods removed prior to the appointed date of GST, should be returned to the factory within 6 months of the appointed date.

Q2. When will purchase returns become taxable?

Ans. The exempted goods returned to the place of business **after 6 months** of the appointed date shall become taxable as per the provisions of Section 148.

Pictorial analysis of this transition provision can presented as follows:



149. Duty paid goods returned to the place of business on or after the appointed day

Statutory provision

- (1) 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, 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 taxable 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.

- (2) Every taxable person who receives such goods within a period of six months shall be entitled to take credit of the duty paid earlier at the time of removal.

(CGST Law)

- (1) 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, no tax shall be payable thereon if such goods are returned 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 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.

- (2) Every taxable person who receives such goods within a period of six months shall be entitled to take credit of the tax paid earlier at the time of sale.

(SGST Law)

149.1 Introduction

This transition 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 148 but for two differences, which are detailed in the following paragraphs.

149.2 Analysis

This provision provides for an exemption 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 credit of the duty paid earlier at the time of removal / sale, as the case may be.

Differences between Section 148 and 149:

Section 148	Section 149
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 credit 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.

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 is 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.

Eg 1: A manufacturer had removed goods for sale worth Rs. 5,00,000 on 1st November, 2016 after 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 Rs. 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 Eg 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 Rs. 1,00,000 because 6 months elapses from the date of applicability of GST.

149.3 Related provisions

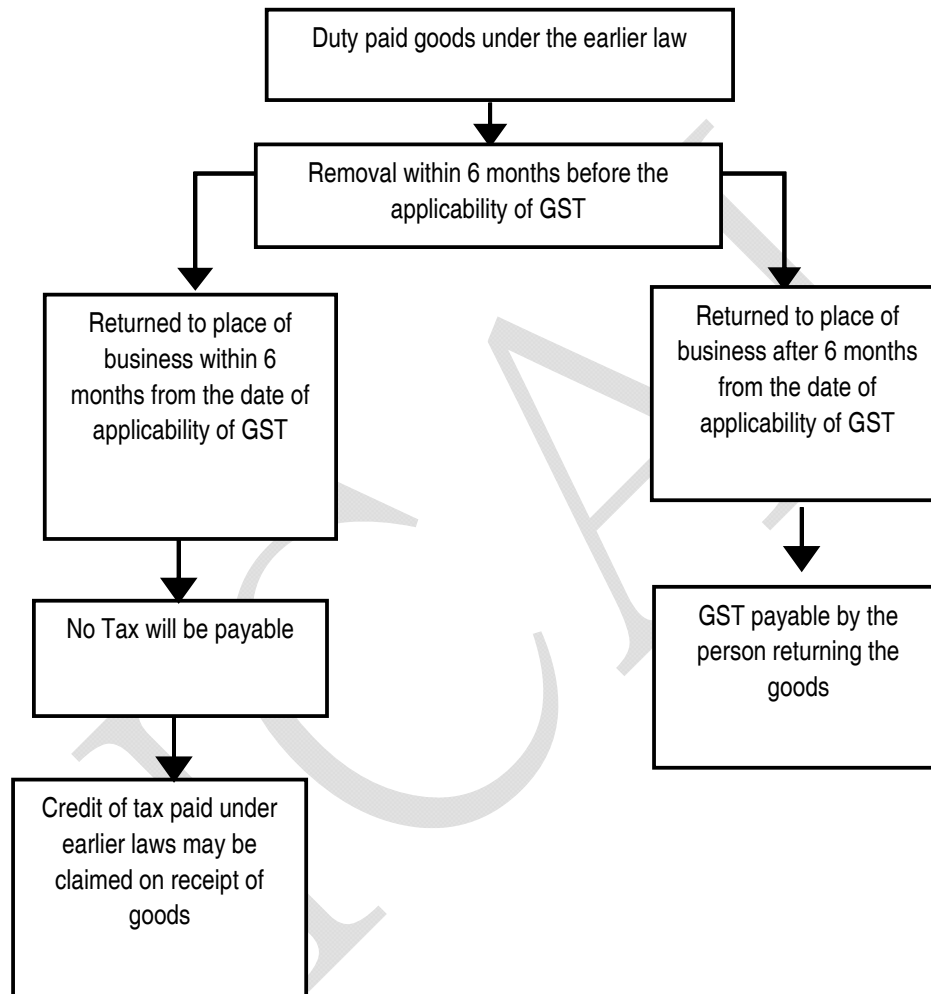
Statute	Section / Rule / Form	Description	Remarks
CGST	Section 148	Exempted goods returned to the place of business on or after the appointed day	While section 148 deals with exempted goods, section 149 refers to duty paid goods, which are returned to the place of business on or after the appointed day.

149.4 FAQs

- Q1. Can GST credit be availed by the recipient? What are the conditions for removal of duty paid goods under the transitional provisions on or after the appointed date of GST?
- Ans. As per section 149 of GST, the duty paid goods removed 6 months prior to the appointed date of GST, should be returned to the factory within 6 months of the appointed date.
- Q2. When can duty paid goods be made taxable?
- Ans. The duty paid goods returned to the place of business after 6 months of the appointed date shall become taxable as per the provisions of Section 149.
- Q3. When can such goods be cleared as non-taxable goods?
- Ans. The duty paid goods should have been removed from the place of business **6 months prior** to the appointed date and returned to the place of business **within 6 months** of the appointed date as per the provisions of Section 149.
- Q4. Can the tax paid when the goods were originally sold be availed as credit by the seller?

Ans. Yes, if the goods are returned by the buyer to the seller within 6 months from the date of GST coming into effect, the seller can take credit of tax paid under the earlier law.
Credit

Pictorial analysis of this transition provision can be presented as follows



150. 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, after completion of the job work, are returned to the said factory on or after the appointed day, no tax shall be payable if such inputs 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 tax shall be payable by the job worker if such inputs 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 manufacturer if such inputs 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.

- (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, after completion of the job work, are returned to the said place of business on or after the appointed day, no tax shall be payable if such inputs 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 tax shall be payable by the job worker if such inputs 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 despatching the inputs if such inputs 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.

- (2) The provisions of sub-section (1) shall apply only if the person despatching 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)

150.1 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.

150.2 Analysis

This provision provides for an exemption in respect of inputs returned after carrying out further processing, testing, repair, reconditioning or any other processes. The exemption would be applicable only in the following situation:

At the time of removal / dispatch for carrying out processing, testing, repair, reconditioning etc.,	Return after carrying out the processing, testing, repair, reconditioning etc., to the very same factory
Should have been removed during the earlier law (before implementation of GST)	Should be returned after the date of implementation of GST but within 6 months from the date of dispatch or such extended period (upto 2 months)

The exemption is subject to the following conditions:

Particulars	CGST	SGST
Inputs should have been removed from a factory	'Factory' as defined under Central Excise law	Registered 'Place of business' under the VAT law
Return of the inputs should be to	Same factory from which it was removed	Same place of business from which it was dispatched
Time period within which the inputs should be returned	Within six months from the date of removal or such extended period (upto 2 months)	Within six months from the date of dispatch or such extended period (upto 2 months)

In the above circumstances, the return of inputs to the same factory / place of business would be wholly exempt from payment of GST only if the person dispatching the goods and job worker declares the details of such inputs held in stock on the appointed day in the prescribed form. But for this exemption, GST would have been payable by the job worker returning the inputs to the said factory / place of business.

Exceptions – when the above exemption is not available:

If the inputs are returned by the job worker after a period of 6 months or such extended period (can be extended by the competent authority by upto 2 months): The dispatch of such inputs to the factory / place of business would be liable to GST. The job worker effecting the return would be liable to pay CGST + SGST or IGST, as applicable.

If the inputs 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 principal manufacturer would be liable to GST.

Where the tax is paid by the principal manufacturer or the job worker, as indicated above, a question would arise as to whether the other taxable person can avail input credit of such tax paid.

In this regard, attention is invited to Section 16A and Section 43A of the CGST Act. On a conjoint reading of Section 16A, Section 43A and this Section, it follows that the recipient of the goods would be allowed to avail credit of the tax paid by the supplier, viz., tax paid by the job worker would be allowed as credit for the manufacturer and vice-versa.

Eg 1: A manufacturer had removed inputs worth Rs. 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.

Eg 2: In Eg 1 above, if the goods had been returned on 10th October, 2017, then the tax will have to be paid by the job worker who returned the goods because 6 months elapses from the date of applicability of GST.

Eg 3: 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.

150.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 2(62)	Definition of 'Job work'	None
CGST	Section 2(66)	Definition of 'Manufacturer'	None
CGST	Section 2(75)	Definition of 'Place of Business'	None

150.4 FAQs

Q1. Is this provision applicable only for removal of inputs for job work?

Ans. Yes, this section is in relation to removal of inputs only for the purpose of job work, which means inputs should have been removed as such or after partially carrying out process, to the job worker's premises for further processing, testing, repair reconditioning etc.

Q2. Who is liable to pay tax when the processed inputs are not returned within the time limit specified?

Ans. When the processed inputs are not returned within specified time limit, at the time of removal of processed inputs, the job worker is liable to pay tax under the proposed GST Act and the 'principal manufacturer' or 'person dispatching the inputs' is liable to pay tax on the expiry of specified time limit.

Q3. Is declaration to the effect of stock held by job worker on behalf of manufacturer, compulsory to be submitted to the prescribed authority?

Ans. Yes, filing of declaration by both the manufacturer and the job worker showing the details of inputs held in stock by job worker on behalf of manufacturer on the appointed day is a primary condition to avail exemption specified by this section.

Q4. Whether tax payable under the GST Act when the time limit conditions are not fulfilled, has to be paid in cash or can it be adjusted to credit lying in the electronic credit ledger?

Ans. It would be allowed to be discharged by way of utilisation of the input credit (viz., by debit in the electronic credit ledger, subject to conditions).

Q5. What is the procedure for removal of goods from job work premises after GST appointed date which were received prior to appointed day by job workers?

Ans. The procedure for removal of goods from job work premises after GST appointed date shall be as per the provisions of Section 150 of the GST Act.

Q6. In what conditions does the tax become payable on such removal of goods after the appointed date of GST?

Ans. In respect of Inputs which are received in the place of business after 6 months from the appointed date, tax will become taxable as per the provisions of Section 150.

Q7. What is the time limit prescribed in law for removal of such goods? Can this be extended? If yes, who is the authority for such extension and for what time period can the same be extended?

Ans. The inputs shall be non-taxable provided the same are removed from the job worker within 6 months of the appointed date. The said period of 6 months shall be extended by the competent authority if sufficient cause is shown, but not beyond further 2 months.

150.5 MCQs

Q1. The time limit of six months or the extended period shall be counted from?

- (a) Appointed date
- (b) Date of removal of inputs to job worker
- (c) Date of receipt of inputs by job worker

Ans. (a) Appointed date

Q2. For the purpose of this section goods removed shall qualify as?

- (a) Semi-finished goods in the hands of manufacturer
- (b) Finished goods requiring further process
- (c) Inputs removed as such or after processing

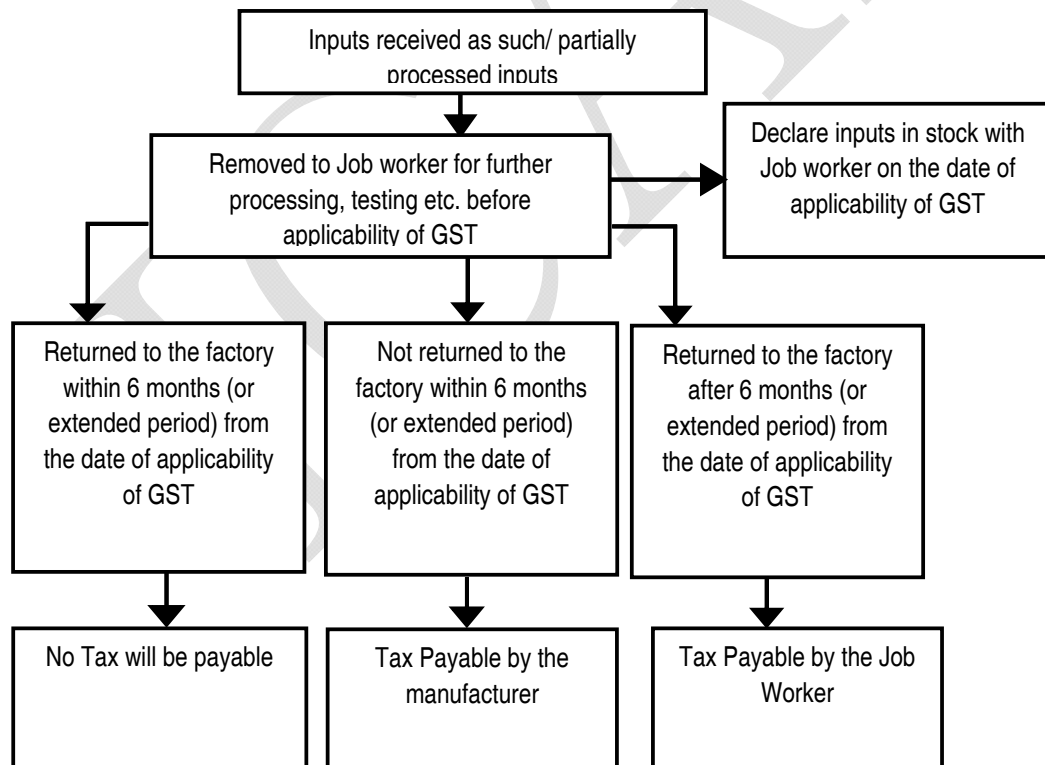
Ans. (c) Inputs removed as such or after processing

Q3. Declaration of inputs held in stock by job worker on behalf of manufacturer is to be filed by?

- (a) Manufacturer
- (b) Job Worker
- (c) Both (a) and (b)

Ans. (c) Both (a) and (b)

Pictorial analysis of this transition provision can be presented as follows:



151. 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 after undergoing manufacturing processes (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 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 tax shall be payable by the person returning the said 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 manufacturer 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:

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 there from 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 after undergoing manufacturing processes (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 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 tax shall be payable by the person returning the said 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 despatching the goods if such goods are liable to tax under this Act, and are not returned to him within a period of six months or the extended period, as the case may be, from the appointed day:

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 despatching 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)

151.1 Introduction

This transition 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.

151.2 Analysis

This provision provides an exemption in respect of semi-finished goods returned after carrying out the manufacturing activities. The exemption would be applicable only in the following situation:

At the time of removal / dispatch for carrying out the manufacturing activities	At the time or return after carrying out the manufacturing activities
It should have been removed before implementation of GST	It should be returned after the date of implementation of GST but within 6 months from the date of dispatch or such extended period (upto 2 months)

The exemption is subject to the following conditions:

Particulars	CGST	SGST
Semi-finished goods should have been removed from a factory	'Factory' as defined under Central Excise law	Registered 'Place of business' under the VAT law

Return of the Semi-finished goods should be to	Same factory from which it was removed	Same place of business from which it was dispatched
Time period within which the Semi-finished goods should be returned	Within six months from the date of removal or such extended period (upto 2 months)	Within six months from the date of dispatch or such extended period (upto 2 months)

In the above circumstances, the return of semi-finished goods to the same factory / place of business would be wholly exempt from payment of GST only if the person dispatching the semi-finished goods and the job worker declares the details of such semi-finished goods held in stock on the appointed day in the prescribed form. But for this exemption, GST would have been payable by the job worker returning the semi-finished goods to the said factory / place of business.

Exceptions – when the above exemption is not available:

If the semi-finished goods are returned by the job worker after a period of 6 months or such extended period (can be extended by the competent authority by upto 2 months): The dispatch of such Semi-finished goods to the factory / place of business would be liable to GST. The job worker effecting the return would be liable to pay CGST + SGST or IGST, as applicable.

If the semi-finished goods 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 principal manufacturer would be liable to GST.

Where the tax is paid by the principal manufacturer or the job worker, as indicated above, a question would arise as to whether the other taxable person can avail input credit of such tax paid.

In this regard, attention is invited to Section 16A and Section 43A of the CGST Act. On a conjoint reading of Section 16A, Section 43A and this Section, it follows that the recipient of the goods would be allowed to avail credit of the tax paid by the supplier, viz., tax paid by the job worker would be allowed as credit for the manufacturer and vice-versa.

Eg 1: A manufacturer had removed semi-finished goods worth Rs. 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 had been returned on 10th October, 2017, then the tax will have to be paid by the job worker who returned the goods because 6 months elapses from the date of applicability of GST.

Eg 3: 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 4: 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.

151.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 2(62)	Definition of 'Job work'	None
CGST	Section 2(66)	Definition of 'Manufacturer'	None
CGST	Section 2(75)	Definition of 'Place of Business'	None

151.4 FAQs

- Q1. Is this provision applicable only to removal of semi-finished goods for job work only?
- Ans. Yes, this Section is in relation to removal of semi-finished goods only for the purpose of job work, which means semi-finished goods should have been removed to job worker's premises for carrying out any manufacturing activities.
- Q2. Who is liable to pay tax when the semi-finished goods after carrying out manufacturing process are not returned within the time limit specified?
- Ans. When the said goods (goods after manufacturing process is carried on) are not returned within specified time limit, at the time of removal of said goods, the job worker is liable to pay tax in proposed GST Act and the 'principal manufacturer' or 'person dispatching the goods' is liable to pay tax on the expiry of specified time limit.
- Q3. Is declaration to the effect of stock held by job worker on behalf of manufacturer, compulsory to be submitted to the prescribed authority?
- Ans. Yes, filing of declaration by both the manufacturer and the job worker showing the details of the semi-finished goods held in stock by job worker on behalf of manufacturer on the appointed day is a primary condition to avail exemption specified by this section.
- Q4. Whether tax payable in GST Act when the time limit conditions are not fulfilled, has to be paid in cash or can it be adjusted to credit lying in the electronic credit ledger?
- Ans. It would be allowed to be discharged by way of utilisation of the input credit (viz., by debit in the electronic credit ledger, subject to conditions).
- Q5. What is the procedure for removal of goods from job work premises after GST appointed date?
- Ans. The procedure for removal of goods from job work premises after GST appointed date shall be as per the provisions of Section 16A of the GST Act.
- Q6. In what conditions does the tax become payable on such removal of goods after the appointed date of GST?

Ans. Inputs received in the place of business after 6 months from the appointed date, shall become taxable as per the provisions of Section 150.

Q7. What is the time limit prescribed in law for removal of such goods? Can this be extended? If yes, who is the authority for such extension and for what time period can the same be extended?

Ans. Return of semi-finished goods will not be taxable provided the same are removed from the job worker within 6 months of the appointed date. The said period of 6 months may be extended by the competent authority if sufficient cause is shown, but not beyond further 2 months.

Q8. Can such goods be transferred to the premise of any other taxable persons?

Ans. The manufacturer can, in accordance with the provisions of the earlier law, transfer the goods to the premises of any registered taxable person on payment of tax or without payment of tax for exports within six months or the extended period from the appointed day.

150.6 MCQs

Q1. The time limit of six months or the extended period shall be counted from?

- (a) Appointed date
- (b) Date of removal of semi-finished goods to job worker
- (c) Date of receipt of semi-finished goods by job worker

Ans. (a) Appointed date

Q2. For the purpose of this section goods removed shall qualify as?

- (a) Semi-finished goods in the hands of manufacturer
- (b) Finished goods requiring further process
- (c) Inputs as such or inputs partially processed

Ans. (c) Semi-finished goods in the hands of manufacturer

Q3. Declaration of inputs held in stock by job worker on behalf of manufacturer is to be filed by?

- (a) Manufacturer
- (b) Job Worker
- (c) Both (a) and (b)

Ans. (c) Both (a) and (b)

152. 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 the earlier law prior to the appointed day and such goods, after undergoing tests or any other process (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 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 tax shall be payable by the person returning the said 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 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 despatched 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, after undergoing tests or any other process (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 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 tax shall be payable by the person returning the said 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 the person despatching 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.

152.1 Introduction

This transition provision is with respect to excisable goods manufactured which were 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.

152.2 Analysis

This provision provides an exemption in respect of the goods returned after carrying out tests or any other processes. The exemption would be applicable only in the following situations:

At the time of removal / dispatch for carrying out tests	At the time or return after carrying out the tests or similar processes
It should have been removed during the earlier law (before implementation of GST)	It should be returned to the same place after the date of implementation of GST
It should have been removed / dispatched without payment of duty / tax	No GST payable – EXEMPT

The exemption is subject to the following conditions:

Particulars	CGST	SGST
Law applicable	Central Excise	State VAT law
Excisable goods should have been removed from a factory without payment of duty	'Factory' as defined under Central Excise law	Registered 'Place of business' under the VAT law without payment of duty
Tests of processes in respect of such goods	The tests or any other process to which the goods were subjected to, should not have amounted to manufacture under the Central Excise provisions;	No requirement / conditions
Return of the goods should be to	Same factory from which it was removed	Same place of business from which it was dispatched
Time period within which the goods should be returned	Within six months from the date of removal or such extended period (upto 2 months)	Within six months from the date of dispatch or such extended period (upto 2 months)

In the above circumstances, the return of goods to the same factory / place of business would be wholly exempt from payment of GST. But for this exemption, GST would have been payable by the person returning the goods to the said factory / place of business.

If the goods are not returned within the period of 6 months or such extended period (can be extended by the competent authority by upto 2 months), the dispatch of goods to the factory / place of business would be liable to GST. The person effecting the return would be liable to pay such tax.

Additionally, it is also provided that the manufacturer or the dealer who had originally removed / dispatched the goods (under the earlier law) may also transfer the said goods directly from the same premises (where the goods are located after being subjected to the process of testing or any similar process) upon payment of tax or without payment of tax in case of exports. In this regard, the following should be noted:

- (i) It should be transferred within 6 months or extended period (upto 2 months)
- (ii) Person returning the goods;
- (iii) The situs of such transfer should be determined in terms of the principles laid down under Section 5 of the IGST Act, 2016;
- (iv) No tax shall be payable if the the goods are transferred for export within six months or such extended period.

It is 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.

Eg 1: A manufacturer had removed finished goods worth Rs. 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, if the goods had been returned on 10th October, 2017, then the tax will have to be paid by the person who returned the goods because 6 months elapses from the date of applicability of GST.

Eg 3: In Eg 1 above, assume that the goods are directly from the premises of the tester 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 are supplied in India and tax will not be payable if the same is exported.

152.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
IGST	Section 5	Place of supply of goods	-

152.4 FAQs

Q1. Who is the competent authority to grant extension of time upto 2 months?

Ans. Competent authority to be prescribed.

Q2. What is the procedure for return of finished goods sent prior to appointed date of GST

for processing or carrying on any tests or any other process not amounting to manufacture without payment of duty?

Ans. The goods removed prior to the appointed date for carrying out process not amounting to manufacture must be returned within 6 months, or such extended period from the appointed date as per the provisions of Section 152, allowed by the competent authority.

Q3. In what conditions does the tax become payable on such removal of goods after the appointed date of GST?

Ans. The person returning such goods shall be liable to pay tax if the goods are returned after 6 months of the appointed date.

Q4. What is the time limit prescribed in law for returning of such goods? Can this be extended? If yes, for what time period can the same be extended?

Ans. Such goods shall be removed within 6 months of the appointed date.

Yes, the period of 6 months can be extended.

The period of 6 months can be extended but not beyond 2 months.

152.5 MCQs

Q1. Time limit within which the goods shall be returned from the appointed day?

- (a) Four months
- (b) Six months
- (c) Three months
- (d) Eight months

Ans. (b) Six months

Q2. The process carried out on finished goods or testing done shall?

- (a) Amount to Manufacture
- (b) Not amount to Manufacture
- (c) Result in different product
- (d) Change the use of product

Ans. (b) Not amount to Manufacture

153. 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 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 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 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 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 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 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)

153.1 Introduction

This is a transition 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.

153.2 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 Rs. 5,00,000. Due to certain renegotiations, this price was escalated to Rs. 550,000 on 15th April, 2017. Assuming applicability of GST from 1st April, 2017, the supplier should issue a supplementary invoice/debit note for Rs. 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 Rs. 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 Rs. 5,00,000. Due to certain renegotiations, this price was revised downwards to Rs. 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 Rs. 1,00,000 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 Rs. 1,00,000 and accordingly the tax liability would be reduced

153.3 Comparative review

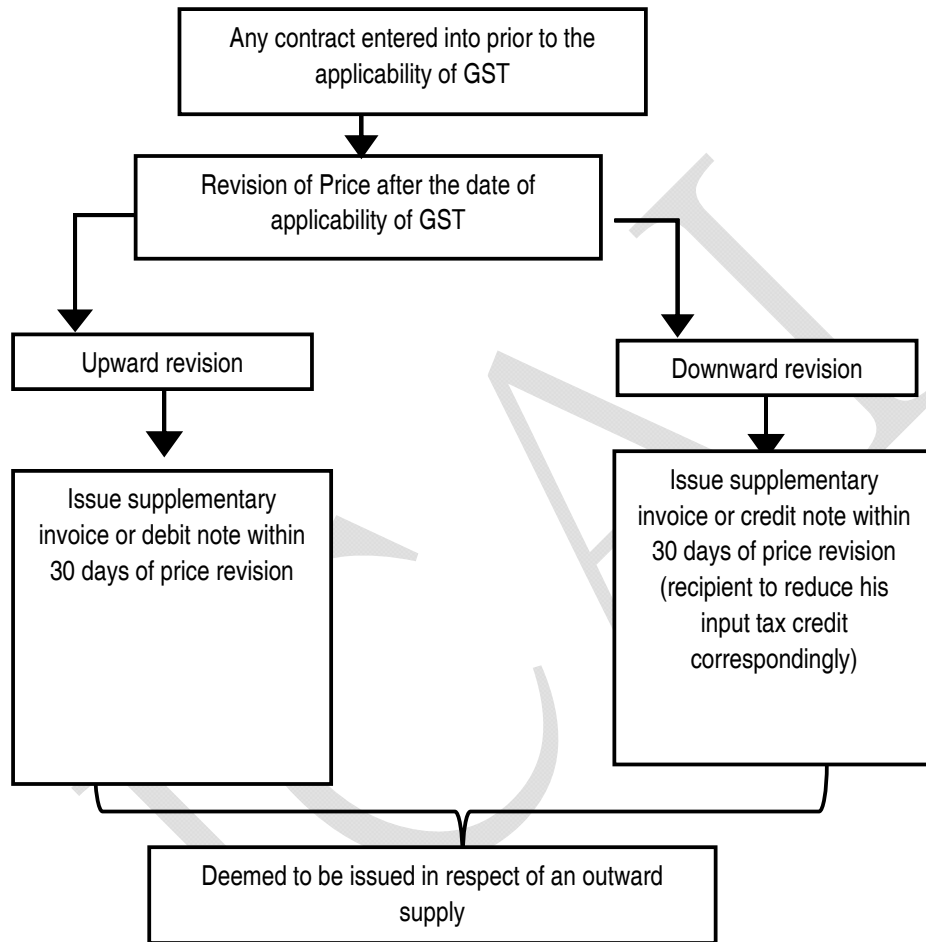
Rule 6(3) of Service Tax Rules, 1994: Where an assessee has issued an invoice, or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason (or when the invoice amount is renegotiated due to deficient provision of service, or any 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.

153.4 FAQs

Q1. What is the time limit for exchange of documents in case of revision of prices? What are the conditions for reducing the tax liability in case of downward price revision?

Ans. The taxable person shall be allowed to reduce his tax liability in case of downward revision of prices by issuing supplementary invoice or credit note within 30 days, only if the recipient of the invoice or credit note has reduced his input tax credit corresponding to such reduction of tax liability

Pictorial analysis of this transition provision can be presented as follows:



154. Pending refund claims to be disposed of under earlier law

Statutory Provision

Every claim for refund of any duty/tax and interest, if any, paid on such duty/tax or any other amount, filed by any person 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 section 11B (2) of the Central Excise Act, 1944 (1 of 1944):

Provided that where any claim for refund is fully or partially rejected, the amount so rejected shall lapse.

(CGST Law)

Every claim for refund of any tax and interest, if any, paid on such tax or any other amount, filed by any person 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 is fully or partially rejected, the amount so rejected shall lapse.

(SGST Law)

154.1 Introduction

This transition 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.

154.2 Analysis

The Section provides that where any person has made an application for refund under the earlier law, viz., 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 earlier 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.

Eg 1: An export manufacturer files a claim for refund of Rs. 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.

It is 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.

154.3 FAQs

Q1. How is the pending refund claims of tax/interest dealt with in the new GST law?

Ans. The pending refund claims shall be disposed of as per the provisions of the earlier law. GST provisions will not be applicable to such claims

Q2. What should be the process in case refund is rejected fully or partly?

Ans. In case the refund is rejected fully or partly, the amount so rejected shall lapse.

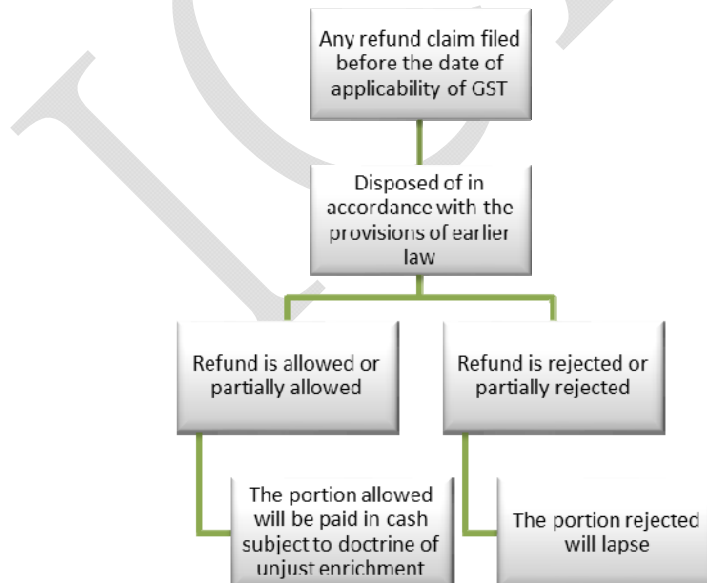
154.4 MCQs

Q1. If the refund claim is partially rejected the amount would _____

- (a) lapse
- (b) be carried forward
- (c) be refunded
- (d) none of the above

Ans. (a) lapse

Pictorial analysis of this transition provision can be presented as follows:



155. Claim of 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 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.

(CGST Law)

- (2) Every proceeding of appeal, revision, review or reference relating to recovery of CENVAT credit 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 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.

(SGST Law)

- (2) Every proceeding of appeal, revision, review or reference relating to recovery of input tax credit 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)

155.1 Introduction

This transition provision is with respect to claim of input credit and disposal of appeals, revisions, reviews or reference proceedings.

155.2 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.

It is 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.

155.3 FAQs

Q1. If the matter in appeal is remanded back to adjudication, will the matter be dealt under the earlier law or as per the GST provisions?

Ans. Till a particular proceeding is completely disposed of, it will be carried out under the provisions of the earlier law. So if a particular matter is remanded back to adjudication, then the same will be dealt as per the provisions of the earlier law itself. Only if the amount is found to be recoverable after the disposal of the proceedings, then the amount will be recovered under section 54 of the GST law.

Q2. Does this section cover all the proceedings under the earlier law relating to recoverability or refund of duty?

Ans. No, this transition provision covers only the proceedings relating to the admissibility and claim of Input Tax credit. There are other transition provisions which deal with the proceedings if the same is not related to claiming of Input Tax Credit.

Q3. Can the State officers exercise jurisdiction over disposal of proceedings relating to CENVAT Credit?

Ans. No, all the proceedings till the disposal of appeal will be managed as per the provision of the earlier law. The State officers under the earlier law did not have jurisdiction to conduct the proceedings relating to CENVAT Credit. So, they will not be able to exercise jurisdiction for disposal of proceedings relating to CENVAT Credit.

Q4. Can the State officers exercise jurisdiction over recoverability of CENVAT Credit in case of default?

Ans. The States will have single jurisdiction for conduct of proceedings under the GST law if the amount involved is below a certain threshold. This will be applicable in case of both CGST and SGST.

Please note that as per this section the recovery of taxes will be conducted under the GST law even though the disposal of proceeding took place in the earlier law.

So, State authorities can have jurisdiction over recovery proceedings even in respect of CENVAT Credit if the proceedings have been disposed of under earlier law.

155.6 MCQs

- Q1. Which of the following is true in respect of events after the applicability of GST?
- (a) Proceedings under earlier law will be disposed of under the earlier law
 - (b) Any default due to proceedings in the earlier law will be recovered in the earlier law
 - (c) Proceedings under the earlier law will be disposed of under the new law
 - (d) Any refund due to the proceedings will be admissible as input tax credit

Ans. (a) Proceedings under earlier law will be disposed of under the earlier law

- Q2. How will the refund occurring due to any proceedings under the earlier law relating to CENVAT Credit be treated under GST?
- (a) Such refund will be made in cash
 - (b) Such refund will be allowed as input tax credit
 - (c) Either a or b at the option of the taxable person
 - (d) Either a or b at the option of the Department

Ans. (a) Such refund will be made in cash

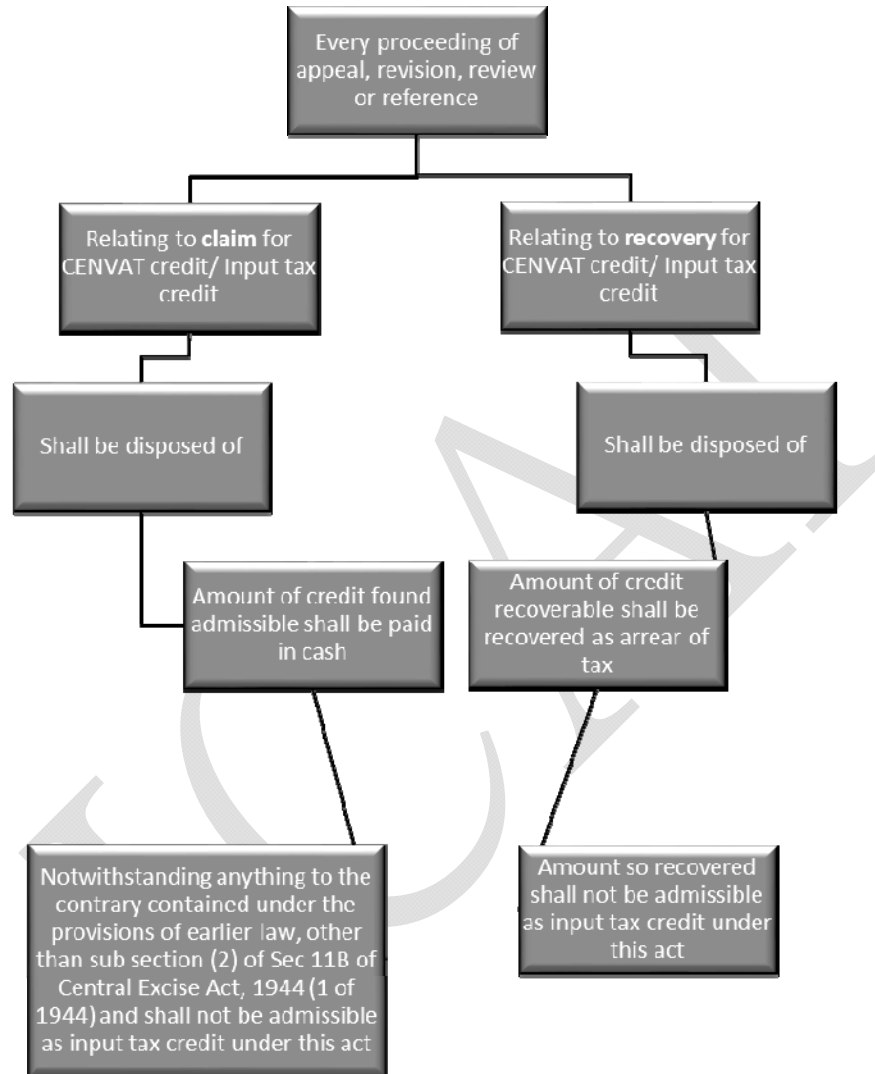
- Q3. This section will cover proceedings:
- (a) Relating to liability under GST
 - (b) Relating to output duty liability under the earlier law
 - (c) Relating to Input tax credit
 - (d) All of the above

Ans. (c) Relating to Input tax credit

- Q4. The proceedings can involve:
- (a) Appeal
 - (b) Review
 - (c) Revision
 - (d) All of the above

Ans. (d) All of the above

Pictorial analysis of this transition provision can be presented as follows



156. Finalization of proceedings relating to output duty liability

Statutory Provisions

- (1) Every proceeding of appeal, revision, review or reference relating to any output duty liability initiated before 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 duty liability initiated before 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, 1944 and 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 before 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 before 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.

156.1 Introduction

This transition provision is with respect to output tax / duty liabilities pending in appeal, review, revision or reference proceedings under any of the earlier law.

156.2 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.

It is 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.

156.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 2(72)	Definition of output tax	Output Tax means tax payable on taxable outward supplies and excludes reverse charge payments.
CGST	Section 157	Treatment of amount reversed or refunded due to assessment or appeal, review, revision or reference proceedings	

156.5 FAQ

Q1. The procedure of appeal, revision, review or reference relating output duty liability initiated before the appointed day shall be regulated by which law?

Ans. Every proceeding of appeal, revision, review or reference relating to any output duty liability initiated before the appointed day, shall be disposed of in accordance with the provisions of the earlier law, and if any amount becomes recoverable / refundable as a result of such appeal, revision, review or reference, the same shall be recovered as an arrear of tax under this Act and amounts recovered shall not be admissible as input tax credit under this Act / paid in cash in case of refund.

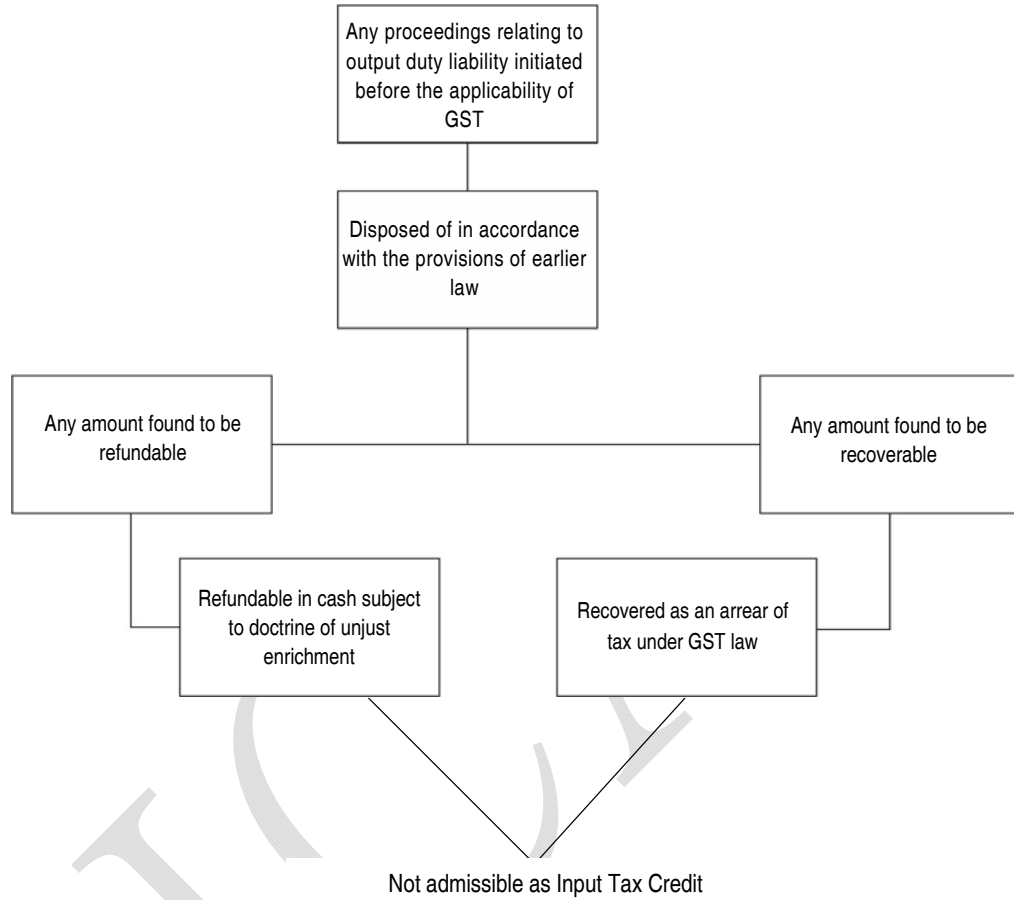
156.6 MCQ

Q1. Any amount of tax under the earlier law to be refunded to the claimant shall be by:

- (a) Cash
- (b) Adjustment against output tax
- (c) Both (a) and (b)
- (d) None of the above

Ans. (a) Cash

Pictorial analysis of this transition provision can be presented as follows



157. 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 or after the appointed day, under the earlier law, any amount of tax, interest, fine or penalty becomes recoverable from the taxable person, 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 or after the appointed day, under the earlier law, any amount of tax, interest, fine or penalty becomes recoverable from the taxable person, 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 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 proceedings instituted, whether before 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.

157.1 Introduction

This Transition 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.

157.2 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 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.

157.3. Comparative review

Under the purview of service tax, if service tax is paid in excess of the actual liability, 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.

157.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 156	Finalization of proceedings relating to output tax / duty liability	-

157.4 FAQs

Q1. How will settlement be done under various legislations?

Ans. As per this Section, the comprehension is that in case of a Refund Adjustment Order (RAO) under VAT Act of the State, it can be adjusted under the GST return. Again a technical point of law would remain whether a refund under one legislation could be set off against an outstanding against another legislation. We hope that the Rules would clarify this point in detail.

Q2. How shall the allocation of revenue be done?

Ans. The recoverable amount so received from assessee relating to earlier regime would be collected as arrears of tax under GST. The allocation of this amount between Centre and State is not specified and might cause difficulty in administration of such taxes after implementation of GST.

Also, nothing has been provided for demands in relation to cess under earlier regime.

An Order for Removal of Difficulties is expected to be passed to resolve the above cases.

157.5 MCQs

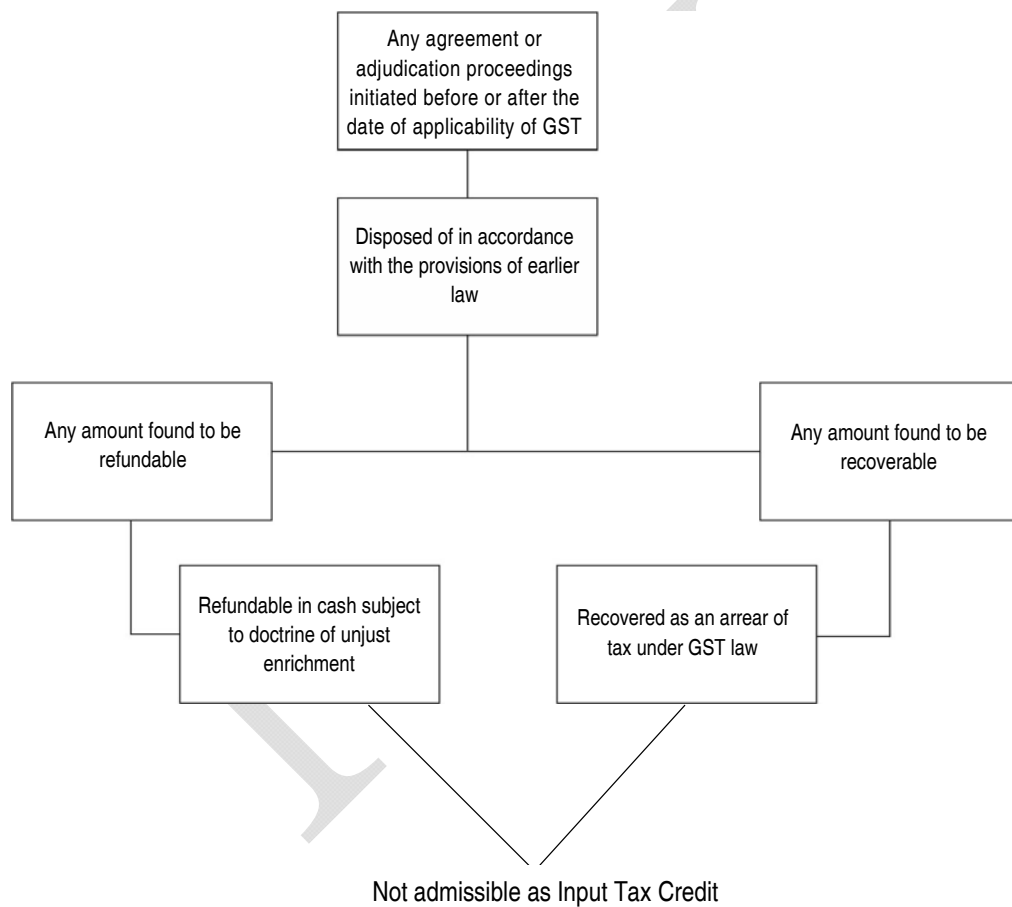
Q1. Whether the amount paid as arrears of tax under the earlier law be admissible as input tax credit?

(a) Yes

(b) No

Ans. (b) No

Pictorial analysis of this transition provision can be presented as follows



158. 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 and if, pursuant to such revision, any amount is found to be recoverable from the taxable person, 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 and if, pursuant to such revision, any amount is found to be recoverable from the taxable person, 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 and if, pursuant to such revision, any amount is found to be refundable 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 and if, pursuant to such revision, any amount is found to be refundable to any taxable person, the amount shall be refunded to the said person in accordance with the provisions of the earlier law.

158.1 Introduction

This transition provision deals with a situation where tax becomes payable or refundable by virtue of revision of returns under earlier law.

158.2 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 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.

158.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 2(84)	Definition of Return	Return refers to the document filed by the taxable persons with details relating to the transactions undertaken, tax paid, tax payable, inward/outward supplies or input credit distributed in prescribed time and manner.

158.4 FAQs

Q1. How shall tax be refunded pursuant to revision of returns under the earlier law?

Ans. Where any return, furnished under the earlier law is revised and if, pursuant to such revision any amount is found to be refundable 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 11 B of the Central Excise Act, 1944.

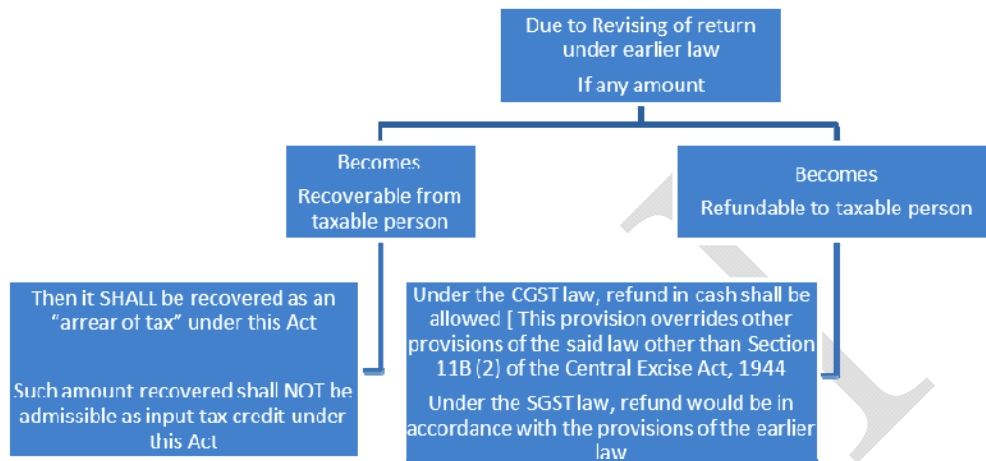
158.5 MCQ.

Q1. Any amount of tax under the earlier law to be refunded to the claimant shall be by:

- (a) Cash
- (b) Adjustment against output tax
- (c) Both (a) and (b)
- (d) None of the above

Ans. (a) Cash

Pictorially, Analysis of this transition provision can presented as follows



159. 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)

159.1 Introduction

This transition provision deals with long term construction or works contracts.

159.2 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 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.

159.3 FAQs

Q1. If services are provided pursuant to a contract entered into prior to the appointed date, which tax is payable?

Ans. All supplies after the appointed date shall be liable to tax under the CGST/SGST Act.

Q2. What is the position of law in a GST regime if an AMC is entered into in Jan 2017 (assuming GST is effective from April 2017) and monies are received in June 2017?

Ans. What is important is when the supplies are made. If it is post appointed day then CGST/SGST Act is applicable.

160. 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 if the consideration 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 if the consideration 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.

160.1 Introduction

This transition 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.

160.2 Analysis

This Section applies in the following cases:

- (i) Where the consideration was received prior to the introduction of GST; and
- (ii) Where the supply of goods and / or services is effected after the introduction of GST.

The provisions of this Section would apply, notwithstanding the provisions in Section 12 and Section 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 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.

160.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 2(28)	Definition of consideration	Consideration refers to the payment made in money or monetary value in respect of supplies made to a person and the supplier applies the same as consideration.
CGST	Section 12	Time of supply of goods	-

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 13	Time of supply of services	-

160.4 FAQs

Q1. Will C Forms/ F Forms still be required to be issued if the goods have been received and tax on it has been paid prior to the appointed day?

Ans. There is still no clarification provided for such issues regarding the issue of statutory forms under different State/Central Laws. Through a common understanding, the forms should be issued if the sale/purchase was governed by the earlier State/Central Laws. However, a Removal of Difficulties Order in this respect can be expected.

160.5 MCQs

Q1. Where supply has been made before the date of implementation of GST, no tax shall be payable:

- (a) If tax/duty has been paid under the earlier law
- (b) If goods were exempted under the earlier law
- (c) If the goods were non-taxable under the earlier law
- (d) All of the above

Ans. (d) All of the above

161. Treatment of retention payments

Statutory Provisions

Notwithstanding anything contained in section 12 and 13, no tax shall be payable on the supply of goods and/or services made before the appointed day where a part consideration for the said supply is received on or after the appointed day, but the full duty or tax payable on such supply 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 before the appointed day where a part consideration for the said supply is received on or after the appointed day, but the full duty or tax payable on such supply has already been paid under the law.

161.1 Introduction

This transition provision relates to any amounts where a part of the consideration is received after the introduction of GST, whereas the said supply is effected under the earlier laws.

161.2 Analysis

This Section applies in the following situations:

- (i) Where the supply of goods and / or services was made prior to the introduction of GST; and
- (ii) Where full tax / duty payable is paid under the earlier law; and
- (iii) Where a part of the amount (referred to as retention amounts) is paid after the introduction of GST.

It provides that if the full tax under the earlier law is already paid, no tax under the GST Act would once again be payable simply because a part of the consideration is received after the date of introduction of GST.

The provisions of this Section would apply, notwithstanding the provisions in Section 12 and Section 13 of the GST Act (time of supply of goods and services).

This is akin to the current Service tax and VAT laws; it would apply where a part of the consideration is retained as 'retention amounts' in large works contracts. Typically, such amounts are paid after a period of say, 1 year from the date of completion of work, based on the quality of work done.

It is 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.

161.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 12	Time of supply of goods	-
CGST	Section 13	Time of supply of services	-

161.3 FAQs

Q1. Where consideration for any supply is made prior to the date of implementation of GST, shall the tax be liable to be paid under the GST law?

Ans. No, tax shall be payable on the supply of goods and/ or services made before the appointed day where a part of consideration for the said supply is received on or after the appointed day, but the full duty or tax payable on such supply has already been paid under the earlier law.

161.4 MCQs

Q1. No tax will be payable on retention payment subsequent to appointed day, if:

- (a) Supplies have been made prior to the appointed day
- (b) Full amount of tax/duty has been paid before the appointed day
- (c) Both (b) and (c)

Ans. (c) Both (b) and (c)

162. 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)

162.1 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.

162.2 Analysis

Input Service Distributor: This term has been defined under Section 2(56) of the GST Law.

As per this section, Input Service Distributor means an office of the supplier of goods and / or services which receives tax invoices issued under section 23 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(88) of the GST law to mean anything other than goods. As per the explanation inserted, it also includes intangible property and actionable claim but does not include money.

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) On 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 17 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 the CENVAT Credit under the old law and carry forward this credit as CGST on the date of applicability of GST under section 143 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

162.3 Comparative Review

This is a transition provision for converging the provisions of the earlier law to 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.

162.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	2(56)	Definition of Input Service Distributor	To know the meaning of Input Service Distributor under the GST law
CGST	2(88)	Definition of Service	It is imperative to know the meaning of service to determine as to what will be distributed under the GST law
CGST	17	Manner of distribution of	Section 17 acts as an extension of section 162. The eligibility of the credit is discussed as per

Statute	Section / Rule / Form	Description	Remarks
		Input Tax Credit by ISD	Section 162 whereas the manner of distribution is under section 17

162.5 FAQs

Q1. Will this section cover the services received by the Input Service Distributor after the applicability of GST?

Ans. No, the transition provisions will not be involved in such a scenario. Receipt of services by the Input Service Distributor after applicability of the GST law will be covered by Section 17 and other relevant provisions of Chapter V of the GST law.

Q2. Will this section cover the services and invoice received by the Input Service Distributor before the applicability of GST if the distribution of credit is yet to be made?

Ans. This section seeks to cover services received by the Input Service Distributor before the applicability of GST. The terminology used in this section in respect of invoices is 'even if the invoice relating to such services is received on or after the appointed day'. The words 'even if' is used to contemplate the exceptional scenario. If the invoice is received before the applicability of GST, it is definitely covered by this section.

However, the only condition in the above situation is that the distribution of credit is pending on the date of applicability of GST.

162.6 MCQs

Q1. If the services are received by an Input Service Distributor before the date of applicability of GST, then how will the services be distributed after the applicability of GST?

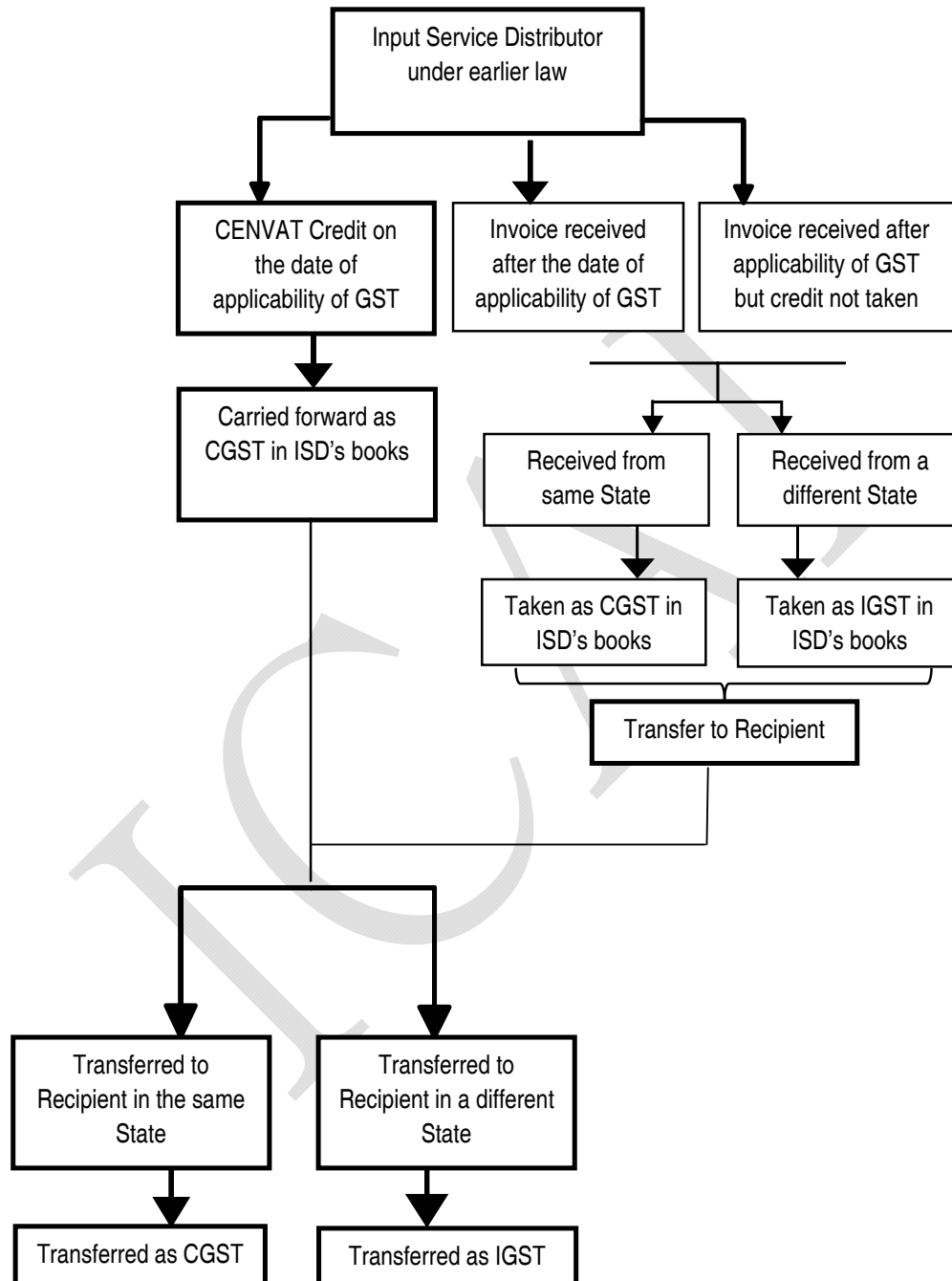
- (a) Under the earlier law
- (b) Under the GST law
- (c) Under earlier or GST law
- (d) Such credit will not be allowed to be distributed

Ans. (b) Under the GST law

Q2. When should the invoice be received in order to fall under this section if the services are received before the applicability of GST and is pending for distribution on the date of GST?

- (a) Before the date of applicability of GST
- (b) After the date of applicability of GST
- (c) On the date of applicability of GST
- (d) The date of receipt of invoice is immaterial.

Ans. (d) The date of receipt of invoice is immaterial



162A. 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.

(SGST)

162A.1 Introduction

This transition provision enables availment of credit for goods of any taxable person lying at the premises of an agent.

162A.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 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 Act*).
- (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 would have to be reversed at this stage to enable the claim of credit under this Section by the agent.

It is clearly understood that the provisions of earlier State (VAT / CST) laws that are to be subsumed under GST would be categorized under SGST.

162A.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 2(5)	Definition of agent	-
SGST	Section 162B	Tax paid on capital goods lying in stock with the agents	-

162A.4 FAQs

Q1. What is the transitional credit available in respect of goods lying with agents?

Ans. The goods lying with agents for subsequent sale might either be sold or returned back. In such cases, there would be a taxable supply and the credit on such stock would therefore be availed by the agent himself. The same would apply in case of capital goods with agents. However, the determining factor would be that the principal has not availed the credit and both the parties have disclosed about the particulars of such goods in prescribed manner.

Thus, both the agent and principal would be required to take note of the manner of disclosure as and when prescribed, before the implementation of GST, failing which the Input Tax credit might not be allowed for stocks lying with agents leading to tax cascading.

Unregistered agent to get registered: Also, any unregistered agent would be required to take registration to be able to avail credit on such stock.

162B. 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 fulfillment 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.

162B.1 Introduction

This transition provision relates to enabling credit for capital goods of any taxable person lying at the premises of an agent, is comparable to the provisions contained in Section 162A with respect to goods lying with agents. While Section 162A is in respect of goods, this Section is in respect of capital goods lying at the premises of the agent.

162B.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 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 Act*).
- (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 144 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 144. While Section 144 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 clearly understood that the provisions of earlier State (VAT / CST) laws that are to be subsumed under GST would be categorized under SGST.

162B.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 2(5)	Definition of agent	-
SGST	Section 162A	Tax paid on goods lying in stock with the agents	-
SGST	Section 144	Unavailed CENVAT credit on capital goods, not carried forward in a return to be allowed	-

162B.4 FAQs

- Q1. What is the time limit for filing of the closing stock details by both the principal and the agent and before which authority should the same be filed?
- Ans. Both the principal and the agent should 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;
- Q2. What if the principal has already claimed credit – would there be any interest / penalty at the time of reversal?
- Ans. This is only an enabling provision for the agent to take credit and the credit availed earlier by the Principal cannot be subjected to interest or penalty as there was no contravention under the earlier law.

162C. 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.

162C.1 Introduction

This transition provision restricts the claim of input tax credit in respect of stock transfers under the SGST Act, effected under the earlier law.

162C.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. As a reference, it may be noted that in most 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 Act 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 Act.

It is clearly understood that the provisions of earlier State (VAT / CST) laws that are to be subsumed under GST would be categorized under SGST.

162D. 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 goods on 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.

(SGSTLaw)

162D.1 Introduction

When goods are sent on approval basis and such goods are returned within the period of 6 months from the appointed day or extended period then no tax is payable. The operation of provision is similar to the transitional provision under section 150 and section 151 in respect of return of goods by the job worker.

162D. 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.

162D.3 FAQs

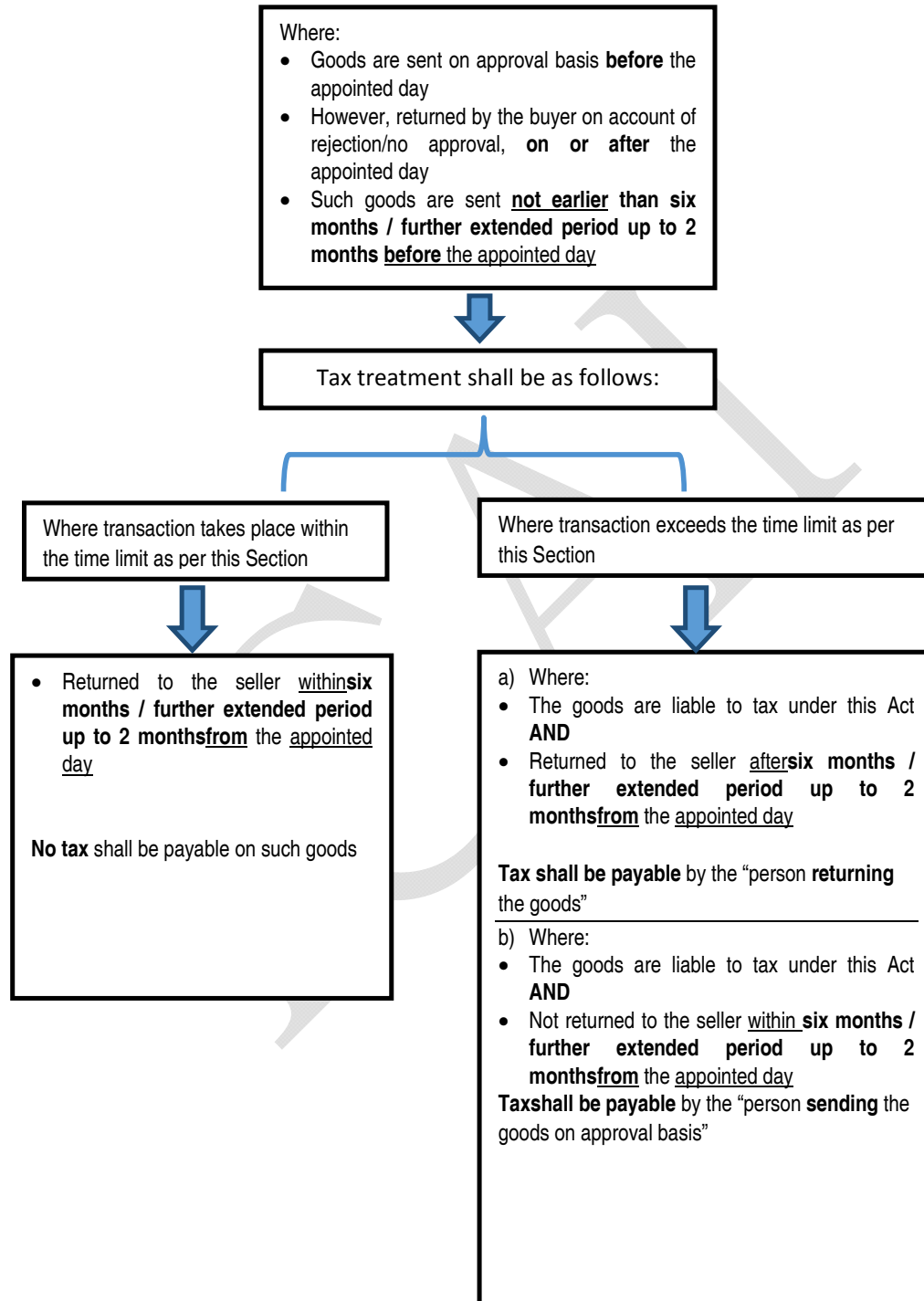
Q1. How shall the issue regarding goods sold on approval basis be resolved?

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

In cases where goods are returned beyond six months, tax would be required to be paid by the person returning goods.

Pictorial analysis of this Section 162D can be presented as follows which states the following:

INDIA



162E. 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 37 shall be made by the deductor under the said Section where payment to the said supplier is made on or after the appointed day.

162E.1 Introduction

This transition provision is in respect of TDS under Section 37. It is a transitional provision to ensure that there is no double deduction of tax at source due to introduction of GST.

162E.2 Analysis

This Section would apply in the following circumstances:

- (i) Where the supplier had sold any goods under the earlier law; and
- (ii) Where TDS applies on such transactions; and
- (iii) Where the supplier had issued the invoice before the introduction of GST
- (iv) Where the 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 37 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 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.

162E.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 37	Tax deduction at source	-

162E.4 MCQ

Q1. Where a supplier has made a sale of goods and deducted tax thereon under earlier law and issued invoice for the same before the appointed day but received payment after the appointed day:

- (i) No TDS is required to be deducted again under GST Act
- (ii) TDS is to be deducted again under GST Act

Ans. (i) No TDS is required to be deducted again under GST Act

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

- (1) In this Act, unless the context otherwise requires,-
 - (a) **“appropriate State”**, in relation to a taxable person, means that State where he is registered or liable to be registered under section 19 of the Central Goods and Services Tax Act, 2016.

Explanation: For the purpose of this Act, “State” includes Union Territory with Legislature.

- (b) **“Government”** means the Central Government;
- (c) **“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.

Explanation 1.- A supply of goods and/or services in the course of import into the territory of India shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

Explanation 2.- An export of goods and/or services shall be deemed to be a supply of goods and/or services in the course of inter-State trade or commerce.

- (d) **“input tax”** in relation to a taxable person, means the Integrated Goods and Services Tax, 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 which are used, or are intended to be used, in the course or furtherance of his business and includes the tax payable under sub-section (3) of section 4;
- (e) **“input tax credit”** means credit of ‘input tax’ as defined in clause (d) of sub-section (1) of section 2;

- (f) “**supply**” has the same meaning as assigned to it in section 3 of the CGST Act, 2016;
- (g) “**output tax**” in relation to a taxable person, means the IGST chargeable under the Act on taxable supply of goods and/or services by him or his agent and excludes tax payable by him on reverse charge basis;
- (2) Words and expressions not defined in this Act shall have the meaning assigned to them in the Central Goods and Service Tax Act, 2016.

Note: The Definitions have been discussed at the appropriate places wherever reference is required.

INDIA

CHAPTER- II

Principles for Determining Supply of Goods and/or Services in the Course of Inter-State Trade or Commerce

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 5, 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 6, 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.

3.1 Introduction

This Section enables determination of supplies of goods or services in the course of inter-State trade or commerce.

3.2 Analysis

- (a) This Section is subservient to Sections 5 and 6 of the IGST Act, which deal with the provisions for determining the place of supply of goods and/or services.
- (b) The term 'inter-State' would mean from one State to another or between different States.
- (c) While sub-Section (1) deals with goods, sub-Section (2) deals with services.
- (d) 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: Refer to the discussion and illustrations in chapter IV, in the context of Sections 5 and 6.

- (e) 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: Refer to the discussion and illustrations in chapter IV, in the context of Sections 5 and 6.

- (f) Section 3 has to be read alongside Sections 5 and 6 and whenever a conflict arises between the said provisions, Section 3 has to make way for Sections 5 and 6, which is signified by usage of the words “subject to the provisions of Section 5/6”.

3.3 Comparative review

There is no such proposition in the existing laws, as the concept of supply being unique to GST regime is considered as a ‘taxable event’.

3.4 FAQs:

- Q1. Under what circumstances a supply would be treated as having taken place in the course of inter-State trade or commerce?

Ans: A supply is said to have taken place in the course of inter-State trade or commerce, when the location of the supplier and the place of supply are in different States.

- Q2. In case of conflict between Section 5 and Section 3, which one should prevail?

Ans: Section 3 has to be read together with Sections 5 and 6 and whenever a conflict arises between the said provisions, Section 3 has to make way for Sections 5 and 6, which is signified by usage of the words “subject to the provisions of Section 5/6”.

- Q3. In case of conflict between Section 6 and Section 3, which one should prevail?

Ans: Section 3 has to be read together with Sections 5 and 6 and whenever a conflict arises between the said provisions, Section 3 has to make way for Sections 5 and 6, which is signified by usage of the words “subject to the provisions of Section 5/6”.

3.5 MCQs:

- Q1. A supply would be considered as – in the course of inter-State trade or commerce if the

- (a) location of the supplier and location of the recipient are in different States
- (b) location of the supplier and place of supply are in different States
- (c) location of supplier and usage of goods and / or services are in different States
- (d) location of the supplier and recipient are in same State.

Ans. (b) location of the supplier and place of supply are in different States

Conclusion:

What is crucial is to determine, whether the location of the supplier and the place of supply are in different States. Once it is determined that the location of the supplier and the place of supply are in different States the transaction would become an inter-State transaction and therefore, be governed by the IGST Act.

3A. Supplies of goods and/or services in the course of intra-State trade or commerce

Statutory provision:

(1) Subject to the provisions of Section 5, intra-state supply of goods means any supply where the location of the supplier and the place of supply are in the same State.

(2) Subject to the provisions of Section 6, intra-state supply of services means any supply where the location of the supplier and the place of supply are in the same State.

3A.1 Introduction

This Section enables determination of supplies of goods or services in the course of intra-State trade or commerce.

3A.2 Analysis

- (a) Although this Section is a part of IGST Act, it is applicable for determining the liability under CGST 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 5 and 6 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 are in the same State.

Note: Refer to the discussion and illustrations in chapter IV, in the context of Sections 5 and 6.

- (f) Similarly, in respect of 'service', 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 are in the same State.

Note: Please refer to the discussion and illustrations given in chapter IV, in the context of Sections 5 and 6.

- (g) Section 3A has to be read alongside Sections 5 and 6 and whenever a conflict arises between the said provisions, Section 3A has to make way for Section 6, which is signified by usage of the words "subject to the provisions of Sections 5/6".

3A.3 Comparative review

There is no such proposition in the existing laws, as the concept of supply being unique to the GST regime is considered as a 'taxable event'.

3A.4 FAQs:

Q1. Under what circumstances a supply would be treated as having taken place in the course of intra-State trade or commerce?

Ans. A supply is said to have taken place in the course of intra-State trade or commerce, when the location of the supplier and the place of supply are in the Same State.

Q2. In case of conflict between Section 5 and Section 3A, which one should prevail?

Ans. Section 3A has to be read together with Sections 5 and 6 and whenever a conflict arises between the said provisions, Section 3A has to make way for Sections 5 and 6, which is signified by usage of the words “subject to the provisions of Section 5/6”.

Q3. In case of conflict between Section 6 and Section 3A, which one should prevail?

Ans. Section 3A has to be read together with Sections 5 and 6 and whenever a conflict arises between the said provisions, Section 3A has to make way for Sections 5 and 6, which is signified by usage of the words “subject to the provisions of Section 5/6”.

3A.5 MCQs

Q1. A supply would be considered as one in the course of intra-State trade or commerce if the _____

- (a) location of the supplier and location of the recipient are in different States
- (b) location of the supplier and place of supply are in same State
- (c) location of supplier and usage of goods and / or services are in different States
- (d) If the location of the supplier and recipient are in same State.

Ans. (b) location of the supplier and place of supply are in same State

Conclusion:

What is crucial is to determine, whether the location of the supplier and the place of supply are in the same State. Once it is determined that the location of the supplier and the place of supply are in the same State the transaction would become an intra-State transaction and therefore, be governed by the CGST / SGST Act.

Illustration for Section 3 and 3A of IGST Act

Section	Nature of supply	Location of the Supplier	Place of Supply	Remarks
3	Goods	Karnataka	Bihar	Inter-State transaction - IGST Act
3A	Services	Delhi	Haryana	Inter-State transaction - IGST Act
3	Goods	Goa	Goa	Intra-State transaction - CGST Act
3A	Services	Kerala	Kerala	Intra-State transaction - CGST Act

Chapter – III

Levy and Collection of Tax

4. 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 at the rate specified in the Schedule to this Act and collected in such manner as may be prescribed.
- (2) The Integrated Goods and Services Tax shall be paid by every taxable person in accordance with the provisions of this Act.
- (3) Notwithstanding anything contained in sub-Section (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 person receiving 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 such goods and/or services.
- (4) Notwithstanding anything contained in sub-Section (1) but subject to such conditions as may be notified in this behalf, no tax under this Act shall be payable by any taxable person in respect of such supplies of goods and/or services as are specified in Schedule . . . to the Act.

4.1 Introduction

This is the charging Section of the IGST Act. It provides that all inter-State supplies would be liable to IGST. The levy of tax on supply of goods and / or services is in two parts in the hands of the –

- (i) Supplier; and
- (ii) Recipient of goods and / or services under the reverse charge mechanism.

This Section also specifies that supply of certain notified or scheduled (schedule yet to be specified), goods and / or services will be exempt from payment of taxes.

4.2 Analysis

In terms of Section 2(2) of the IGAT Act, any words or expressions 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 are critical.

- Supply
- Inter-State supply
- Goods
- Services
- Taxable person

The expression 'inter-State supply' is defined under Section 3 / 3A of the IGST 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) The supply envisages goods and / or services – viz., wholly goods or wholly services. Prima facie, where the supply appears to include both goods and services, Schedule II of the CGST Act provides for clarity on the same by specifying that they would qualify, **either as services or as goods**, as mentioned therein.
- (ii) The supply is an inter-State supply – viz., the location of the supplier and the places of supply are 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 9 and Schedule III of the CGST Act.

Tax shall be payable by a 'taxable person': The tax shall be payable by a 'taxable person' as defined under Section 9 and Schedule III of the CGST Act. Broadly, a taxable person is one who is carrying on business at any place in the State and who is registered or who is required to be registered. One may refer to the discussion under Section 9 read with Schedule III of the CGST Act for a thorough understanding of this concept.

Tax payable: Every inter-State supply will attract IGST.

Rate of tax and value of supplies: The rate of tax will be as specified in Schedule ____ to this Act (schedule yet to be prescribed) and the value of supplies would be as determined under Section 15 of the CGST Act.

Supply:

Refer to discussion under Section 7 of the CGST Act for a detailed understanding of the expression 'supply'.

Reverse charge mechanism: Normally, the supplier of goods and / or services will be liable to discharge tax on the supplies affected. 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’.

4.3 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 taxable. Under the current law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST. However, under the GST law, it would be taxable as a ‘supply’.

Under the current law, there are multiple transactions which apparently qualify as both ‘sale of goods’ as well as ‘provision of services’. E.g.: license of software, providing a right to use a brand name, etc. Unlike this situation, GST clarifies as to whether a transaction would qualify as a ‘supply of goods’ or as ‘supply of services’. At this juncture, it appears that a transaction would either qualify as goods or as services, under the GST law. Even in respect of composite contracts, it has been clarified under the GST law (Schedule II of the Act) as to whether a transaction would qualify as a ‘supply of goods’ or as ‘supply of services’.

The payment of VAT in the hands of the purchaser (who is a 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.

4.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
IGST	Section 3A	Meaning of intra-State supplies	Defines intra-State supplies of goods and / or services for the purposes of levy of tax under the CGST Act
CGST	Section 7	Levy and collection of GST	Charging Section under CGST Act
CGST	Section 3 read with Schedule I and II	Definition of ‘supply’	Every supply of goods or services would be liable to tax. Thus, it becomes essential to understand the meaning of ‘supply’.
CGST	Section 9 read with Schedule III	Meaning of ‘taxable person’	Liability to tax is on every taxable person. Thus, it becomes essential to understand the meaning of ‘taxable person’.
CGST	Section 35	Payment of tax	Provides for method and timelines for remittance of tax by the registrant.

4.5 FAQs

Q1. Will sale of business as a whole be liable to tax?

Ans: In terms of Section 3 of the CGST Act read with Schedule I “sale of business as a whole” will be treated as a supply without consideration and would thus be liable to tax unless such supply is notified to be exempt.

Q2. Is the reverse charge mechanism applicable only to services?

Ans: No, in terms of Section 4(3) of the IGST Act, it is applicable to both Goods and Services.

Q3. What will be the implications in case of purchase of goods from unregistered dealers?

Ans: The Model GST law as on date, leaves this question unanswered, but one can expect such supplies to be made taxable.

Q4. In respect of exchange, will the transaction be taxable as two different supplies or will it be taxable only in the hands of the main supplier?

Ans: Since the GST Law proposes to treat “a transaction of exchange as a supply” the levy of tax on such exchange transactions, would be in the hands of both the persons.

Q5. Services are defined to mean as ‘anything other than goods’. Illustratively what all would it include?

Ans: “Rentals received on immovable property” would be in the nature of services.

Q6. In respect of exchange or barter, if one supply is intra-State and another is inter-State, how will the taxes be applicable?

Ans: These transactions will be treated as two separate supplies, and taxes as applicable under the IGST or CGST Acts would become payable.

Q7. What are examples of ‘disposals’ as used in supply?

Ans: In simple terms it could mean “free issues as in samples”, or something that is used up as in “consumables” etc.

Q8. What are activities which the Government or local authority undertakes, as a public authority?

Ans: It could be in the areas of health-care by running hospitals, education by running schools/ colleges or postal services etc.

Q9. Will recovery towards food and conveyance from employees be liable to tax as supply by the employer to the employee?

Ans: Yes.

Q10. Will sale of immovable property be liable to tax?

Ans: Sale of Immovable property is kept outside the purview of the GST regime.

Q11. Will a Bank qualify as a taxable person for sale of hypothecated / pledged goods (auction)?

Ans: Yes.

Q12. Will a “not for profit entity” be liable to tax on any sales effected by it – e.g.: sale of assets received as donation?

Ans: Yes.

4.6. MCQs

Q1. The rate of tax payable under the IGST Act is:

- (a) 16%
- (b) 20% on goods and 16% on services
- (c) 20% on goods and / or services
- (d) At the rate specified in the schedule to the IGST Act

Ans: (d) At the rate specified in the schedule to the IGST Act

Q2. The tax under the IGST Act is payable by:

- (a) A service provider
- (b) A supplier of goods and / or services
- (c) Every taxable person
- (d) Unregistered person

Ans: (c) Every taxable person

Q3. The tax payable on reverse charge basis will be notified by:

- (a) The State Government
- (b) The Central Government on recommendation of the Council
- (c) CBEC
- (d) Recipient of goods and / or services

Ans: (b) The Central Government on recommendation of the Council

CHAPTER – IV

Place of Supply of Goods and/or Services

5. Place of supply of goods

Statutory Provision

- (1) The provisions of this Section shall apply to determine the place of supply of goods.
- (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.
- (2A) 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.
- (3) 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.
- (4) Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.
- (5) 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.
- (6) Where the place of supply of goods cannot be determined in terms of sub-Section (2), (3), (4) and (5), the same shall be determined by law made by the Parliament in accordance with the recommendation of the Council.

5.1. Introduction

Based on the discussion under Section 3 of the IGST Act, 2016, it is important to correctly determine the 'place of supply' as to whether IGST Act applies to a particular supply or CGST / SGST Acts apply. Any error committed in determining the 'place of supply' may result in payment of the wrong tax, that is, CGST / SGST instead of IGST and vice versa. In order to ensure compliance with GST laws, a thorough understanding of the 'place of supply' provisions are helpful.

As explained in an earlier chapter, 'supply' is the taxable event, but this event may occur in any one State or across more than one States. Once the 'place of supply' is correctly identified / determined, the following facts become clear:

- Confirm that the liability is only under IGST Act; and
- Exclude any liability under CGST / SGST Acts.

5.2. Analysis

(a) This Section is applicable 'only' with respect to transactions of supply involving 'goods'. Services are covered in the next Section 6. 'Goods' are defined in Section 2(48) of CGST Act, 2016 to mean every kind of movable property excluding intangible property. This definition is applicable by virtue of Section 2(2) of IGST Act, 2016 which states that, in case any words used are not defined in this Act, it will have the same meaning assigned to it under the CGST Act, 2016. Judicial precedents available currently may be referred to understand the meaning of the term 'goods' under IGST Act, 2016 if it is contextually relevant.

(b) 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'.

(c) Another important point to be noted in this Section is that wherever 'delivery' takes place, the place of delivery is its 'place of supply'. To cite a few instances:

- If goods have to be transported to properly complete the supply, then as per sub-Section 2, the place where 'movement terminates' is said to be its place of supply;
- If goods do not have to be transported, then as per sub-Section 3, the place where they are 'delivered' to the recipient is provided to be its place of supply.

(d) If we notice the basis of determining the 'place of supply', it is the same in both the above sub-Sections (and in all other sub-Sections) i.e., the place where the supply is properly complete by 'effective delivery' is its place of supply.

(e) Delivery would be the place where the supplier passes control over the goods supplied. And until control is retained by the supplier, the place of supply has not yet reached.

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

Explanation– For the purpose of this clause, the term 'moveable property' shall not include any intangible property.

Thus, whether movement of goods is involved or not, the important aspect to be understood is that the place of supply will be determined under this Section based on the site or premises (geographic location) where the 'delivery' is complete for each supply.

- (f) Once it is determined that these two places i.e., the location of supplier and place of supply are in two different States then, IGST Act applies.
- (g) If the place from where the supply originates and the place of supply (as determined under this Section) are not in the same State, then it is a supply covered by IGST Act. When a supply is covered by IGST Act, CGST / SGST Act does not apply. Supply of goods may or may not involve movement of those goods from one State to another, whereas, it may be in the same State.
- (h) If the terms of supply require 'movement' of those goods in order to properly complete the supply, then it can be said that 'supply involves movement of goods'. This question should be determined first, so that the correct sub-Section can be applied to know the correct place of its supply:

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 5.1:

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 5.2:

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.

- (i) If the supply 'does not' require movement of goods, then the place of supply is not determined based on the movement but by its delivery to the recipient:

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

- (j) If the goods are assembled or installed at site, the place of supply shall be deemed to be the place of assembly / installation:

Particulars	Location of the supplier (location of goods ready for supply)	Location of the recipient (regd. office of the customer)	Site of assembly or installation	'Place of supply'
Where the goods are assembled / installed at site	Madhya Pradesh	Chhattisgarh	Tamil Nadu	Tamil Nadu –CGST / SGST Act
	Madhya Pradesh	Madhya Pradesh	Tamil Nadu	Tamil Nadu –CGST / SGST Act
	Madhya Pradesh	Madhya Pradesh	Madhya Pradesh	Madhya Pradesh - CGST / SGST Act
	Madhya Pradesh	Tamil Nadu	Tamil Nadu	Tamil Nadu - CGST / SGST Act
	Madhya Pradesh	Tamil Nadu	Madhya Pradesh	Madhya Pradesh - CGST / SGST Act

- (k) When the goods are supplied on board a conveyance place of supply will be the location at which goods are taken on board

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

- (l) 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 2A to Section 5) 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(78) 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).*

In summary, the provisions of Section 5 specify the place of supply to be:

- Place of delivery, if movement is required (sub-Section 2)
- Place of delivery, if movement is through carrier (sub-Section 2A)
- Location of goods, if movement is not required (sub-Section 3)
- Site of assembly or installation (sub-Section 4)
- Place of loading, if the goods are meant for consumption 'on-board' a conveyance (sub-Section 5)
- All other cases, as determined by law made by Parliament (sub-Section 6)

5.3. Comparative Review

Place of supply of goods is determined by Sections 3, 4 and 5 of CST Act. Here, if the movement of goods is 'occasioned' by a contract of sale is from one State to another then, the sale is an inter-State sale. And if a sale is decided not to be an inter-State sale according to these Sections, then that sale is an intra-State sale.

The levy of duty under the Central Excise Act, 1944 was on the goods upon their manufacture but collection was postponed until they were 'removed' from the place of manufacture. Removal included captive consumption also.

On a comparative review of the above provisions, we find that 'destination of movement' guided the levy of CST whereas 'completion of delivery' now decides the levy of IGST.

5.4. Related provisions

Statute	Section or Rule	Description	Remarks
IGST	Section 3	Supplies of goods and / or services in the course of inter-State trade or commerce	

5.5. FAQs:

Q1. What does 'supply involves movement' mean?

Ans: It means that, if the supply would be incomplete until the goods are transported, then such supplies involve movement. Now, taking Illustration 5.1, no doubt, those mobile phones would be taken by the customer to his residence before using them but the supply completes at the showroom itself by satisfactorily delivering the vegetables to the customer.

Q2. Which sub-Section applies in preference over the others?

Ans: Each of sub-Sections provide for a different situation, so based on the facts of each situation, the relevant sub-Section should be followed. There is no preference of one sub-Section over another. Please note that the same principle of 'delivery' is present in each sub-Section.

Q3. Is 'location of supplier' same as 'location of goods' or are they different?

Ans: Firstly, with respect to goods, 'location of supplier' is not defined in IGST Act or CGST Act. But based on a review of all other provisions, the word 'location' refers to the site or premises (geographical point) where the supplier is situated with the goods in his control and ready to be supplied. Although, these two terms may refer to different physical places but the legal requirements of every taxable person to pay tax in respect of every taxable supply and persons liable for registration, the 'location of goods' becomes the 'location of supplier' for the purpose of section 5(2).

Q4. When the words 'place of supply' are well understood in common language, what is the need for a specific Section in IGST Act?

Ans: It is exactly for this reason that – the words are well understood in common language – care needs to be taken to only use the explanation provided in Section 5 and not deviate from this explanation based on common understanding.

Q5. Are 'in-transit' supplies permitted under IGST Act?

Ans: Yes, by providing for a situation where goods may be delivered by way of 'transfer of documents of title' in sub-Section 3(2), supplies are permitted to be made 'in transit' also.

Q6. If goods are manufactured 'at site' do they qualify as 'assembled or installed'?

Ans: Yes, that would be the place of supply because the purpose of taking the manufacturing facility to the site is for convenience in assembly or installation.

Q7. If place of supply cannot be decided, which Government will make the rules?

Ans: The secondary rules for determination of place of supply, if not possible under any sub-Section, are required to be made by Parliament. Hence, sub-Section (6) does not delegate the 'rule making' power but in fact places a 'restraint' on Parliament that the rules made must be 'in accordance' with the recommendations of the GST Council. This is in line with article 269A (2) of the Constitution Amendment (Bill).

5.6. MCQs:

Q1. Intangible property is not 'goods' because:

- (a) It is not movable property
- (b) It is not tangible and excluded from definition in Section 2(48) of CGST Act
- (c) It is required to be excluded from GST
- (d) None of above

Ans: (a) It is not movable property

Q2. What are 'intangible' goods?

- (a) Goods that cannot be touched
- (b) Goods that should not be touched
- (c) Goods that do not have any sensation to touch
- (d) Goods that are invisible

Ans: (a) Goods that cannot be touched

Q3. What is delivery of goods?

- (a) Placing the goods in the customer's hands
- (b) Placing the goods within the control of the customer
- (c) Supplier losing control over the goods
- (d) All of above

Ans: (b) Placing the goods within the control of the customer

Q4. If a Private Limited Company is the supplier and Office of GST registration is in Jaipur and the goods are in Jodhpur, the location of supplier is:

- (a) Only Jaipur because it is registered under GST
- (b) Only Jodhpur because goods are to be supplied from here
- (c) Jaipur and Jodhpur because they are both in Rajasthan State
- (d) At the registered place of incorporation of Company

Ans: (b) Only Jodhpur because goods are to be supplied from here

6. Place of supply of services

Statutory Provision

- (1) The provisions of this Section shall apply to determine the place of supply of services.
- (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 sub-Sections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15), made to any person other than a registered person shall be
 - (i) The location of the recipient where the address on record exists, and
 - (ii) The location of the supplier of services in other cases.
- (4) The place of supply of services, -
 - (a) 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.

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.

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, and 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 and internet service are provided on pre-payment through a voucher or any other means, be the location where such pre-payment is received or such vouchers are sold:

Provided 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.

- (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 service is not linked to the account of the recipient of services, 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, is 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

6.1. Introduction

Service is not defined under the IGST Act, 2016 but is defined under the CGST / SGST Act, 2016 to include intangible property and actionable claims. This is different from the definition in service tax law [Section 65B(44) of the Finance Act, 1994]. Supply of services is to be understood as different from supply of goods. Determining the place of supply of service is difficult because there are no tangible articles involved. The principle of GST – destination based consumption tax – must be construed as a new system that issued for deciding the place of supply of services.

Services are basically identified by work done, by the usage of skill possessed by a person, or in an organization.

6.2. Analysis

- (a) Determining the correct location as the 'place of supply' is based on the principle that GST is a 'destination based consumption tax'. Please refer to discussion under Section 4 on this aspect to understand the same.
- (i) Transactions of supply involving services, requires to establish two aspects:
1. Fact of its performance; and
 2. Place of its supply.
- (ii) Whether a service has been performed or not can be ascertained only by observing what change has resulted from the service so performed. Alternatively, issuing an invoice or receiving payment may be the only available accounting proof for performance of services. One may refer to the elaborate discussion under Section 13 of CGST Act on 'time of supply' of services.
- (iii) It is important to note that transactions of supply involving 'intangible property' have been treated as services under GST laws. Therefore, the controversy as it exists today as to whether VAT or service tax should apply on intangible property has been resolved by this legal fiction under the GST laws. Another fiction created in this Section is by including 'actionable claim' as services. As per Section 3 of the Transfer of Property Act, 1882 "Actionable Claim is a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of moveable property, or to any beneficial interest in moveable property not in possession either actual or constructive, of the claimant, which the civil courts recognise as affording grounds of relief whether such debt or beneficial interest be existent, accruing or conditional or contingent". Implications of this must be properly understood.
- (iv) By applying the said principles, a fair manner of deciding the 'place of supply' will be possible. Otherwise, the levy of GST itself will become debatable due to differences in the method followed.

2(88) "services" means anything other than goods;

Explanation: Services include intangible property and actionable claim but does not include money.

Illustration 6.1: Services performed at the hospital are identified with the place where the usage of service occurs rather than residence of the patient.

A service provided may be verified either by the change that is produced in the articles on which the service is carried out, or upon observing actions of parties that generally takes place only after the agreed service has been performed. But there are certain services where, except for the invoice or payment received there is no other way to verify its performance. When the place of supply of most services is decided in a fair manner, then any rule provided to decide place of supply in case of such unverifiable services would also be accepted by trade and industry.

In summary the **provisions of Section 6 specify the place of supply in relation to:**

- (b) Registered person or Unregistered person whose **address is on record**, place of supply will be the location of service receiver, except if it is provided in any other clause below (sub-Section 2);
- (c) Unregistered person whose address is unknown, place of supply will be the location of service provider, except if it is provided in any other clause below (sub-Section 3);
- (d) Immovable property – its development or usage – place of supply will be location of such immovable property (boat or vessel also included) (sub-Section 4)

Illustration 6.2: Architect may perform his services in any city (or country) but his services cannot be without reference to the conditions of each site for which he may be designing the building. The place of supply is therefore identified with the site of the project and not the place of its preparation. Similarly, an interior decorator or a real estate broker's services also are linked to the project site which would be its place of supply.

- (e) Restaurant and catering, wellness and personal care, place of supply will be location of its actual performance (sub-Section 5)

Sub-Section 5 relating to 'supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery' requires careful consideration due to the nature of services that are listed. It is possible that;

- One approach may be to consider the services listed as examples so that other similar services may be included.
- Another approach may be to consider the services listed to be exhaustive.

- (f) Training and personnel services, place of supply will be location of service receiver (if registered) or place of actual performance of service (if unregistered) (sub-Section 6)
- (g) Admission to social or educational event, place of supply will be location of such venue (sub-Section 7)

- (h) Organizing social or educational event, place of supply will be location of service receiver (if registered) or location of venue (if unregistered) (sub-Section 8)
- (i) Transportation of goods, place of supply will be location of service receiver (if registered) or loading of goods (if not registered) (sub-Section 9)
- (j) Passenger transport, place of supply will be location of service receiver (if registered) or location of embarkation (if unregistered) (sub-Section 10)
- (k) Service on-board conveyance, place of supply will be first place of departure (sub-Section 11)
- (l) Telecommunication services, place of supply will be (sub-Section 12)
 - (a) Location of any fixed installation;
 - (b) Address on record of service receiver; or
 - (c) location where payment is received.
- (m) Banking, financial or broking services, place of supply will be location of service receiver, if service is linked to account of receiver and location of service provider in other cases (sub-Section 13)
- (n) Insurance services, place of supply will be known location of service receiver (sub-Section 14)
- (o) Advertisement to Government authorities, place of supply will be location of dissemination (sub-Section 15)

6.3. Comparative Review

Place of supply of services is determined by Place of Provision of Service Rules, 2012 which classify services into various categories and then specific by legal authority which is its place of provision.

Service tax is regarded to be a 'destination based consumption tax'. Accordingly, this principle is contained in the Place of Provision of Service Rules. But, it is not expressly stated in the Rules.

Landmark decision: In the case of All India Federation of Tax Practitioners v. UoI (2007) 10 STT 166, the Hon'ble Supreme Court laid down that service tax is a 'destination based consumption tax'.

6.4. Related Provisions

In terms of Section 6(1) of Model IGST Act, 2016, the provision of this Section shall apply to determine the place of supply of services

Section / sub-section	Description	Services made to	Place of supply
6(2)	Except services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15).	Registered Person	Location of the Registered Person
Example 1	ABB Ltd in Mumbai engaged in providing repair services of machinery goes to a registered person's factory located at Delhi and repairs the machinery, the place of supply of services will be Delhi. ABB Ltd., shall pay IGST in Mumbai.		
6(3)	Except services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15)	Person other than a Registered Person	(i) Location of the recipient where the address on record exists; Address on record means address of the recipient as available in the records of the supplier. and (ii) Location of the Supplier of services in other cases
Example 2	<p>a. If ABC Ltd in Bangalore provides repair services of iPhone to a customer (not registered under GST laws) residing in Hyderabad and the customer's address on record exists, the place of supply shall be the location of the recipient i.e., Customer in Hyderabad - IGST will be payable in Bangalore.</p> <p>b. If ABC Ltd in Bangalore provides repair services of iPhone to a customer (not registered under GST laws) residing in Chennai and the customer's address on record does not exist, the place of supply shall be the location of the Supplier i.e., ABC Ltd in Bangalore - CGST / SGST will be payable in Bangalore.</p>		
6(4)(a)	The Place of supply of services		
	In relation to an immovable property, including services provided by architects,	Recipient of services (Registered Person or Person other than	Location at which the immovable property or boat or vessel is located or

	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	Registered Person)	intended to be located
Example 3	In case a plumbing contractor carries out plumbing services, the place of supply would be the location of the immovable property.		
6(4)(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	Recipient of services (Registered Person or Person other than Registered Person)	Location at which the immovable property or boat or vessel is located or intended to be located
Example 4	If services are provided in a house boat at Alleppey, then place of supply will be the location of house boat i.e., Alleppey. IGST is not applicable: CGST/SGST is applicable.		
6(4)(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	Recipient of services (Registered Person or Person other than Registered Person)	Location at which the immovable property or boat or vessel is located or intended to be located
Example 5	If services are provided say in Hotel Ashok at Delhi for a marriage reception, then the place of supply will be Delhi. IGST is not applicable: CGST/SGST is applicable.		
6(4)(d)	any services ancillary to the services referred to in	Recipient of services (Registered Person or	Location at which the immovable property or boat

	clause (a), (b) and (c)	Person other than Registered Person)	or vessel is located or intended to be located
In terms of the explanation to section 6 of the IGST Act, 2016 where the immovable property or boat or vessel is located in more than one State, the supply of service shall be:			
(i) Deemed to be made in each of the States; and			
(ii) Proportionately for the value for services separately collected or determined (as per the contract / agreement); or			
(iii) If no contract or agreement exists, on such reasonable basis as prescribed.			
6(5)	Restaurant and catering services, Personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery	Registered or unregistered Person	Where the services are actually performed
Example 6	a. Eating out at say Taj West End at Bangalore, the place of supply will be Bangalore - CGST / SGST will be payable in Bangalore. b. If a beautician in Bangalore carries out a beauty treatment at Bhopal in MP, then the place of supply would be Bhopal (MP) - IGST will be payable in Bangalore.		
6(6)	Training and performance appraisal	Registered Person	Location of such Person
	Training and performance appraisal	Unregistered Person	Location where the services are actually performed
Example 7	If SAP India Limited, Bangalore conducts a training program for IBM India (Registered Person at Delhi), the place of supply shall be Delhi. IGST payable in Bangalore; If SAP India Limited, Bangalore conducts a training program for XYZ Enterprises (unregistered Person in Telangana), the place of supply shall be Bangalore. IGST is not applicable: CGST/SGST is applicable.		
6(7)	Admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place and services ancillary thereto	Registered or unregistered Person	Place where the event is actually held or where the park or such other place is located.

Example 10	1. Indian Oil Corporation New Delhi is appointing VRL Logistics Bangalore for transportation of goods: Place of supply shall be New Delhi. IGST payable in Bangalore 2. Agarwal Packers and Movers (registered person in Bangalore) providing transportation of goods to individual Ms. P for personal use (unregistered person located in Mumbai). Individual handing over goods at Mumbai for transportation: Place of supply of services shall be Mumbai. IGST payable in Bangalore.		
6(10)	Passenger transportation service	Registered Person Unregistered Person	Location of such Person Place where the passenger embarks on the conveyance for a continuous journey
<p>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.</p> <p>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.</p>			
Example 11	1. SRS Travels (registered in Bangalore) providing passenger transportation services to the Suresh Enterprises located and registered in Tamil Nadu: Place of supply of service shall be Tamil Nadu. IGST payable in Bangalore; 2. SRS Travels (registered in Bangalore) providing transportation services to educational institution located in Kerala (unregistered person) for all India tour. The tour scheduled to start from Kerala: Place of supply of service shall be Kerala. IGST payable in Bangalore;		
6(11)	On board a conveyance such as vessel, aircraft, train or motor vehicle	Registered or Unregistered Person	First scheduled point of departure of that conveyance for the journey
Example 12	M/s Star Cruise Lines (registered in Cochin) is charging additional fees provides personalised services to passengers. The cruise is set for departure from Cochin port to Colombo. Place of supply of personalised services shall be Cochin. CGST/SGST payable in Cochin.		
6(12)	Telecommunication services including data transfer, broadcasting, cable and direct to home television services		

	Fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna		Where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services
	Mobile connection for telecommunication and internet services provided on post-paid basis		Billing address of the recipient of services on record of the Supplier of services
	Mobile connection for telecommunication and internet service are provided on pre-payment through a voucher or any other means		Where such pre-payment is received or such vouchers are sold Provided 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
Example 13	<p>1. Mr. A located (unregistered in Hosur) is receiving dish services from Tata Sky (registered in Bangalore): Place of supply of service shall be Hosur. IGST payable in Bangalore;</p> <p>2. Mr. B (unregistered person) has furnished Chennai address while obtaining post-paid connection from Airtel (registered in Chennai). He has now shifted his place of residence to Bangalore. Airtel issues invoice indicating Chennai address: Place of supply of service shall be Chennai. IGST is not applicable: CGST/SGST is applicable;</p> <p>3. If Mr. B has pre-paid mobile connection in the above example 2 and recharges the same by obtaining recharge voucher at Bangalore: Place of supply shall be Bangalore. IGST is not applicable: CGST/SGST is applicable;</p> <p>4. In the above example 2, If Mr. B has pre-paid mobile connection and recharges his phone connection by making payment through net-banking to Mr. A: Place of supply shall be Chennai (location of recipient on record of service provider). IGST is not applicable: CGST/SGST is applicable;</p>		

6(13)	Banking and other financial services including stock broking services		Location of the recipient of services on the records of the Supplier of services: Provided that if the service is not linked to the account of the recipient of services, the place of supply shall be location of the Supplier of services
Example 14	<p>1. Mr. A (unregistered person) has furnished his residential address of Cochin at the time of opening SB account with Canara Bank Pune. He is receiving services of locker facility from Canara Bank at Pune: Place of supply of services shall be Cochin. IGST payable in Pune;</p> <p>2. Mr. A of Cochin (unregistered person) during his business travel to Ahemdabad pays commission to Bank of India Ahemdabad for providing services in relation to obtaining demand draft: Place of supply shall be Ahemdabad. IGST is not applicable: CGST/SGST is applicable;</p>		
6(14)	Insurance services	Registered Person Unregistered Person	Location of such Person Location of the recipient of services on the records of the Supplier of services
Example 15	<p>1. Meru Cabs Gurgaon (registered person) having fleet of cars receives insurance services from the Oriental Insurance Co., (registered person in Mumbai): Place of supply shall be Gurgaon; IGST payable in Mumbai;</p> <p>2. Ms. P located in Lucknow (unregistered person) receives insurance services from LIC of India (registered person in New Delhi): Place of supply shall be Lucknow. IGST payable in New Delhi;</p>		
6(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		
Example	Government of India promoting 'Skill India' in association with all the States has		

16	appointed M/s XYZ Advertisement Private Limited (registered and located in New Delhi) for advertisement in different States: Services provided in the State of New Delhi: IGST is not applicable. CGST/SGST applicable; Services provided in State other than New Delhi: IGST payable in New Delhi;
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6.5. FAQs:

Q1. Why is determination of 'place of supply' difficult with respect to services?

Ans: Services, unlike goods, are not visible to know the place where it passes from the supplier to the recipient and therefore, it is important that the rules for deciding place of supply of services must be fair to tax payer as well as to the Government.

Q2. Is it equitable to impose IGST on services that are performed in relation to immovable property which does not require visit by service provider to the property site?

Ans: Services, in relation to immovable property, cannot be performed in vacuum and have a very close nexus with the property site. Hence, imposition of tax based on the site location is the most reliable basis.

Q3. Are principles of 'destination based tax' present in each of the provisions on place of supply of services?

Ans: Yes, this principle is the common framework for all the provisions.

Q4. What is the 'destination based tax' principle in case of services that are actually performed over an indeterminate space like on-board services?

Ans: Just because the services are performed over indeterminate space does not mean the rule for deciding place of supply can be equally uncertain. Hence, the relying on the last preceding location is the next most reasonable method.

Q5. What is the reasoning in the services listed in sub-Section 5 of Section 6?

Ans: This provision refers to services whose place of supply is linked to the place where they are actually performed.

Q6. When supply includes both goods and services, which provisions apply?

Ans: Schedule II of the CGST Act addresses all such cases and declares that to be treated 'as if' they were supply of any one or other, that is, supply of goods or supply of services. This fiction in Schedule II being prescribed under Section 3(2) of the CGST Act it will be followed universally in all provisions of the CGST Act.

Q7. Where services are performed on goods which are carried to the location of the service provider, then are the services performed at the place of actual performance or at the place of supply under sub-Section 2 of Section 6?

Ans: Services, whether performed on goods or not, if they are listed in any specific sub-Section, then that provision will apply and if not, then the actual place where the

services are performed is not the criteria but the location of the recipient (if registered) or address on record (if unregistered).

Q8. Where services are performed from outside India (say) in relation to immovable property like real estate brokers or architects, how will payment of IGST apply?

Ans: In such cases, it is likely that IGST may be imposed on 'reverse charge' basis so that the tax is payable by the recipient of the service and not the supplier.

Q9. When the place of supply of services is spread over more than one States, then will the appropriation be contested based on the share of IGST accruing to each State?

Ans: Suitable appropriation of the total value of service will be made so that the tax applicable may be distributed to each State in a fair manner. For example, refer explanation under sub-Section (4) or (8).

Q10. When the specific services provided overlap and there is dispute about the application of the most relevant provision, what is the outcome to the assessee?

Ans: Given the clear scope of each sub-Section in this Section, most cases of such overlap or doubt about its coverage will be resolved. However, if there is any such overlap or doubt, the principle of destination-based tax may be applied to see which is the most appropriate provision that to be followed.

6.6. MCQs:

Q1. Is 'service' under IGST different from Service Tax?

- (a) Yes, all services as commonly understood PLUS those listed in Sch II of CGST Act
- (b) No, it is more or less same in IGST compared to Service Tax
- (c) Service is any activity other than those exempt
- (d) as defined for Service Tax

Ans: (a) Yes, all services as commonly understood PLUS those listed in Sch II of CGST Act

Q2. Are the 15 sub-Sections exhaustive or will they be amended from time to time?

- (a) Yes, it is usual to make amendments
- (b) No, there is no provision to expand this list unlike goods [section 5(6)]
- (c) Cannot say
- (d) No, making amendments will cause confusion

Ans: (b) No, there is no provision to expand this list unlike goods [section 5(6)]

Q3. Tax on services under Service Tax law differs from IGST Act – what is the impact of significant differences?

- (a) This is a new law and old principles do not apply

- (b) Service tax and IGST must be reconciled somehow because the activities of the assessee are the same
- (c) IGST cannot differ from service tax as regards the place of provision or place of supply
- (d) As in many other services, the place of supply under IGST matches with place of provision of services, so it must match with all services

Ans: (a) This is a new law and old principles do not apply

Q4. If tax is wrongly paid under IGST Act due to misinterpretation of applicability of any of the sub-Sections, what is the impact?

- (a) Pay the correct tax again and claim refund of the tax paid in error
- (b) Revise both returns so as to transfer amount deposited to the correct account code
- (c) Rectify the error by revising return only if accepted by recipient of service
- (d) Write letter to department and inform them of the adjustment needed.

Ans: (a) Pay the correct tax again and claim refund of the tax paid in error

Chapter-V

Payment of Tax

7. 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.

- (2) The input tax credit as self-assessed in the return of a taxable person shall be credited to his electronic credit ledger 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 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 38 of the CGST Act 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 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 51 of the CGST Act.
- (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.

7.1 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.

7.2 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 in the manner as may be prescribed.
- a.1. The date of credit to the account of the appropriate Government in the authorized bank is the date of deposit.
- a.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.
- a.3. Balance in the electronic cash ledger can be claimed as refund in accordance with the provisions of Section 38 of CGST Act and correspondingly the balance in the electronic cash ledger should be reduced.

(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

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

35 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.

7.3 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 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.

7.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
IGST	Section 4	Levy and collection of IGST	Charging Section under IGST
CGST	Section 2(40)	Definition of 'electronic cash ledger'	Defines 'electronic cash ledger'
CGST	Section 2(41)	Definition of 'electronic credit ledger'	Defines 'electronic credit ledger'
CGST	Section 2(94)	Definition of 'tax'	Defines 'tax'
CGST	Section 35	Payment of tax	Provides for method and timelines for remittance of tax by the registrant.

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 38	Refund of tax	Deals with refund of taxes and interest
CGST	Section 39	Interest on delayed refunds	Deals with interest on delayed refunds

7.5 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 being 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 info 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 Rs.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.

7.6 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 Rs 1 lakh
- (b) More than Rs 5 Lakhs
- (c) Upto Rs. 10,000/-
- (d) More than Rs .10,000/-

Ans: (c) Upto Rs. 10,000/-

Q3. Input Credit of IGST can be utilized against payment of?

- (a) IGST
- (b) CGST
- (c) IGST
- (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

Chapter – VI

Input Tax Credit

8.1 Claim of input tax credit, provisional acceptance, matching, reversal and re-claim 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 provisions of Section 29 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.

8.1 Introduction

This Section discusses about the availment of input tax credit by registered taxable person under IGST Act. This is similar to Section 28 of the CGST Act.

8.2 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.

One may refer to the BGM on Section 29 of the CGST Act for a detailed discussion.

8.3 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. 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.

8.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	2(41)	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.
CGST	28	Claim of input tax credit and provisional acceptance thereof	
CGST	29	Matching, reversal and reclaim of input tax credit	Manner, in which input credit is matched, reversed and reclaimed.

8.5 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.

8.6 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

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9. 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 7, 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 7, 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 SGST account of the appropriate State Government in the manner and time as may be prescribed.

9.1 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 37A of the CGST Act.

9.2 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 Rs. 1 Lakh credit of IGST. It uses Rs. 40,000/- for payment of tax dues under CGST. The amount Rs. 40,000/- used for the payment of CGST is reduced from IGST account. The Central Government will transfer Rs. 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, if uses Rs. 30,000/- for payment of tax dues under SGST of Karnataka State, such amount of Rs. 30,000/- is reduced from IGST account. The Central Government

will transfer Rs. 30,000/- from IGST account to SGST account of Karnataka state.

9.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
IGST	Section 7(5)	Payment of tax, interest, penalty and other amounts	Order in which IGST, CGST and SGST credit available to be utilized
CGST	Section 37A	Transfer of input tax credit	Similar provision under CGST / SGST Act

9.5 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.

9.6 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

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Chapter – VII

Apportionment of Tax and Settlement of Funds

10. 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 8 of the CGST Act, 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 made in a year to a registered taxable person, where such taxable person is either not eligible for input tax credit or 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.
- (3) 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 8 of the CGST Act, 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 made in a year by a registered taxable person, where the such taxable person is either not eligible for input tax credit or 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.
- (5) 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 sub-Section (1), (2) or (3) shall be apportioned, in the manner and time as may be prescribed, to the State where such supply takes place as per Section 9, 5 or 6.
- (6) The provisions of sub-Sections (1), (2), (3), (4) and (5) relating to apportionment of tax

shall mutatis mutandis apply to the apportionment of interest and penalty realized in connection with the tax so apportioned.

- (7) Where an amount has been apportioned to the Central Government or a State Government under sub-Sections (1), (2), (3), (4), (5) and (6), 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.

10.1 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.

10.2 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:

<p>1. IGST paid on supplies to:</p> <ul style="list-style-type: none"> ○ Unregistered persons; or ○ Persons registered under composition scheme 	<p>Credit chain is broken since the buyer is not eligible to claim any credits</p>
<p>2. IGST paid on imports by:</p> <ul style="list-style-type: none"> ○ Unregistered persons or ○ Persons registered under composition scheme 	
<p>3. IGST paid on supplies to registered taxable persons but where:</p> <ul style="list-style-type: none"> ○ Such registered taxable persons are not eligible to claim the credit; or ○ Where no credit is claimed within the allowed time period (within the expiry of the due date for filing of annual return) 	<p>Credit chain is broken since the recipient of goods and / or services is not eligible / has not claimed the input credit</p>
<p>4. IGST paid on imports by a registered taxable person where:</p> <ul style="list-style-type: none"> ○ Such registered taxable persons are not eligible to claim the credit; or 	

○ Where no credit is claimed within the allowed time period (within the expiry of the due date for filing of annual return)	
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In the above circumstances, the apportionment and consequential transfer of the tax by the Central Government to the State Government would be as follows:

Situation detailed in the above tax	Transfer to the Central Government	Transfer to the State Government
Situation 1	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.
Situation 2		
Situation 3		
Situation 4		

Note: The appropriate State Government, to which the amount would be transferred as per column 3 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 5 or 6 of the IGST Act, as applicable (viz., place of supply of goods and place of supply of services, respectively).

The above mechanism of apportionment and transfer will equally apply for interest and penalty which is realized on such supplies.

10.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 8	Composition Levy	
IGST	Section 5	Place of supply of goods	
IGST	Section 6	Place of supply of services	

10.5 FAQs:

Q1. What are the types of supplies in respect of which the taxes will be transferred under Section 10?

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 10.

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. The State in which the supply is deemed to have taken place should be determined in terms of the provisions contained in Section 5 or 6 of the IGST Act, as applicable (viz., place of supply of goods and place of supply of services, respectively).

Chapter - VIII

Settlement of Cases

11. Definition clause

Statutory provision

- (a) "Bench" means a Bench of the Settlement Commission;
- (b) "case" means any proceeding under this Act for the levy, assessment and collection of IGST before an IGST officer, or before a First Appellate Authority in connection with such levy, assessment or collection of IGST pending on the date on which an application under sub-Section (1) of Section 15 is made:

Provided that where an order is passed by an adjudicating authority and for which the appeal period has not expired shall also be deemed to be a proceeding pending within the meaning of this clause:

Provided further that where any appeal has been preferred after expiry of the period specified for filing such appeal under this Act and which has not been admitted, such appeal shall not be deemed to be a proceeding pending within the meaning of this clause:

Provided also that where any Court or Appellate Tribunal or the First Appellate

Authority refers a case back to the original adjudicating authority or the First Appellate Authority, as the case may be, for a fresh adjudication or decision, such proceeding shall not be deemed to be a proceeding pending within the meaning of this clause;

- (c) "Designated Officer" means an officer of the IGST appointed in the Settlement Commission to conduct inquiry or investigation for the purpose of this Chapter;
- (d) "Member" means a Member of the Settlement Commission and includes the National/State Chairman;
- (e) "Settlement Commission" means the National Goods and Services Tax Settlement Commission constituted under Section 12.

11.1. Introduction

The word "Settlement" as per the dictionary means "an official agreement intended to resolve a dispute or conflict". It is also understood as an arrangement, between two parties to a dispute, by which the dispute gets resolved out of Court and in the interests of both the parties.

In common parlance it is understood as: a) an arrangement or agreement reached, as in business proceedings, or negotiating a dispute: a wage *settlement*; a peace *settlement*. b) The resolution of a lawsuit or dispute by way of settling. c) The process of reaching such an arrangement, agreement, or resolution.

Section 11 defines certain terms and expressions, for the purpose of this Chapter which deals with settlement of cases.

11.2. Analysis

- (a) The word 'Bench' refers to a Bench of the Settlement Commission.
- (b) The term 'Case' means the following:
 - Any proceeding for levy, assessment and collection of IGST, **pending** before the First Appellate Authority, when an application for settlement is filed under Section 15(1).
 - An order passed by an adjudicating authority in respect of which the time limit available for filing appeal has not expired would be deemed to be a proceeding pending.
 - Situations where a proceeding is not pending:
 1. An appeal filed after the specified time limit pending admission;
 2. When a Court, Tribunal or First Appellate Authority remands the matter for de-novo consideration.
- (c) 'Designated Officer' refers to an IGST Officer, appointed in the Settlement Commission to inquire / investigate.
- (d) 'Member' means a person who is the National or State Chairman as well as a Member of the Settlement Commission.
- (e) 'Settlement Commission' means the National Goods and Services Tax Settlement Commission constituted under Section 12.

11.3 Comparative review

The definition clauses are broadly similar to the current indirect tax laws. A matter pending before the First Appellate Authority being treated as a "Case Pending" for settlement is a new feature.

11.4 Related Provisions

The definitions discussed supra are relevant for discussions made under Sections 12 to 26 of this Chapter.

11.5 FAQs:

- Q1. If a matter is pending before an adjudicating authority in de-novo proceedings pursuant to a Court order can it be settled under this chapter?

Ans: In terms of the third proviso to Section 11(b) it would not be treated as a proceeding pending. Therefore, no application can be made for settlement under this chapter.

Q2. If the First Appellate Authority dismisses an appeal due to delay in filing can the party go to Settlement Commission?

Ans: No, in terms of the second proviso if an appeal filed after the specified time limit and the said appeal is not admitted, then it would not be treated as proceeding pending.

Q3. Can a party approach the Settlement Commission when the matter is pending before the First Appellate Authority?

Ans: Yes, the provisions of Section 11(b) would cover such a scenario.

Q4. In general terms, what is "settlement"?

Ans: As per the dictionary meaning it is "an official agreement intended to resolve a dispute or conflict". It is also understood as an arrangement, between two parties to a dispute, by which the dispute gets resolved out of Court and in the interests of both the parties. In common parlance it is: a) an arrangement or agreement reached, as in business proceedings or negotiating a dispute: a *wage settlement*; a *peace settlement*. b) The resolution of a lawsuit or dispute by settling. c) The process of reaching such an arrangement, agreement, or resolution.

Q5. Why do we need a settlement process, or what could be the effects of not settling a dispute?

Ans: In respect of disputes arising, the absence of a settlement process would mean continuation of the litigation process by the business, and it is a cost and time consuming effort. It will also have a bearing on revenue collection. At times, it may result in uncertainty in pricing policies leading to huge business losses and in extreme cases closure of the very business itself.

Q6. Is this settlement with revenue a new concept?

Ans: No, this is not a new concept. The concept of Settlement is prevalent in Revenue Laws relating to Central Excise, Service Tax, and Customs and even under the Income tax legislations.

Q7. What is the object behind the mechanism of settlement of cases with an assessee in the tax laws?

Ans: The mechanism speeds up collection of revenue tied up in litigation by the Government. It also extends immunities from penalties, prosecution etc to an assessee. The mechanism actually provides an opportunity to rectify the errors and mistakes committed by an assessee.

Q8. What is the meaning of "Case"?

Ans: Case means a dispute between the Tax Department and the Tax Payer by way of

proceedings initiated by the Tax Department for levy and collection of taxes, interest, penalties.

Q9. What do we mean by Settlement Commission?

Ans: The Bench constituted under the National Goods and Services Tax Settlement Commission as provided in Section 12 of IGST Act.

Q10. What do we mean by Designated Officer?

Ans: An Officer appointed in the Settlement Commission for the purpose of submission of inquiry / investigation report.

Q11. What do we mean by Member?

Ans: Member of Settlement Commission is appointed as part of the National Goods and Service Tax Settlement Commission to settle the cases.

Q12. What is the benefit to the Government?

Ans: It entails speedy resolution of disputes and early collection of revenue.

Q13. What are the factors that force an assessee to opt for Settlement?

Ans: It affords an opportunity to an assessee to come clean and to show cause that genuine reasons had forced the assessee to commit such errors or mistakes. It also provides an opportunity to an assessee to save time and costs of litigation while getting immunity from penalties, prosecutions.

11.6. MCQs:

Q1. To approach the Settlement Commission, the matter should be pending before the

- (a) High Court
- (b) Supreme Court
- (c) Tribunal
- (d) None of the above

Ans: (d) None of the above

12. Constitution of National Goods and Services Tax Settlement Commission

Statutory provision

- (1) The Central Government shall on the recommendation of the Council constitute a National Goods and Services Tax Settlement Commission for settlement of cases under this Act.
- (2) The Settlement Commission shall be headed by a National Chairman.
- (3) The Settlement Commission shall have one bench for one or more states, which shall be called the State Settlement Commission.
- (4) Every State Settlement Commission shall be headed by a State Chairman.
- (5) Every State Settlement Commission shall consist of a Chairman and as many Members (Technical-IGST) as may be prescribed, to exercise the powers and discharge the functions conferred on the Settlement Commission by this Act.
- (6) The National Chairman/State Chairman shall be a person who is or has been a judge of the High Court.
- (7) The qualifications, eligibility conditions and the manner of selection and appointment of the National Chairman, the State Chairman, and the Members shall be such as may be prescribed on the recommendations of the Council.
- (8) The National Chairman and the State Chairman shall exercise such powers and discharge such functions as may be prescribed on the recommendations of the Council.

12.1 Introduction

This provision discusses the constitution of National Goods and Service Tax Settlement Commission (NGSTSC).

12.2. Analysis

- (a) NGSTSC shall be constituted by the Central Government based on Council's recommendation. The NGSTSC headed by a National Chairman will have one Bench for one or more States and would be called the **State Settlement Commission (SSC)**. The SSC headed by a State Chairman will have prescribed number of Members (Technical-IGST) and will exercise powers and discharge functions.
- (b) The Chairman (National or State) shall be a sitting or retired Judge of the High Court. The Rules (based on Council's recommendations) would prescribe the qualifications, eligibility conditions, manner of selection and appointment of Chairman / Members.

12.3 Comparative review

None - Setting up of National or State Settlement Commission is unique to the GST law.

12.4 FAQs:

Q1. SSC would be headed by whom?

Ans: State Chairman

Q2. What are the qualifications, eligibility conditions, selection process for appointment of Members of SC?

Ans: It would be as prescribed by the Rules.

12.5 MCQs

Q1. NGSTSC would be headed by _____

- (a) National Chairman
- (b) State Chairman
- (c) Tribunal Member
- (d) Supreme Court Judge

Ans: (a) National Chairman

Legend:

NGSTSC – National Goods and Service Tax and Settlement Commission

SC – Settlement Commission

SSC – State Settlement Commission

13. Jurisdiction and powers of Settlement Commission

Statutory provision

- (1) The jurisdiction of the State Settlement Commission constituted under this Act shall extend to the (Name of States).
- (2) Each Bench shall be presided over by the State Chairman and shall consist of two other Members.
- (3) Notwithstanding anything contained in the foregoing provisions of this Section, and subject to any rules that may be made in this behalf, when one of the persons constituting a Bench (whether such person is the presiding officer or other Member of the Bench) is unable to discharge his functions owing to absence, illness or any other cause or in the event of the occurrence of any vacancy either in the office of the presiding officer or in the office of one or the other Members of the Bench, the remaining Members may function as the Bench and if the presiding officer of the Bench is not one of the remaining Members, the senior among the remaining Members shall act as the presiding officer of the Bench.

13.1 Introduction

This provision lays down the jurisdiction and powers of the SC.

13.2 Analysis

The jurisdiction of SSC would extend to a particular State while the Bench would comprise of a Chairman and Two Members. In a situation where a Chairman or one of the members are not able to discharge their functions due to absence, illness or any other reason, the other available members of the Bench would function as the Bench. In the absence of the Presiding Officer (Chairman), the senior member would act as the Presiding Officer of the Bench.

13.3 Comparative review

The provisions are comparable to the existing central indirect tax laws with some changes. The law does not provide for a Vice Chairman of the SC.

13.4 FAQs:

Q1. How would the SC function if one of the members is sick for a long time?

Ans: If the Chairman or one of the members is not able to discharge their functions due to absence, illness or any other reason, the other available members of the Bench would function as the Bench.

Q2. Who will be the Presiding Officer of the Bench if the Chairman is not available?

Ans: The Senior-most member would assume the role of the Presiding Officer of the Bench.

13.5 MCQs

1. Each Bench should comprise of _____
- (a) a State Chairman and two other Members
 - (b) National and State Chairmen
 - (c) Three Members
 - (d) Single Member

Ans: (a) a State Chairman and two other Members

Legend:

SC – Settlement Commission

INDIAN

14. Decisions to be by majority

Statutory provision

- (1) If the Members of a Bench differ in opinion on any point, the point shall be decided according to the opinion of the majority.
- (2) In a case where the decision is taken by a two member Bench as provided under sub-Section (3) of Section 13 and Members are equally divided, the matter will be referred to the third Member and the decision will be according to the opinion of the majority.

14.1 Introduction

This provision deals with the methodology to be adopted when there is a difference of opinion on any point amongst the members of a Bench.

14.2 Analysis

(a) It is made clear that in case a difference of opinion among the Members of the Bench on any point, the opinion of the majority would prevail. If the Bench comprises of two Members the case would be referred to a third member and accordingly, the opinion of majority would prevail.

14.3 Comparative review

This provision is similar to Section 32D of the CE Act, 1944.

14.4 FAQs:

Q1. If the members of the Bench have conflicting views, then whose opinion would prevail?

Ans: In case of difference of opinion among members of the Bench on any point, the opinion of the majority would prevail.

Q2. In a Division Bench matter, there is conflict of opinion, how can it be resolved?

Ans: If the Bench comprises of two members and if there is a difference of opinion, the case would be referred to a third member and accordingly, the opinion of majority would prevail.

14.6 MCQs

Q1. In case of difference of opinion amongst the members of a bench of the Settlement Commission, the matter should be referred to:

- (a) Larger Bench
- (b) Third member
- (c) No decision is possible and case will be returned to the IGST or the First Appellate Authority

Ans: (b) Third member

15. Application for settlement of cases

Statutory provision

- (1) A taxable person may, in respect of a case or identical cases involving periodical show cause notices relating to him and pending before the adjudicating authority or the First Appellate Authority under the Act, make an application, in such form and in such manner as may be prescribed, containing a full and true disclosure of his tax liability which has not been disclosed before the jurisdictional IGST officer, the manner in which such liability has been derived, the additional amount of tax accepted to be payable by him and such other particulars as may be prescribed, to the Settlement Commission to have the case(s) settled and any such application shall be disposed of in the manner hereinafter provided:

Provided that no such application shall be made unless,-

- (a) the applicant has furnished the return(s), which he is or was required to furnish under the provisions of this Act;
- (b) a show cause notice for demand of tax issued by the IGST officer has been received by the applicant or an order confirming the demand of tax has been issued by the IGST officer and the same is pending before the First Appellate Authority;
- (c) the additional amount of tax accepted by the applicant in his application exceeds five lakh rupees; and
- (d) the applicant has paid the additional amount of tax accepted by him along with interest due thereon under Section 36 of the CGST Act:

Provided further that the Settlement Commission, if it is satisfied that the circumstances exist for not filing the return(s) referred to in clause (a) of the first proviso to sub-Section (1), may, after recording the reasons thereof, allow the applicant to make such application.

- (2) No application shall be entertained by the Settlement Commission under sub-Section (1) in cases which are pending with the Appellate Tribunal or any Court.
- (3) No application under sub-Section (1) shall be made for determination of any Question having a bearing on the rate of tax or determination of liability to pay tax on goods and/or services under the Act.
- (4) Every application made under sub-Section (1) shall be accompanied by such fees as may be prescribed.
- (5) An application made under sub-Section (1) shall not be allowed to be withdrawn by the applicant.

15.1 Introduction

This provision sets out the procedure and criteria for making an application.

15.2 Analysis

1. The Section enables a taxable person (applicant) to make an application in the relevant Form in respect of a case, or identical cases involving issue of periodical show cause notices (SCN) that are pending before the adjudicating authority or First Appellate Authority.
2. The applicant must make a full and true disclosure of his tax liability which has not been disclosed before the jurisdictional IGST officer. It is important to disclose the manner in which such liability has been arrived at while accepting the amount of tax acceptable as payable by the applicant.
3. An application before the Settlement Commission can be maintained if:
 - The Applicant has filed his returns. However, if the Settlement Commission is satisfied that circumstances exist due to which the applicant has not filed his returns the condition relating to filing of returns can be waived in writing by the Settlement Commission and the applicant will be allowed to maintain his application.
 - A SCN with tax demand is issued and received by the applicant or an order demanding tax should have been issued by the IGST officer and the matter must be pending before the first appellate authority.
 - The case should involve additional amount of tax as accepted by the applicant in excess of Rs 5 Lakhs which should have been paid along with applicable interest due.
4. An application before the Settlement Commission cannot be maintained if:
 - The matter covered by the applicant's application is pending before the Appellate Tribunal or Court the said application would not be entertained.
 - The case involves determination of any question having a bearing on the rate of tax or determination of liability to pay tax on goods and /or services.
5. The application should be accompanied by prescribed fees and once an application is filed it cannot be withdrawn by the applicant.

15.3 Comparative review

Under the Central Excise Act, 1944 the bar applies to a dispute that relates to interpretation of classification, whereas under the GST laws it covers rate of tax as well as determination of tax liability.

- (a) In *CCE Vs Dharampal Satyapal Ltd*, 2012 (275) ELT 71 (Gau.), the question whether the scope of an exemption notification under Central Excise would also extend to the Education Cess levied under the Finance Act, 2004 was answered in the negative and it

was held that the same does not have direct or proximate relation for purpose of assessment to rate of duty applicable to the manufacture of goods.

- (b) Similar to the provision under Central Excise Act, 1944 (Sec 32E(4)) an application once made cannot be withdrawn.
- (c) Under the Central Excise Laws a Case pending **would include** where any order of adjudication has been passed and the time limit for filing an appeal has not expired including where the appeal has been admitted by the Appellate Authority after condonation of delay. This is a departure from the provision under the Central Excise Act, 1944 wherein matters pending before the First Appellate Authority on the date of application **are not eligible** for Settlement. However, where the case of a person is sent back to the jurisdictional IGST officer or the First Appellate Authority, then a bar would operate against such person to apply for settlement under Sec 15 of the Act.

15.5 FAQs:

Q1. Who is eligible to make an application to Settlement Commission?

Ans: The person who has been served: 1) A Show Cause Notice 2) An adjudication order and time in respect of which has not elapsed to file an appeal to the First Appellate Authority 3) Appeal pending before the first appellate authority where the appeal has been filed in time. 4) Appeal admitted after condonation of delay by the First Appellate Authority.

Q2. What are circumstances under which an application cannot be made to Settlement Commission?

Ans:

- (i) Where no proceeding has been initiated by way of show cause notice
- (ii) If the accepted amount of liability is less than or equal to Rs 5 Lakhs
- (iii) If the accepted amount has not been paid with interest
- (iv) A person who has not filed regular returns as per the provisions of the act, unless the SC relaxes such condition.
- (v) Who's application is sent back to the original authority
- (vi) If a person has already availed settlement option twice (Sec. 23)
- (vii) If the case is pending before the Tribunal or any Court.
- (viii) If the dispute relates to rate of tax or determination of liability to pay tax
- (ix) After settlement of an order, if the assessee is convicted of any offence relating to the same case, then no application can be made for subsequent cases (Sec. 23).

Q3. What is the minimum amount required to be admitted to make an application to the settlement commission?

Ans: If the case is pending and the amount admitted is more than Rs 5 Lakhs application can be made to Settlement Commission.

Q4. What are the time limits to make an application to Settlement Commission?

Ans: No time limit is prescribed for making an application. However, the case should be pending either at show cause notice stage, or after adjudication, where time has not elapsed for filing an appeal before the First Appellate Authority or is pending before First Appellate Authority.

Q5. On whom does the law cast the onus to prove that there is full and true disclosure of duty liability and the manner in which it is arrived at?

Ans: The onus or burden of proof is to be discharged squarely by the Applicant who is required to make full and true disclosure of tax liability and the manner in which it has been arrived at.

Q6. Mr Underground never appeared before the investigating authority but has made an application before the Settlement Commission for settling the dispute. Can the Settlement Commission proceed with the application?

Ans: Yes, there is no such requirement under the provision and Mr Underground's application can be proceeded with, if otherwise in order.

Q7. How far is the requirement on the part of the applicant to show that there was no intention to avoid payment of duties an essential consideration for the Settlement Commission to proceed with applicant's case?

Ans: It is important for an applicant to make a full and true disclosure of his tax liability and the manner in which it has been computed. The *bonafide* of an applicant is crucial to decide for the Settlement Commission to proceed with the case.

Q8. What are the key differences between Settlement Commission and normal appeal process?

Ans: Settlement Commission has to dispose off the case in time bound manner i.e. within 12 months or before the extended period of another 3 months (i.e., A maximum of 15 months) as against no time limit fixed in appeal. An, Applicant can estimate his tax liability with some certainty in case of moving an application settlement commission as he has to pay the required taxes etc. along with the application whereas no such certainty exists in case of appeal process. Settlement Commission can grant immunity from prosecution and penalty whereas no such power is given to appellate authorities.

Q9. Does the applicant have the option to withdraw the application?

Ans: As per Section 15(5) of IGST, the application once made is not allowed to be withdrawn.

Q10. Does the department have the power to apply to the Settlement Commission for cancellation of the application?

Ans: No such power has been granted to the Tax Department. The Settlement Commission can however, reject the application on its own under Section 16(1) of IGST.

Q11. Is the Settlement Commission empowered to admit application that does not fulfil the requirement stipulated in Section 15 of the IGST Act?

Ans: No such discretion is provided. This is similar to Section 32E(1) of the Central Excise Act.

15.6 MCQs:

Q1. An application for Settlement could be made when:

- (a) Show Cause Notice has been issued;
- (b) When Summons seeking certain information has been issued
- (c) When the matter is pending before the Appellate Tribunal;
- (d) When there is a likelihood of proceedings being launched
- (e) None of these

Ans: (a) Show Cause Notice has been issued

Q2. An application for settlement cannot be made when

- (a) case is not pending
- (b) case involving SCN and pending with AA/FAA
- (c) case is pending with the appellate tribunal or any court
- (d) a & c

Ans: (d) a & c

Q3. An application for settlement shall

- (a) contain estimated amount of his tax liability
- (b) contain only the tax liability that has been previously disclosed
- (c) contain the tax not acceptable to be payable by him
- (d) full and true disclosure of his tax liability which has not been disclosed and additional amount of tax accepted to be payable by him

Ans: (d) full and true disclosure of his tax liability which has not been disclosed and additional amount of tax accepted to be payable by him

Q4. An application can be made by an applicant when

- (a) the return has been furnished by the applicant

- (b) SCN for demand of tax has been issued and pending before first appellate authority
- (c) additional tax exceeds five lakh rupees and it has been paid
- (d) All of the above

Ans: (d) All of the above

Q5. An application for settlement can be made towards

- (a) settlement of all the types of cases
- (b) only the cases relating to valuation of goods or services
- (c) all the cases except having bearing on rate of tax or determination of liability to pay tax
- (d) only the cases having bearing on rate of tax or determination of liability to pay tax

Ans: (c) all the cases except having bearing on rate of tax or determination of liability to pay tax

16. Procedure for Settlement

Statutory provision

- (1) On receipt of an application under sub-Section (1) of Section 15, the Settlement Commission shall, within seven days from the date of receipt of the application, issue a notice to the applicant to explain in writing as to why the application made by him should be allowed to be proceeded with, and after taking into consideration the explanation provided by the applicant, it shall, within a period of forty five days from the date of the notice, by an order, allow the application to be proceeded with, or reject the application as the case may be, and the proceedings before the Settlement Commission shall abate on the date of rejection :

Provided that an application shall not be rejected unless an opportunity has been given to the applicant of being heard;

Provided further that where no notice has been issued or no order has been passed within the aforesaid period by the Settlement Commission, the application shall be deemed to have been allowed to be proceeded with.

- (2) A copy of every order under sub-Section (1) shall be sent to the applicant and to the jurisdictional IGST officer.
- (3) Where an application is allowed under sub-Section (1), the Settlement Commission shall, within seven days from the date of order under sub-Section (1), call for a report along with the relevant records from the jurisdictional IGST officer and such officer shall furnish the report within a period of sixty days of the receipt of communication from the Settlement Commission:

Provided that where the jurisdictional IGST officer does not furnish the report within the aforesaid period of sixty days, the Settlement Commission shall proceed further in the matter without the report of the said officer.

- (4) After examination of the report of the jurisdictional IGST officer received under sub-Section (3), if the Settlement Commission is of the opinion that any further enquiry or investigation in the matter is necessary, it may, within 15 days of the receipt of the report, direct, for reasons to be recorded in writing, the Designated Officer to make such further enquiry or investigation and furnish a report within a period of ninety days of the receipt of such direction, on the matters covered by the application and any other matter relating to the case :

Provided that where the Designated Officer does not furnish the report within the aforesaid period, the Settlement Commission shall proceed to pass an order under sub-Section (5) without such report.

- (5) After examination of the records and the report of the jurisdictional IGST officer received under sub-Section (3), and the report, if any, of the Designated Officer

under sub-Section (4), and after giving an opportunity to the applicant and to the jurisdictional IGST officer to be heard, either in person or through an authorised representative, and after examining such further evidence as may be placed before it or obtained by it, the Settlement Commission may pass such order as it thinks fit on the matters covered by the application and any other matter relating to the case not covered by the application, but referred to in the report of the jurisdictional IGST officer and Designated Officer under sub-Section (3) or sub-Section (4), as the case may be.

Explanation. - For the purposes of this sub-Section, "authorised representative" shall have the meaning assigned to it in Section 86 of the CGST Act.

- (6) An order under sub-Section (5) shall not be passed in respect of an application after twelve months from the last day of the month in which the application was made, failing which the settlement proceedings shall abate, and the adjudicating authority or the First Appellate Authority, as the case may be, before whom the proceeding at the time of making the application was pending, shall dispose of the case in accordance with the provisions of this Act as if no application under Section 15 had been made.

Provided that the period specified under this sub- Section may, for reasons to be recorded in writing, be extended by the Settlement Commission for a further period not exceeding three months.

- (7) For the purposes of the time limit under Section 51 or Section 79, as the case may be, of the CGST Act and for the purposes of interest under Section 36 of the said Act, in a case referred to in sub-Section (1) or sub-Section (6), as the case may be, the period commencing on and from the date of the application to the Settlement Commission under Section 15 and ending with the date of abatement, shall be excluded.
- (8) The order passed under sub-Section (5) shall provide for the terms of settlement including any demand by way of tax, interest, fine or penalty, the manner in which any sums due under the settlement shall be paid and all other matters to make the settlement effective and in case of rejection contain the reasons therefor:
- Provided that the amount of settlement ordered by the Settlement Commission shall not be less than the tax liability admitted by the applicant under Section 15.
- (9) Settlement arrived under sub-Section (5) shall be void if it is subsequently found by the Settlement Commission that it has been obtained by fraud or misrepresentation of facts.
- (10) Where any tax, interest, fine and penalty payable in pursuance of an order under sub-Section (5) is not paid by the taxpayer within thirty days of receipt of a copy of the order by him, or within such period as extended by the Settlement Commission not exceeding three months, the amount which remains unpaid, shall be recovered

along with interest due thereon at the rate prescribed under Section 36 of the CGST Act, as the sums due to the Central/ State Government by the jurisdictional IGST officer in accordance with the provisions of Section 54 of the CGST Act.

- (11) Where a settlement becomes void as provided under sub-Section (9), the proceedings with respect to the matters covered by the settlement shall be deemed to have been revived from the stage at which the application was allowed to be proceeded with by the Settlement Commission and the jurisdictional IGST officer or the First Appellate Authority, as the case may be, may, notwithstanding anything contained in any other provision of this Act, complete such proceedings before the expiry of two years from the date of the receipt of communication that the settlement became void.

16.1 Introduction:

This provision sets out the procedure for settlement upon receipt of an application.

16.2 Analysis

- (a) On receipt of an application from an applicant the Settlement Commission must issue a notice within seven days seeking reasons from the applicant as to why the application should be allowed to be proceeded with. Thereafter, within a period of 45 days the Settlement Commission after affording the applicant a reasonable opportunity of being heard shall pass an order allowing or rejecting the said application. If no such notice is issued or no order is passed within the said time limit, then the matter has to be proceeded with. Any order passed is to be communicated by the Settlement Commission to the IGST officer as well as to the applicant.
- (b) The Settlement Commission shall within 7 days of passing of an order u/s 16(1) call for a report and the relevant records from the jurisdictional IGST Officer. The Officer is required to furnish the same within 60 days and if no such report is received the Settlement Commission may proceed further without the report, considering the other factors.
- (c) After receipt of the report from the IGST Officer the Settlement Commission may seek a further inquiry / investigation report from a Designated Officer within a period of 90 days. If no such report is received after expiry of the said period of 90 days, the Settlement Commission can proceed further without the report.
- (d) The Settlement Commission may pass such order as it thinks fit on matters covered by the application and any other matter referred to in the report of the jurisdictional IGST officer after examining the records and affording an opportunity of personal hearing to the parties concerned. The Commission shall also examine further evidence as may be placed or obtained by it.
- (e) The order should be passed within 12 months or such extended period not exceeding 3

months reckoned from the last date of the month in which the application is maintained. If such order is not passed then the proceeding shall abate and the Adjudicating Authority or the First Appellate Authority shall proceed to dispose of the case in accordance with the provisions of the Act. The time taken from date of application to proceeding by IGST officer shall be excluded for the purpose of Sec, 51, 79 and 36.

- (f) The order passed under sub-Section 5 of Section 16 shall provide for the terms of settlement including demand of tax, interest, fine and penalty and the manner in which the same shall be paid. In case of rejection, the reasons shall be recorded in writing. The Settlement shall not be less than the tax liability admitted. The Settlement shall be void if it is discovered subsequently that the same has been obtained by reason of fraud or misrepresentation of fact.
- (g) The tax, interest, fine and penalty shall be paid within 30 days of the receipt of the order or within such period as may be allowed by the Commission not exceeding 3 months failing which the same shall be recovered in terms of Sec 54 of the CGST Act by the IGST officer.
- (h) In case where the Settlement is rendered void then the jurisdictional IGST officer or the First Appellate Authority shall complete the proceeding before the expiry of two years from the date of receipt of the said communication from the Settlement Commission.
- (i) Under Sec 16(10) the tax, interest, fine and penalty has to be paid within 30 days or within such extended period not exceeding 3 months as may be ordered by the Commission. This will be reckoned from the date of receipt of the order by the applicant. If he fails to do so the amount which remains unpaid shall be recovered along with interest due thereon as the sums due to the Central Government in accordance with Sec 54 of the CGST Act

16.3 Comparative review

The procedure prescribed under Section 16 of the IGST Act, is similar to the procedure under Section 32F of the Central Excise Act, 1944 with some modifications as to the time limits and the exclusion for purposes of time limits *relating to* issue of notice and filing of appeal under Sections 51 and 79 respectively and for purpose of payment of interest under Section 36 in a case where the order is not passed within 12 months from the date of application.

16.4 Related Provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 36	Interest on delayed payment of tax	
CGST	Section 51	Determination of tax not paid / short paid / erroneously refunded	
CGST	Section 54	Recovery of tax	

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 36	Interest on delayed payment of tax	
CGST	Section 79	Appeals before First Appellate Authority	
CGST	Section 86	Appearance by Authorized Representative	

16.5 FAQs:

Q1. Is there any other information that is required to be provided by the assessee apart from filing an application?

Ans: He has to explain in writing making a full and true disclosure of his tax liability and the manner in which it has been arrived at, apart from making payment of the tax and interest and submit the proof that tax / interest has been paid.

Q2. When will the settlement process be completed?

Ans: Once the application for settlement is made, the Settlement Commission may issue a notice (within 7 days) to the applicant asking why it should be allowed. Within a period of 45 days from the date of notice the applicant has to adduce reasons in writing by way of an explanation in writing making a full and true disclosure of his tax liability and the manner in which it has been arrived at, apart from making payment of the tax and interest and submit the proof that tax / interest has been paid. Thereafter, if an application is not rejected, then it is deemed to be accepted.

Q3. What are the duties / obligations of the applicant?

Ans: The applicant has to make the application and pay the accepted amount of tax along with interest. True and fair disclosure of facts of the case would be necessary while co-operating with the Commission in presenting the correct and timely information and represent the case by himself or through his authorized representative. He has to fulfil the conditions stipulated in the Order after obtaining the Order of the Settlement.

Q4. Can the Settlement Commission make any reference of the application to the Departmental Officer and get any additional information?

Ans: Yes, within seven days from the date of allowing the application the Commission may send the Order of admission to the jurisdictional IGST Officer / Designated Officer and request for further records, information and enquiry / investigation report.

Q5. If so what are the time lines for obtaining the information?

Ans: Within seven days from the date of admission of application the Commission may request the IGST officer to submit the report, information and records. The IGST officer shall submit such records / report within 60 days from the date of communication, if not the Commission may dispose of the case as per the information available on record. If

the Commission is not satisfied with the said report it can seek a further enquiry / investigation report from a Designated Officer (who is required to furnish the report within 90 days) within 15 days of receiving the said report.

Q6. If case the information or report is not submitted within the prescribed time what would be the effect on the application?

Ans: The case may be disposed off based on the available information on record and submissions made by the applicant.

Q7. Can the settlement commission go beyond the application made?

Ans: If the matter is referred to the Jurisdictional IGST officer and Designated Officer, then based on the report, if any, the Commission may pass an Order on any other matter relating to the case not covered by the application.

Q8. What are the powers of settlement commission?

Ans: Powers of the Commission are as follows:

- To attach the property in the interest of revenue;
- Seek report from IGST officer and Designated Officer;
- To reopen completed proceedings by affording an opportunity to the assessee;
- Granting immunity from penalties and prosecution;
- Rectify its own order in case of any mistake apparent ;
- To send the case back to IGST officer in case of non-cooperation by the applicant.

Q9. What is the flow of process or procedure from application to hearing of application?

Ans: The chronology is as follows:

- Receipt of application from the applicant;
- Notice by the Commission in order to accept the application by invitation of explanation;
- Acceptance or rejection of the application by the Commission after affording a reasonable opportunity of being heard to the parties;
- Forward the order of admission to jurisdictional IGST Officer;
- Obtain report from jurisdictional IGST Officer, if required.
- Obtain enquiry / investigation report from the Designated Officer;
- Afford an opportunity to the parties before disposal of the case.
- Issue the order of settlement with or without conditions.
- Rectification its own order in case of any mistake apparent on record.

Q10. Whether the Settlement Commission is under obligation to afford an opportunity to both the parties (i.e., department and assessee)?

Ans: Yes.

Q11. What are the factors that should be considered before passing of the final order?

Ans: The object and purpose of the applicant behind the application to verify whether true, correct and complete information has been submitted by the applicant, report furnished by the I GST Officer / Designated Officer, Cooperation from applicant.

Q12. What is time line available for the Settlement Commission to dispose off the case?

Ans: 12 months from the last day of the month in which application was made plus a further 3 months permitted by statute to the Settlement Commission for reasons to be recorded in writing.

Q13. Even if the additional timeline has expired, what is the recourse for the settlement commission, assessee and Government?

Ans: If within the 15 month time frame the case is not disposed of by way of an Order then the proceedings shall abate. The proceedings will once again begin as if no application is made to Settlement Commission.

Q14. Can the Settlement Commission order be rendered void, if so what are the situations?

Ans: The Order can be rendered void provided the Order is obtained by way of fraud or misrepresentation of facts.

Q15. Can the Settlement Commission enhance the liability of the assessee ascertained by the department?

Ans: No, the liability cannot be higher than that ascertained by the Tax Department.

Q16. What is the maximum time allowed by the statute to the Commission for collection of revenue after passing of the order?

Ans: The amount ascertained by the Order should be payable not later than 3 months.

Q17. If the conditions are not fulfilled by the applicant what are the consequences to be faced by the assessee?

Ans: The proceedings will commence as if the applications were not made to Settlement Commission.

Q18. Can the assessee / applicant approach the Commission any number of times?

Ans: No, the applicant can make the application only twice.

Q19. If the assessee has not fulfilled the conditions of earlier order, even then can he be allowed to make an application again?

Ans: If in relation to the earlier Order the applicant has been convicted of any offence under

this Act in relation to that case, then there could be no second application. In other cases, one more application could be made.

16.6 MCQs:

Q1. The SC shall, on receipt of application for settlement, issue a notice to the applicant to explain as to why the application made by him should be allowed to be proceeded with within

- (a) 45 days
- (b) 60 days
- (c) 7 days
- (d) 30 days

Ans: (c) 7 days

Q2. The SC shall either proceed with or reject the application, as the case may be, within

- (a) 45 days
- (b) 7 days
- (c) 15 days
- (d) 40 days

Ans: (a) 45 days

Q3. If no notice of explanation from applicant has been issued within 7 days, or no order has been passed by SC within 45 days allowing or rejecting application, the application

- (a) shall be deemed to have been allowed to be proceeded with
- (b) shall be deemed to have been rejected
- (c) shall be filed by applicant freshly
- (d) is sent back by the SC

Ans: (a) shall be deemed to have been allowed to be proceeded with

Q4. Where an application is allowed, the SC shall call for a report along with relevant records from the jurisdictional IGST officer within

- (a) 2 days
- (b) 15 days
- (c) 7 days
- (d) 5 days

Ans: (c) 7 days

Q5. The jurisdictional IGST officer shall furnish the report, after receiving the communication from SC within

- (a) 60 days
- (b) 30 days
- (c) 20 days
- (d) 7 days

Ans: (a) 60 days

Q6. Any further investigation as felt necessary by SC upon receipt of report from jurisdictional IGST officer shall be directed within

- (a) 10 days
- (b) 20 days
- (c) 15 days
- (d) 30 days

Ans: (c) 15 days

Q7. The report from the jurisdictional IGST officer as directed by the SC shall be submitted by the said officer within

- (a) 45 days
- (b) 90 days
- (c) 120 days
- (d) 75 days

Ans: (b) 90 days

Q8. The orders passed by the SC shall cover matters

- (a) only as covered in application
- (b) other than those covered by application
- (c) covered in the application and any other matter referred to in the report of jurisdictional IGST officer or designated officer
- (d) referred to in the report of jurisdictional IGST officer or designated officer

Ans: (c) covered in the application and any other matter referred to in the report of jurisdictional IGST officer or designated officer

Q9. If SC does not pass an order within 12 months from the last day of the month in which the application was made, the proceedings shall

- (a) be deemed to have been concluded

- (b) abate
- (c) be restarted
- (d) be renewed automatically

Ans: (b) be restarted

Q10. The period of 12 months for completing the proceedings can be extended by SC for reasons to be recorded in writing for a further period not exceeding

- (a) 6 months
- (b) 3 months
- (c) 45 days
- (d) 60 days

Ans: (b) 3 months

Q11. The amount of settlement ordered by the settlement commission shall be

- (a) equal to more than the tax liability admitted by the applicant
- (b) equal to the tax liability admitted by the applicant
- (c) less than the tax liability admitted by the applicant as decided by SC
- (d) None of the above

Ans: (a) equal to more than the tax liability admitted by the applicant

Q12. When the period of 12 months from the date of application to the Settlement Commission has expired and also the extended period of 3 months the case could be heard:

- (a) in the discretion of the Commission
- (b) the application is deemed to be allowed
- (c) the proceeding abates with no further action against the applicant
- (d) the proceedings re commence before the appropriate authority as though no application was made

Ans: (d) the proceedings re commence before the appropriate authority as though no application was made

17. Power of Settlement Commission to order provisional attachment to protect revenue:

Statutory provision

- (1) Where during the pendency of any proceeding before it, the Settlement Commission is of the opinion that for the purpose of protecting the interests of revenue it is necessary so to do, it may, by order, attach provisionally any property belonging to the applicant in the manner as may be prescribed.
- (2) Every provisional attachment made by the Settlement Commission under sub-Section (1) shall cease to have effect from the date, the sums due to the Central Government / the State Government for which such attachment is made are discharged by the applicant and evidence to that effect is submitted to the Settlement Commission.

17.1 Introduction

This provision sets out the circumstances under which the Settlement Commission would Order for provisional attachment to protect revenue.

17.2 Analysis

The settlement Commission is empowered to pass a provisional order by attaching the property of an applicant if it is necessary to do so in the interest of revenue. The Order shall cease on payment by the applicant and evidence to the effect is produced before the Settlement Commission.

17.3 Comparative review

This is comparable to Section 32G of the CE Act.

17.4 FAQs:

Q1. Are there any powers provided to the Settlement Commission to protect the interest of the revenue, in case of a long drawn proceeding in the case?

Ans: If the Settlement Commission is of the opinion that it is necessary to protect the interest of revenue it may by Order, attach provisionally, the property belonging to the applicant. The attachment will cease to have effect after discharge of the dues and submission of evidence to the Settlement Commission.

17.6 MCQs:

Q1. The Settlement Commission shall order provisional attachment of the property of the applicant:

- (a) in every case until the matter is disposed of
- (b) when it is necessary in the interest of revenue even where the entire amount found due has been deposited by the applicant
- (c) when it is necessary to protect the interest of revenue during the pendency of any proceeding before it

Ans: (c) when it is necessary to protect the interest of revenue during the pendency of any proceeding before it

ICAI

18. Power of Settlement Commission to reopen completed proceedings

Statutory Provision

If the Settlement Commission is of the opinion (the reasons for such opinion to be recorded by it in writing) that, for the proper disposal of the case pending before it, it is necessary or expedient to reopen any proceeding connected with the case but which has been completed under this Act before application for settlement under Section 15 was made, it may, with the concurrence of the applicant, reopen such proceeding and pass such order thereon as it thinks fit, as if the case in relation to which the application for settlement had been made by the applicant under that Section covered such proceeding also :

Provided that no proceeding shall be reopened by the Settlement Commission under this Section after the expiry of five years from the date of application.

18.1 Introduction

All though not often, it is may be necessary to reopen completed proceedings for the purposes of proper disposal of the case pending before the Commission. When the authority vested in the Commission is so significant, that it cannot be precluded from examining matters involved in closed proceedings if it will have a bearing on the case under consideration.

18.2 Analysis

Where the Settlement Commission is of the opinion – such reasons to be recorded in writing – that for the proper disposal of the case there is a requirement to reopen any proceeding that are completed under this Act, with the concurrence of the applicant, the Commission may reopen the said proceeding and pass such order as it thinks fit.

The proceedings so reopened also qualify as a 'case' before the Commission for the purpose of passing of the settlement order. But any proceeding completed 5 years prior to the date of current application before the Commission will not be available to be reopened.

18.3 Comparative review

This is comparable to Section 32H of the CE Act.

18.4 FAQs:

Q1. Does the Settlement Commission have the powers to reopen past proceeding that has been concluded?

Ans: Yes, for the purpose of the proper disposal of the case if so required it may order for reasons to be recorded that the past proceeding be reopened

Q2. Is the concurrence of applicant mandatory for reopening past proceeding?

Ans: Yes, it is must for SC to take concurrence of the applicant for reopening of past proceeding

18.5 MCQs:

Q1. The SC can reopen a proceeding that was concluded in the past:

- (a) without any time limit;
- (b) upto three years
- (c) back period of five years
- (d) none at all

Ans: (c) back period of five years

Legend

SC – Settlement Commission

19. Inspection, etc. of reports

Statutory provision

The Settlement Commission shall, on an application made in this behalf, and on payment of the prescribed fee by the applicant, for the purpose of rebutting any evidence brought on record against him in any report made by any IGST Officer or Designated officer, furnish to him a certified copy of any such report or part thereof relevant for the purpose.

19.1 Introduction

This Section states that the procedure for furnishing the applicant with a certified copy of inspection report containing inculpatory report that may be under consideration before the Commission

19.2 Analysis

Any IGST officer or Designated Officer proposes to rely upon any report containing evidence of inculpatory nature that may be placed before the Commission for its consideration against the applicant. In such cases, on making an application with appropriate fee, the applicant may be provided a copy of the said report in order to rebut the evidence contained in such report.

19.3 Comparative review

This is similar to Section 32J of the CE Act.

19.4 FAQs:

Q1. Can the applicant ask for a copy of the report made by the designated officer or the IGST officer before the SC?

Ans: Yes, in so far as it is against the applicant in order to rebut the same

19.6 MCQs:

Q1. The applicant can obtain a certified copy of the report made by the designated officer or the IGST officer before the SC:

- (a) in every case
- (b) when there is nothing against the applicant in the report
- (c) when the report is against the applicant for effective rebuttal

Ans: (c) when the report is against the applicant for effective rebuttal

Legend

CE Act – Central Excise Act

20. Power of SC to grant immunity from prosecution and penalty:

Statutory provision

- (1) The Settlement Commission may, if it is satisfied that any person who made the application for settlement under Section 15 has co-operated with the Settlement Commission in the proceedings before it and has made a full and true disclosure of his tax liability, grant to such person, subject to such conditions as it may think fit to impose, immunity from prosecution for any offence under this Act and also either wholly or in part from the imposition of any penalty and fine under this Act, with respect to the case covered by the settlement :

Provided that no such immunity shall be granted by the Settlement Commission in cases where the proceedings for the prosecution for any such offence have been instituted before the date of receipt of the application under Section 15.

- (2) An immunity granted to a person under sub-Section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of the settlement passed under sub-Section (5) of Section 16 within the time specified in such order or within such extended period as permitted by the Settlement Commission or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted.
- (3) An immunity granted to a person under sub-Section (1) may, at any time, be withdrawn by the Settlement Commission, if it is satisfied that such person had, in the course of the settlement proceedings, concealed any particular material to the settlement or had given false evidence, and thereupon such person may be tried for the offence with respect to which the immunity was granted or for any other offence of which he appears to have been guilty in connection with the settlement and shall also become liable to the imposition of any penalty under this Act to which such person would have been liable, had no such immunity been granted.

20.1 Introduction

While this entire Chapter is directed to secure immunity from prosecution and penalty from the Commission, it is important to know the boundaries of the authority to grant such immunity.

20.2 Analysis

The Commission can grant immunity from;

- Prosecution, unless proceedings have been initiated prior to making application under Section 15 of the IGST Act

— Penalty and fine – partly or wholly – imposable under any provision of the IGST Act

The requirement is that a 'full and true' disclosure has been made of the liability under the IGST Act. Immunity is a forceful word used in this Section and it denies authority and eclipses the power of tax administration under other provisions of the IGST Act.

The applicant forfeits the immunity if the amounts directed to be paid by the Commission under Section 16(5) is not paid within the due date or extended due date. Such forfeiture will also arise in the event of non-compliance with any condition attached to the grant of immunity. On such forfeiture, the provisions of the Act will apply as if no such immunity was granted.

The Commission may also withdraw the immunity if it is discovered, within a time period to be prescribed, that order of the Commission was secured by concealing any material information or by supplying false information. On such withdrawal, the applicant will be exposed to prosecution and penalty proceedings under the Act as if no such immunity was granted.

20.3 Comparative review

This is comparable to Section 32K of the CE Act.

20.5 FAQs:

Q1. Does the Settlement Commission have the power to grant certain immunities upon settlement of the case?

Ans: Yes, the SC can grant immunity from Prosecution and levy of penalties wholly or in part.

Q2. Are there any circumstances under which the immunities could be withdrawn?

Ans: The immunities could be withdrawn if the applicant has concealed any material fact or secured the settlement by false disclosure or has failed to pay the sums ordered within the time limits as stated in the order

20.6 MCQs:

Q1. The Settlement Commission can grant immunities such as:

- (a) payment of interest, penalty and prosecution
- (b) interest and penalty
- (c) penalty and prosecution

Ans: (c) penalty and prosecution

21. Power to send back case to IGST Officer:

Statutory provision

- (1) The Settlement Commission may, if it is of opinion that any person who made an application for settlement under Section 15 has not co-operated with the Settlement Commission in the proceedings before it, send the case back to the jurisdictional IGST officer or the First Appellate Authority, as the case may be, who shall thereupon dispose of the case in accordance with the provisions of this Act as if no application under Section 15 had been made.
- (2) For the purpose of sub-Section (1), the jurisdictional IGST Officer or the First Appellate Authority, as the case may be, shall be entitled to use all the materials and other information produced by the taxable person before the Settlement Commission or the results of the inquiry held or evidence recorded by the Settlement Commission in the course of the proceedings before it as if such materials, information, inquiry and evidence had been produced before such IGST Officer or the First Appellate Authority, as the case may be, or held or recorded by him in the course of the proceedings before him.
- (3) For the purposes of the time limit under Section 51 or Section 79, as the case may be, of the CGST Act and for the purposes of interest under Section 36 of the said Act, in a case referred to in sub-Section (1), the period commencing on and from the date of the application to the Settlement Commission under Section 15 and ending with the date of receipt by the jurisdictional IGST Officer or the First Appellate Authority, as the case may be, of the order of the Settlement Commission sending the case back to the jurisdictional IGST officer or the First Appellate Authority, as the case may be, shall be excluded.

21.1 Introduction

Every person who applies to the Commission must come clean and extend full cooperation in the matter. And the Commission must be empowered to take exception to any delinquency with regard to cooperation during the proceedings.

21.2 Analysis

If the Commission reaches an opinion that the applicant had failed in cooperating during the proceedings, then the application can be dismissed. Further, the case can be remanded back to the IGST officer or First Appellate Authority who may proceed with the case as if no such application was made to the Commission.

Further, the material and information, to the extent, submitted by the applicant during the proceedings before the Commission may also be delivered to the IGST officer or First Appellate Authority who may use the same as if it was submitted by the applicant to such IGST officer or First Appellate Authority.

The time consumed in the proceedings before the Commission will be excluded while computing the applicable period of limitation in the proceedings to be resumed by the IGST officer or First Appellate Authority.

21.3 Comparative review

This is comparable to Section 32L of the CE Act.

21.5 FAQs

Q1. If the case is returned back to the IGST officer or the First Appellate authority can the assessee make an application subsequently relating to any other matter?

Ans: The applicant cannot make subsequent application to the settlement commission in such cases.

Q2. If the assessee submits incorrect/wrong/un true information what are the consequences?

Ans: The case is disposed off without any immunity relating to penalties and prosecution or the matter may be sent back to the IGST officer or the First Appellate Authority without settlement.

21.6 MCQs:

Q1. The materials collected during the settlement proceedings when the matter is remitted:

- (a) could be made use of by the first appellate authority or IGST officer
- (b) cannot be used in any other proceeding
- (c) may be used with the permission of the SC

Ans: (a) could be made use of by the first appellate authority or IGST officer

Legend

CE Act – Central Excise Act

22. Settlement Order to be conclusive

Statutory provision

Every order of settlement passed under sub-Section (5) of Section 16 shall be conclusive as to the matters stated therein and no matter covered by such order shall, save as otherwise provided in this Chapter, be reopened in any proceeding under this Act or under any other law for the time being in force.

22.1 Introduction

The statutory force attached with the order of the Commission is provided in this Section.

22.2 Analysis

The order of the Commission is declared to be final, binding and conclusive as regards the matters stated in the order. Further, matters stated in the order are not permitted to be opened in any proceedings under this Act, where an order has been passed by the Commission.

Considering that this Act is of special nature to address and prosecute on matters involved in an application to the Commission, the order passed is final not only as regards proceedings that may be initiated under this Act but also any other law that may be in force with regard to the facts of the case.

22.3 Comparative review

This is comparable to Section 32M of the CE Act.

22.4 FAQs:

Q1. What is the nature of the order passed by the Settlement Commission?

Ans: The order will be conclusive with respect to matters under the IGST Act and also with regard to any other Act in their application to the same set of facts

22.6 MCQs

Q1. Matter covered by the order of the settlement commission:

- (a) may be reopened in any other proceeding under the Act
- (b) any other proceeding under IGST Act
- (c) any other proceeding under any other Law
- (d) None of these

Ans: (d) None of these

23. Bar on subsequent application for settlement in certain cases:

Statutory provision

- (1) Where-
- (i) after the passing of an order of settlement under sub- Section (5) of Section 16, in relation to a case, such person is convicted of any offence under this Act in relation to that case; or
 - (ii) the case of such person is sent back to the jurisdictional IGST Officer or the First Appellate Authority, as the case may be, by the Settlement Commission under Section 21; then, he shall not be entitled to apply for settlement under Section 15 in relation to any other matter.
- (2) No person shall be allowed to avail of the facility of settlement under this Chapter more than twice.

23.1 Introduction

Declaring finality of order of the Commission requires clarity on the consequence of forfeiture or withdrawal of the immunity due to the operation of the conditions subsequent to passing of the order. This Section details these consequences.

23.2 Analysis

A second or follow-up application on the same case is not allowed in the following cases:

- Where the applicant is convicted of any offence under this Act after the order of the Commission is passed
- The case is sent back to the IGST officer or First Appellant Authority under Section 21

Further, a life-time limit is set as 'two' opportunities to approach the Commission for every person.

23.3 Comparative review

This is comparable to Section 32-O of the CE Act.

23.4 FAQs:

Q1. When does an applicant forfeit his right to file a second application before the SC in a subsequent matter?

Ans: When the applicant is convicted of any offence in relation to the case or when the matter is remitted to the First appellate authority or the IGST officer as the case may be

Q2. How many times can an applicant approach SC for settlement under normal circumstances?

Ans: An applicant can settle the cases through the SC only two times. On utilising the option twice, the settlement window gets closed for the applicant.

23.6 MCQs:

Q1. A person is not entitled to apply for settlement more than once if

- (a) the case has been settled once
- (b) such person is convicted of any offence under the Act and the case of such applicant has been sent back to jurisdictional IGST officer or the first appellate authority
- (c) the person has settled the case with SC twice
- (d) Both b & c

Ans: (d) Both b & c

Q2. A person could approach the SC for settlement of a case:

- (a) any number of times
- (b) only once in a life time even when there is no other disability
- (c) twice under normal circumstances

Ans: (c) twice under normal circumstances

Legend

SC – Settlement Commission

24. Rectification of mistakes by Settlement Commission

Statutory provision

The Settlement Commission may amend any order passed by it under Section 16 so as to rectify any mistake apparent from the record, if such mistake is noticed by the Settlement Commission on its own accord, or is brought to its notice by the jurisdictional IGST officer or the applicant within a period of three months from the date of the order:

Provided that no rectification, which has the effect of enhancing the liability of the applicant shall be made under this Section, unless the Settlement Commission has given notice to the applicant and the jurisdictional IGST officer of its intention to do so and has allowed the applicant and the jurisdictional IGST officer a reasonable opportunity of being heard.

24.1 Introduction

This Section grants authority to the Commission to rectify mistakes apparent on record by amending the order passed.

24.2 Analysis

Rectification of mistake of order passed under Section 16 can be effected under the following circumstances:

- If the mistake is noticed by the Commission on its own
- If the mistake is brought to notice of the Commission by the jurisdictional IGST officer or applicant

The rectification should be done within a period of 3 months from the date of the order.

If the rectification is likely to enhance the liability of the applicant, the SC has to give notice to the applicant and IGST officer and afford reasonable opportunity of being heard.

24.3 FAQs:

Q1. Can the Settlement commission rectify its own order? If so what are the situations?

Ans: Yes, it can rectify its own order when the mistake is apparent from record noticed by commission by own accord or brought to its notice by jurisdictional IGST officer or applicant.

24.6 MCQs:

Q1. The Settlement Commission may order rectification of an order:

- (a) in case of a mistake apparent on the face of record
- (b) without limitation even if the rectification may tantamount to review of the order
- (c) cannot rectify its own order

Ans: (a) in case of a mistake apparent on the face of record

Q2. The SC cannot amend any order passed by it after expiry of

- (a) 1 month
- (b) 45 days
- (c) 3 months
- (d) 2 months

Ans: (c) 3 months

ICAI

25. Powers of Settlement Commission

Statutory provision

(1) The Settlement Commission 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 Settlement Commission 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 Settlement Commission 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).

25.1 Introduction

The inquisitorial powers of the Commission are set out in this Section.

25.2 Analysis

1. The SC would exercise the following powers of a civil court under the CPC, 1908:
 - *Discovery and inspection;*
 - *Enforcing the attendance of any person;*
 - *Examining such person on oath;*
 - *Issuing commissions*
 - *Compelling production of books of account and other records*
2. The proceeding before the Commission shall be a judicial proceeding for the purpose of Sections 193, 228 and 196 of the Indian Penal Code.

25.3 Comparative review

This is similar to Section 32P of the CE Act.

25.4 FAQs:

1. Does the SC have the powers of a Civil Court?

Ans: Not all powers of the Civil Court but certain specified powers such as for purpose of discovery of evidence and compelling attendance of witnesses.

25.5 MCQs:

1. Proceeding before the SC are judicial proceeding under IPC:
 - (a) all purposes of the IPC
 - (b) not judicial proceedings but quasi-judicial proceedings
 - (c) certain specified Sections

Ans: (c) certain specified Sections

26. Procedure of Settlement Commission

Statutory provision:

The Settlement Commission 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.

26.1 Introduction

This Section provides the administrative the procedure of the Commission.

26.2 Analysis

The Commission is at liberty to regulate its own procedure subject to the provisions of the Chapter.

26.3 FAQs:

Q1. How are the proceedings before the SC regulated?

Ans: The SC has powers to regulate its own procedures

26.4 MCQs:

Q1. The power of the SC to regulate its own procedure:

- (a) is unlimited
- (b) is limited to proceeding under the Act
- (c) is subject to the other provisions of the Act and matters arising under the Act

Ans: (c) is subject to the other provisions of the Act and matters arising under the Act

Chapter – IX

Miscellaneous

27. 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 services, exemption from payment of tax, input tax credit and utilization thereof, accounts and records, payment, return, 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.

28. 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.

27.1/28.1 Introduction

- (i) **Section 27:** Certain provisions of CGST Act in relation to levy of tax would be applicable to IGST Act also.
- (ii) **Section 28:** Provides power to the Central Government to make Rules for purposes of IGST Act.

27.2/28.2 Analysis

- (i) **Section 27:** 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 services
- Exemption from payment of tax
- Input tax credit and utilization thereof
- Accounts and records
- Payment
- Return
- 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 28:** 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 Chapter VIIA of 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]

27.3/28.3 Comparative review

Under IGST Act	Corresponding Section under present Central Sales Tax Act, 1956	Comparison
Section 27 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, exemption, etc. which are included in Section 27 of IGST
Section 28 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.	

27.4/28.4 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 services, exemption from payment of tax, input tax credit and utilization thereof, accounts and records, payment, return, 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. 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.

27.5/28.5 MCQs:

Q1. Under Section 28, 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

29. Interest on delayed payment of tax

Statutory Provision

- (1) Every person liable to pay tax in accordance with the provisions of this Act or rules made there under, who fails to pay the tax or any part thereof to the account of the Central 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 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 29 of the CGST Act, he shall be liable to pay interest on such undue or excess claim at the prescribed rate for the period computed in the manner prescribed.

29.1. Introduction

This Section provides for interest on delayed payment of IGST by person liable to pay tax.

29.2. Analysis

- (a) This Section sets out that:
 - (i) Any person, who fails to pay the whole or part of tax payable under IGST Act or Rules within the prescribed period, shall pay interest for the period for which such tax is unpaid at the notified rate.
 - (ii) Interest rate will be notified by the Central Government, on the recommendation of the Council.
 - (iii) The interest amount will be calculated from the first day from when such tax is due.
 - (iv) A taxable person who makes an excess claim of any amount of input tax credit on inward supply due to non-declaration of invoice and/or debit note by supplier in his valid return within specified time.
 - (v) Such amount shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place.
 - (vi) Recipient shall be liable to pay interest on excess claim of input tax credit at the prescribed rate for the period calculated in the prescribed manner.

29.3. Comparative Review

The interest rate under the CST Act, 1956 is as per the rate of interest applicable to the respective State law.

29.4. Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 29(10)	Adding back amount of undue or excess claim of input tax credit to the output tax liability of the recipient in his return in the month in which such contravention takes place and such recipient shall pay interest on the amount so added	Such adding back is due to default by supplier

29.5. FAQs:

Q1. Whether there is any provision under IGST Act to charge interest for delay in payment of tax?

Ans: Section 29 of the IGST Act provides for interest for delayed payment of taxes.

Q2. What is the rate of interest in case of delay in payment of tax?

Ans: The interest rate will be notified by the Central Government on the recommendation of the Council.

Q3. What is the implication when a taxable person makes an excess claim of input tax credit than the amount declared by supplier?

Ans: The taxable person shall add back inappropriate or extra input tax credit claim and is also liable to pay interest on such excess claim.

29.6. MCQs:

Q1. State the Section under the IGST Act, which provides interest on delayed payment of tax?

- (a) Section 18
- (b) Section 29
- (c) Section 38
- (d) Section 40

Ans: (b) Section 29

Q2. From which date interest on failure to pay tax under Section 29 of IGST Act shall be calculated?

- (a) First day when it becomes due
- (b) Second day when it becomes due

- (c) Fifth day when it becomes due
- (d) Sixth day when it becomes due

Ans: (a) First day when it becomes due

Q3. What should a taxable person do when the input tax credit claim by him, is more than the amount declared by supplier?

- (a) Add such excess input credit and pay interest
- (b) Add only excess input credit
- (c) Pay only Interest
- (d) None of the above

Ans: (a) Add such excess input credit and pay interest

30. Tax wrongfully collected and deposited with the Central or a State Government

Statutory Provision

A taxable person who has paid IGST on a transaction considered by him to be an interstate supply, but which is subsequently held to be an intra-state supply, shall, upon

Payment of CGST and SGST in the appropriate State, be allowed to take the amount of IGST so paid as refund subject to the provisions of Section 38 of the CGST Act, 2016 and Such other conditions as may be prescribed.

30.1. 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.

30.2. 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 subject to Section 38 (provision for refund of tax) and other prescribed conditions.

30.3. 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.

30.4. Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST Act	38	Refund of tax	

30.5. FAQs:

Q1. Whether IGST wrongly paid on intra-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 interstate 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.

30.6. MCQs:

1. In which situation is a taxable person eligible for refund in case of IGST payment made on intra-state supply instead of intra-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

31. 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.

31.1. Introduction

This transition provision deals with taxability of

- (a) Import of services, or interstate supply of goods and / or services regardless of whether such transactions are initiated before the appointed date;
- (b) Import or interstate 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.

31.2. 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.

31.3. FAQs:

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 31 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 31 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 31 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.

31.4. MCQs:

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

INDIAN

32. 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,

- Principal Chief Commissioner of IGST or Principal Directors General of IGST,
- Chief Commissioner of IGST or Directors General of IGST,
- Principal Commissioners of IGST or Principal Additional Directors General of IGST,
- Commissioners of IGST or Additional Directors General of IGST,
- First Appellate Authority,
- Additional Commissioners of IGST or Additional Directors of IGST,
- Joint Commissioners of IGST or Joint Directors of IGST,
- Deputy Commissioners of IGST or Deputy Directors of IGST,
- Assistant Commissioner of IGST or Assistant Directors of IGST and
- Such other class of officers as may be appointed for the purposes of this Act.

32.1. Introduction

- (a) This Section specifies different ranks / class of officers from higher to lower levels for the administration of IGST law.
- (b) There are 9 classes of officers as per IGST Act with 17 officers and a general class.
- (c) Section 33 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 32 are illustrative and the Board may appoint such other class of officers which are required for better administration.

32.2. Analysis

- (a) Section 32 (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.

32.3. Comparative Review

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

32.4. Related Provisions

Section 141 to 162E of the CGST Act, 2016

32.5. FAQs:

Q1. Whether there are any other classes of officer apart from those specifically listed in Section 32 of IGST Act?

Ans: Yes, there could be other classes of officers who may be appointed for the purpose of this Act.

32.6. MCQs:

Q1. Which Section sets out the classes of officers who maybe appointed for purpose of IGST Act, 2016?

- (a) Section 36
- (b) Section 34
- (c) Section 32
- (d) Section 31

Ans: (c) Section 32

33. Appointment of officers under the Integrated Goods and Services Tax Act, 2016

Statutory Provision:

The Board may appoint such persons as it may think fit to be officers under the Integrated Goods and Services Tax Act, 2016.

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.

33.1. 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 33. 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 33 for appointing certain class of officers of IGST.

33.2. Analysis

- (i) The administrative set up under the IGST law shall be guided by this Section along with Section 32 of this law.
- (ii) The Board is empowered to appoint the persons who are thought fit to be officers under the IGST Act.

33.3. Comparative Review

The provisions under the GST regime are similar to present regime under Customs law.

33.4. Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	4	Classes of Officers	
CGST	5	Appointment of Officers	

33.5. 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 authorise 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 authorise specified officers of CGST to appoint officers of IGST below the rank of Assistant Commissioner of IGST Act, 2016.

33.6 MCQs:

1. Which Section sets out the appointment of officers under IGST Act, 2016?

- (a) Section 35
- (b) Section 33
- (c) Section 38
- (d) Section 31

Ans: (b) Section 33