

## Chapter XXI

# Miscellaneous

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### Statutory Provisions

#### 143. Job Work Procedure

- (1) A registered person (hereafter in this section referred to as the “principal”) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall,—
- (a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;
  - (b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

Provided that the principal shall not supply the goods from the place of business of a job worker in accordance with the provisions of this clause unless the said principal declares the place of business of the job worker as his additional place of business except in a case—

- (i) where the job worker is registered under section 25; or
  - (ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.
- (2) The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.
- (3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.
- (4) Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period

of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

- (5) Notwithstanding anything contained in sub-sections (1) and (2), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax, if such job worker is registered, or by the principal, if the job worker is not registered.

Explanation.—For the purposes of job work, input includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or the job worker.

### 143.1. Introduction

This section provides for a special procedure to exempt supplies from payment of GST by principal to job worker and return from job worker to principal subject to certain conditions and procedure.

**Meaning of job work and job worker:** Section 2(68) gives the meaning of the term 'job work'. As per the said provision, it means a person undertaking any treatment or processing of goods belonging to another registered taxable person. Any person who does such job work will be considered as "Job worker".

### 143.2. Analysis

#### Sending of inputs or capital goods to job worker

This provision enables **registered taxable person** to send inputs / capital goods under intimation and subject to such conditions as may be prescribed to a job worker without payment of tax.

It also provides that the inputs or capital goods can be sent from one job worker to another job worker as well without payment of any tax on such goods being sent.

#### Receipt of inputs or capital goods from the job worker after job work or otherwise

After the processing of goods or otherwise, the goods may be dealt with in any of the following manner by the principal:

- (a) Brought back to any place of business without payment of tax and thereafter supplied,
  - (i) Within India on payment of tax;
  - (ii) For export with or without payment of tax;
- (b) Supply from the place of business of job worker –
  - (i) Within India on payment of tax;
  - (ii) For export with or without payment of tax;

#### **Direct Supply of goods from job worker**

The goods can be supplied directly from the place of business of job worker by the principal

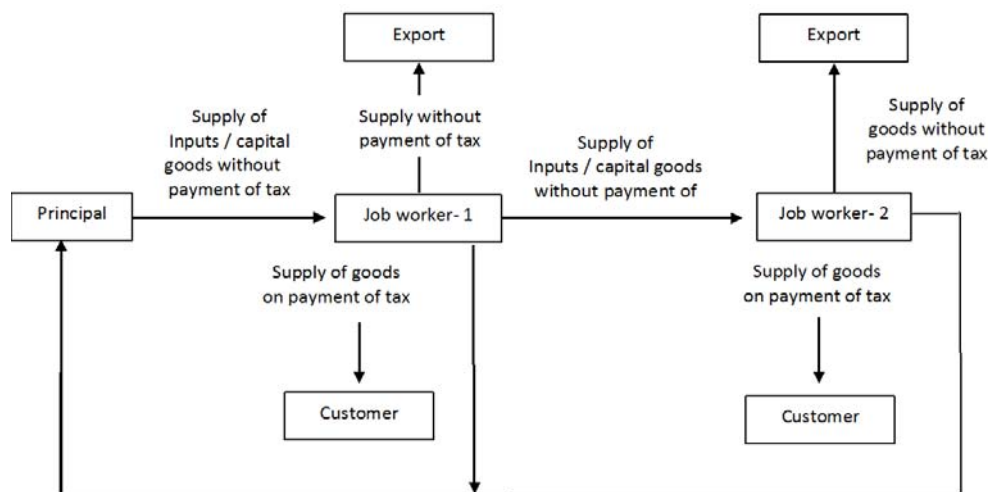
only when the principal declares the place of business of the job worker as his additional place of business. However, the exceptions are -

- (i) If job worker is registered under Section 25;
- (ii) The principal is engaged in the supply of notified goods.

### Responsibility for accountability of Inputs / Capital Goods

If the benefit under this section is availed, the principal is responsible and accountable for all the transactions between him and the job worker.

The above chain can be represented as under:



Principal must receive back inputs and capital goods (except moulds & dies, jigs& fixtures or tools) within 1year and 3years respectively.

### Inputs sent to Job Worker not received back with one year

As per section 143(3), where the inputs sent for job-work are not received back by the “principal” after completion of job-work or otherwise or are not supplied from the place of business of the job worker as aforesaid within a period of one year of their being sent out, **it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out. Hence, the Principal would be liable to pay interest from the date inputs were sent out.**

### Capital Goods Sent to Job Worker not received back with three years

As per section 143(4), where the **capital goods, other than moulds and dies, jigs and fixtures, or tools**, sent for job-work are not received back by the “principal” or are not supplied from the place of business of the job worker as aforesaid within a period of three years of their being sent out, **it shall be deemed that such capital goods had been supplied by the principal to the job-worker on the day when the said capital goods were sent out. Hence, the Principal would be liable to tax along with pay interest from the date capital goods were sent out.**

**Waste and Scrap generated at Job worker**

As per section 143(5), any waste and scrap generated during the job work may be supplied by the job worker directly from his place of business on payment of tax if such job worker is registered, or by the principal, if the job worker is not registered.

**Application of certain provisions of CGST Act, 2016 under IGST Act**

As per section 20 of the IGST Act, the provisions relating to job work would be applicable in case of IGST Act also.

**143.3. Comparative review**

The term 'job work' has not been defined in the Central Excise Act or Customs Act but the same has been provided for in Notification No 214/86 C.E. dated 25.03.1986 and CENVAT Credit Rules, 2004.

**143.4. Related provisions**

In section 143 there is no specific reference to any other sections but there are other provisions where section 143 has been referred to:

Section / Rule / Form	Description	Remarks
Sub-section (68) of Section 2	Job work definition	The job work has been defined to mean undertaking any treatment or process.
Section 19	Taking ITC in respect of inputs and capital goods sent for Job work	The condition and procedure has been prescribed.
Section 22 – Explanation (ii)	Registration	The turnover of job work for principal should not be included in aggregate turnover of job worker

**143.5. FAQ**

Q1. Who shall undertake responsibility for keeping proper accounts under this provision and in case of contraventions?

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

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

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

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

Ans. Yes, inputs are to be returned to Principal or supplied from the place of business of job worker within one year of their being sent out. .

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

Ans. Yes, capital goods, other than moulds and dies, jigs and fixtures, or tools sent for job work, are to be returned to Principal or supplied from the place of business of job worker within three years of their being sent out.

**143.6 MCQ**

Q1. The inputs and/ or capital goods may be sent by .....to job worker under intimation and subject to such conditions as may be prescribed

- (a) Taxable person
- (b) Unregistered taxable person
- (c) Registered person

Ans. (c) Registered person

Q2. The job workers are allowed to send such goods to other

- (a) Manufacturers
- (b) Traders
- (c) Job workers
- (d) All of the above

Ans. (c) Job workers

Q3. Who will undertake responsibility and accountability for any contravention under this section?

- (a) Principal
- (b) Manufacturer
- (c) Job worker
- (d) No body

Ans. (a) Principal

Q4. What is the time limit within which inputs return to principal?

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

Ans. (b) 365 days (One Year)

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

- (a) One Years
- (b) Two Years

- (c) Three years
- (d) None of above

Ans. (d) Three years

#### Statutory provision

##### 144. Presumption as to documents in certain cases

Where any document —

- (i) is produced by any person under this Act or any other law for the time being in force; or
- (ii) has been seized from the custody or control of any person under this Act or any other law for the time being in force; or
- (iii) has been received from any place outside India in the course of any proceedings under this Act or any other law for the time being in force,

and such document is tendered by the prosecution in evidence against him or any other person who is tried jointly with him, the court shall—

- (a) unless the contrary is proved by such person, presume—
  - (i) the truth of the contents of such document;
  - (ii) that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
- (b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

##### 145. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence

- (1) Notwithstanding anything contained in any other law for the time being in force,—
  - (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
  - (b) a facsimile copy of a document; or
  - (c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or
  - (d) any information stored electronically in any device or media, including any hard copies made of such information,

shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof

or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.

- (2) In any proceedings under this Act or the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate,—
- (a) identifying the document containing the statement and describing the manner in which it was produced;
  - (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer, shall be evidence of any matter stated in the certificate and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

### 145.1 Introduction

Both the sections i.e. Section 144 dealing with "Presumption as to Documents in Certain Cases" and Section 145 dealing with "Admissibility of micro films, facsimile copies of documents and computer printouts as documents and evidence" are analysed together.

### 145.2 Analysis

As per the Webster Dictionary presumption means "a belief that something is true even though it has not been proved". Presumption, is an inference of fact drawn from other known facts, unless there is contrary evidence.

This presumption is rebuttable, since, any contrary evidence provided by the assessee, negates such presumption and such presumption is not a conclusive proof. The words "shall presume" in the Act suggest that the judge cannot refuse to draw the presumption.

In general practice the onus of proving relevance and genuineness of documents produced as evidence is on the person producing the said documents. This chapter deals with documents produced as evidence by prosecution. Further, this section has placed the onus of proving the contrary on the assessee i.e. the assessee has to prove that the documents provided by prosecution are not proper evidence.

The term 'document' has been defined so as to include written or printed record of any sort and electronic record as defined in the Information Technology Act, 2000 (Sec 2(41)). Any information stored electronically or any hard copies made thereof is treated as document.

A certificate by a responsible person in relation to the operation of the computer or the management of such activities is required for identifying the document and describing the manner it was produced is required.

### 145.3 Comparative Review

#### Comparison to Central Excise:

Sections 144 and 145 of the CGST Act are similar to Sections 36A and 36B of the Central Excise Act respectively.

In addition, Sec 12B of the Central Excise Act deals with Presumption that the incidence of duty has been passed on to the buyer.

**Landmark Judgements:**

- In the case of Commissioner of Central Excise and Customs, Surat - Vs. Vinod Kumar Gupta, a computer print out of the data collected on USB during a raid was adduced as an evidence against the manufacturer, and further the witnesses had disowned their statements, The Honourable Gujarat High Court has held that such reliance on such material was impermissible in view of non-fulfilling the conditions contained in sub-section (2) of Section 36-B of the Central Excise Act.
- In the case of Commissioner of Central Excise, Ludhiana Vs. Ghansham Bassi, the Honourable Punjab and Haryana High Court noted that the Tribunal had wrongly rejected the appeals of the revenue without considering the arguments raised by the department and relevant provisions of law regarding maintenance of record. The Honourable Court further held that the Tribunal had only recorded that the Commissioner (Appeals) had passed a detailed order by taking into consideration various precedent decisions of the Tribunal as also the provisions of Section 36B of the CE Act and also found that there was no evidence of clandestine removal. The charges of clandestine activities and removal of goods thereof were required to be adjudicated on the basis of appreciating factual matrix by giving sufficient and cogent reasons. A perusal of the order of the Tribunal more particularly para 8 thereof showed that no legally justified reasons had been recorded for rejecting the appeals of the revenue. The Tribunal being final fact finding authority was required to deal with all aspects of facts and law before recording its conclusions based thereon.

**145.6 MCQ**

- Q1. Document includes:
- (a) Written record
  - (b) Printed Record
  - (c) Electronic
  - (d) all of the above

Ans: (d) All of the above

**Statutory provision**

**146. Common Portal**

The Government may, on the recommendations of the Council, notify the Common Goods and Services Tax Electronic Portal for facilitating registration, payment of tax, furnishing of returns, computation and settlement of integrated tax, electronic way bill and for carrying out such other functions and for such purposes as may be prescribed.



**146.1. Introduction**

This section deals with notification of common portal for various purposes upon recommendation by the GST Council.

**146.2. Analysis**

This common portal would facilitate registration, tax payment, filing returns, computation and settlement of integrated tax, electronic way bill and other prescribed purposes.

**146.3. Comparative Review**

GST is a technology driven law and this type of common portal is hitherto unheard of in the history of Indian tax jurisprudence although there was some attempt made in the past to facilitate e-payment of tax, e-filing of returns etc.

**146.6 MCQ**

Q1. The common portal can be notified based on recommendation of:

- A) GST Council B) President of India C) Union Finance Minister D) Supreme Court

Ans. A) GST Council

**Statutory provision****147. Deemed Exports**

The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.

**147.1. Introduction**

This section deals with notification of certain supplies of goods as deemed exports upon recommendation by the GST Council.

**147.2. Analysis**

The notified goods would be deemed to be exported although they do not leave India and payments are received in Indian rupees or convertible foreign exchange.

**147.3. Comparative Review**

This is comparable to the concept of deemed exports in the Foreign Trade Policy and attendant export benefits/incentives are extended.

**147.4 Related provisions**

Section 2(39) of the CGST Act defines the term 'deemed exports'. This would be relevant for extending refund benefit under section 54 of the CGST Act.

**Statutory provision****148. Special Procedure for certain processes**

The Government may, on the recommendations of the Council, and subject to such conditions and safeguards as may be prescribed, notify certain classes of registered persons, and the special procedures to be followed by such persons including those with regard to registration, furnishing of return, payment of tax and administration of such persons.

**148.1. Introduction**

This section deals with notification of certain classes of registered persons, who would be required to follow certain special procedures.

**148.2. Analysis**

The Government can notify such persons upon recommendation of the GST Council. Such notified persons would be required to follow certain special procedures inter-alia relating to registration, returns, tax payment and administration aspects.

**Statutory provision****149. Goods and Services Tax Compliance Rating**

- (1) Every registered person may be assigned a goods and services tax compliance rating score by the Government based on his record of compliance with the provisions of this Act.
- (2) The goods and services tax compliance rating score may be determined on the basis of such parameters as may be prescribed.
- (3) The goods and services tax compliance rating score may be updated at periodic intervals and intimated to the registered person and also placed in the public domain in such manner as may be prescribed.

**149.1 Introduction**

Compliance rating system is one of the new ways of tax administration. This Section states that every taxable person would be rated based on certain parameters. It also provides that the rating would be published in the public domain.

**149.2 Analysis**

The compliance rating is a unique form of rating the performance of the taxable persons. The parameters which would be considered for performance rating would be as prescribed.

Amongst others, the rating of a taxable person would be relevant to determine the eligibility of input tax credit in respect of inward supplies, selection for scrutiny and other administrative / monitoring purposes.

This Section provides as follows:

- Every person liable to pay GST shall be rated and will be assigned a GST compliance rating score.

- The rating would be based on his record of compliance with the provisions of CGST, IGST and SGST. The details of parameters and methodology for rating would be as prescribed.
- The compliance rating score will be updated periodically and will be intimated as follows:
  - to the taxable person;
  - will be placed in the public domain.

### 149.3 Comparative Review

Currently there is no rating system under any of the indirect tax laws.

### 149.4 FAQs

Q1. What would the compliance rating be used for?

Ans: It would be for determining the eligibility for credit on inward supplies, selection of cases for audit / scrutiny, grant of benefits etc, as may be prescribed.

Q2. What are the parameters which would be considered in compliance rating?

Ans: The parameters and methodology of usage of the same would be as prescribed. These would be contained in the Rules.

### 149.5 MCQs

Q1. How will the compliance rating be communicated?

- (a) only to the relevant taxable person
- (b) will be put up in the public domain
- (c) neither a nor b
- (d) both a and b.

Ans . (d) both a and b.

### Statutory provision

#### 150. Obligation to furnish information return

- (1) Any person, being—
  - (a) a taxable person; or
  - (b) a local authority or other public body or association; or
  - (c) any authority of the State Government responsible for the collection of value added tax or sales tax or State excise duty or an authority of the Central Government responsible for the collection of excise duty or customs duty; or
  - (d) an income tax authority appointed under the provisions of the Income-tax Act, 1961; or
  - (e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or
  - (f) a State Electricity Board or an electricity distribution or transmission licensee under the

- Electricity Act, 2003, or any other entity entrusted with such functions by the Central Government or the State Government; or
- (g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or
  - (h) a Registrar within the meaning of the Companies Act, 2013; or
  - (i) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988; or
  - (j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
  - (k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or
  - (l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or
  - (m) an officer of the Reserve Bank of India as constituted under section 3 of the Reserve Bank of India Act, 1934; or
  - (n) the Goods and Services Tax Network, a company registered under the Companies Act, 2013; or
  - (o) a person to whom a Unique Identity Number has been granted under sub-section (9) of section 25; or
  - (p) any other person as may be specified, on the recommendations of the Council, by the Government, who is responsible for maintaining record of registration or statement of accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.
- (2) Where the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said authority may allow and if the defect is not rectified within the said period of thirty days or, the further period so allowed, then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.
- (3) Where a person who is required to furnish information return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the said authority

may serve upon him a notice requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.

### 150.1 Introduction

This is an administrative provision. This Section requires specified persons to furnish an information return with the prescribed authority.

### 150.2 . Analysis

A return called an 'information return' would be required to be filed by specified persons. It is expected that this would be used by the Government/s for exchange of information.

#### Specified persons who would be required to furnish the return:

Nature of persons who would be required to file the return would be:	If the said persons are responsible for maintaining:
<ul style="list-style-type: none"> <li>• Taxable Person.</li> <li>• Local Authority, Other Public Body or Association.</li> <li>• Authority responsible for collecting VAT, Sales Tax, State Excise Duty, Central Excise Duty or Customs Duty.</li> <li>• Authority appointed under Income Tax.</li> <li>• Banking Company</li> <li>• State Electricity Board</li> <li>• Registrar or Sub-Registrar of Registration Act, 1908</li> <li>• Registrar of Companies</li> <li>• Registering authority of Motor Vehicles</li> <li>• Collector</li> <li>• Recognised Stock Exchange</li> <li>• Depository of Shares</li> <li>• Officer of Reserve Bank of India</li> <li>• Goods &amp; Service Tax Network</li> <li>• Person to whom Unique Identity Number (UIN) is granted</li> <li>• Any other specified person</li> </ul>	<ul style="list-style-type: none"> <li>• Records of registration</li> <li>• Statement of accounts</li> <li>• Periodic returns</li> <li>• Details of payment of tax</li> <li>• Any other details of transaction of goods or services</li> <li>• Transaction relating to bank account</li> <li>• Transaction relating to consumption of electricity</li> <li>• Transaction of purchase</li> <li>• Sales</li> <li>• Exchange of goods or property</li> <li>• Right or interest in a property</li> <li>• 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.</li> </ul>

The periodicity, form and manner of filing such returns will be prescribed by way of Rules / Regulations.

#### Implications of non-compliance

1. If the details filed are defective:

- Defect should be intimated to the person who has furnished such information return.
- Reasonable opportunity should be given to rectify the defect in the return
- Defect should be rectified within a period of 30 days from the date of such information or within such further period.

If the defect in the return is not rectified within the time prescribed, the information return should be treated as not submitted and penalty of Rs.100/- per day for each day during which the failure continues, would be payable subject to a maximum of Rs.5,000 in terms of section 123 of the CGST Act.

2. If no return is filed:
  - Authority may serve a notice requiring him to furnish such information return.
  - It should then be filed within a period not exceeding 90 days from the date of service of notice.

### 150.3 Comparative Review

The provision is similar to Section 15A of Central Excise Act, 1944.

### 150.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 123	Penalty for non filing of Information Return	None

### 150.5 FAQs

Q1. What type of persons would be required to file the information return?

Ans. Any person who is responsible for maintaining any of the following would be required to file the information return.

- Records of registration
- Statement of accounts
- Periodic returns
- Details of payment of tax
- Any other details of transaction of goods or services
- Transaction relating to bank account
- Transaction relating to consumption of electricity
- Transaction of purchase
- Sales
- Exchange of goods or property
- Right or interest in a property

Q2. Is this return required to be filed by every taxable person?

Ans. No. Only the persons responsible for maintaining any of the above mentioned records / details would be required to file this return.

### Statutory provision

<p><b>151. Power to Collect Statistics</b></p> <p>(1) The Commissioner may, if he considers that it is necessary so to do, by notification, direct that statistics may be collected relating to any matter dealt with by or in connection with this Act.</p> <p>(2) Upon such notification being issued, the Commissioner, or any person authorised by him in this behalf, may call upon the concerned persons to furnish such information or returns, in such form and manner as may be prescribed, relating to any matter in respect of which statistics is to be collected.</p>
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#### 151.1 Introduction

This Section authorises the Commissioner for the purpose of administration of the Act, to collect any statistics relating to any matter that may be required.

#### 151.2 Analysis

- The Commissioner may, by way of a notification, direct collection of statistics for the purpose of better administration of the Act.
- After issuance of such notification, the Commissioner or any person authorised by Commissioner in this regard may call all concerned persons to furnish such information or return relating to any matter in respect of which statistics is being collected.
- The form in which the information need to be filed, the authority to whom such return need to be filed, the details that are captured on the return, the periodicity of filing such return shall be prescribed by rules.

#### 151.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 152	Disclosure of information collected under Section 141	None

### Statutory provision

<p><b>152. Bar on disclosure of information</b></p> <p>(1) No information of any individual return or part thereof with respect to any matter given for the purposes of section 150 or section 151 shall, without the previous consent in writing of the concerned person or his authorised representative, be published in such manner so as to enable such particulars to be identified as referring to a particular person and no such information shall be used for the purpose of any proceedings under this Act.</p>
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- (2) Except for the purposes of prosecution under this Act or any other Act for the time being in force, no person who is not engaged in the collection of statistics under this Act or compilation or computerisation thereof for the purposes of this Act, shall be permitted to see or have access to any information or any individual return referred to in section 151.
- (3) Nothing in this section shall apply to the publication of any information relating to a class of taxable persons or class of transactions, if in the opinion of the Commissioner, it is desirable in the public interest to publish such information.

### 152.1 Introduction

This Section discusses about the way in which the information obtained under Sections 150 and 151 needs to be handled.

### 152.2 Analysis

- Any information obtained shall not be published so as to enable any particulars to be identified as referring to a particular taxpayer, without the previous consent of the tax payer or his authorised representative. This consent should be in writing. Further the information so obtained shall not be used for the purpose of any proceedings under this Act.
- A person who is not engaged in the collection of statistics under this Act or compliance or computerisation for the purpose of Act, shall not be permitted to see or have access to any information or any individual return.  
However, for the purpose of prosecution under the Act, or under any other Act, access to such information can be given.
- Any person who is engaged in connection with collection of statistics under Section 151 or compilation or computerisation willfully discloses any information or contents of any return under this Section, or otherwise in execution of his duties shall be punished with imprisonment or fine or both in terms of section 133.

### 152.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 150	Obligation to file information return	None
CGST	Section 151	Provisions for collection of statistics and filing of returns	None

### Statutory provision

#### 153. Taking assistance from an expert

Any officer not below the rank of Assistant Commissioner may, having regard to the nature and complexity of the case and the interest of revenue, take assistance of any expert at any stage of scrutiny, inquiry, investigation or any other proceedings before him.



**153.1 Introduction**

This Section enables the Officer not below the rank of an Assistant Commissioner to take assistance of an expert at any stage of scrutiny, inquiry, investigation or any proceedings.

**153.2 Analysis**

This section will enable the Officer to take assistance of experts like IT professional, Lawyer, Technocrat, CA etc considering the nature and complexity of the case and revenue's interest. These experts would assist the concerned officer in scrutiny, inquiry, investigation or any other proceedings.

**Statutory provision****154. Power to take samples**

The Commissioner or an officer authorised by him may take samples of goods from the possession of any taxable person, where he considers it necessary, and provide a receipt for any samples so taken.

**154.1 Introduction**

This Section discusses about authority of the GST officers to draw sample of goods.

**154.2 Analysis**

Sample of any goods may be drawn by the Commissioner or any officer who is authorised by him.

The samples may be drawn wherever the officer so deems necessary and should be out of the goods in possession of the taxable person.

Once the samples are drawn, the officer should provide a receipt for the same.

**154.3 FAQs**

Q1. For what purposes can samples be taken?

Ans. There is no purpose which is specified in the law. However, if the specified officer deems necessary, a sample of the goods may be drawn.

Q2. Who can effect samples?

Ans. The Commissioner or any other person who is authorised by the Commissioner may draw samples out of the goods which are in possession of the taxable person.

**Statutory provision****155. Burden of Proof**

Where any person claims that he is eligible for input tax credit under this Act, the burden of proving such claim shall lie on such person.

**155.1 Introduction**

This provision places the burden on the taxable person to prove his input tax claims.

**155.2 Analysis**

Normally, it is for the person to prove a fact which he asserts.

Following this, under this Section, the onus of correctness and eligibility of the following claim has been vested with the taxable person:

- Eligibility to claim input tax credit: Where the taxable person claims any input tax credit under Section 16 of the CGST Act.

**155.3 FAQs**

Q1. Under what circumstances does the onus of claim by a taxable person lie with him?

Ans. The onus of proving that the taxable person is right in his claims would vest with him, in the following circumstance:

- Where the taxable person has claimed any input tax credit.

**155.4 MCQ**

Q1. Which of the following proposition is correct?

- (a) The Act provides for rule of burden of proof in all situations
- (b) The Act places specific burden on the assessee only in one situation
- (c) The burden of proof is always on the assessee
- (d) None of the above

Ans . (b) The Act places specific burden on the assessee only in one situation

**Statutory provision****156. Persons deemed to be public servants**

All persons discharging functions under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

**156.1. Introduction**

This section proclaims that all persons discharging official functions under the CGST Act would be deemed to be public servants within the meaning of section 21 of the IPC.

**156.2. Analysis**

As the persons discharging official functions are deemed to be public servants, any offences against such persons and offences by such persons would be dealt with in accordance with IPC.

**156.3 Related provisions**

Section 21 of the IPC defines a public servant. Chapter IX of IPC comprising of sections 166

to 171 deals with offences against and offences by public servants prescribing for punishment including imprisonment. Chapter X deals with contempt's of the lawful authority of public servants – sections 172 to 190 thereof prescribes for punishment including imprisonment.

### Statutory provision

#### 157. Protection of action taken under this Act

- (1) No suit, prosecution or other legal proceedings shall lie against the President, State President, Members, officers or other employees of the Appellate Tribunal or any other person authorised by the said Appellate Tribunal for anything which is in good faith done or intended to be done under this Act or the rules made thereunder.
- (2) No suit, prosecution or other legal proceedings shall lie against any officer appointed or authorised under this Act for anything which is done or intended to be done in good faith under this Act or the rules made thereunder.

#### 157.1 Introduction

This Section protects the GST officers and officers of GST Tribunal from legal proceedings in respect of acts done in good faith.

#### 157.2 Analysis

Immunity from any legal or departmental proceedings is provided to the GST officers and officers of the Tribunal for the acts done in good faith under the provisions of this Act.

#### 157.3 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 156	Deemed as public servants	All officers performing any function under this Act are designated as 'public servants'.
CGST	Section 158	Disclosure of information by a public servant	None

#### 157.4 FAQs

Q1. Can the Department proceed against the officer for passing any adjudication order?

Ans. No, the Department cannot take any action against the officer who has discharged his duty in good faith.

### Statutory provision

#### 158. Disclosure of information by a public servant

- (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceedings before a criminal

court), or in any record of any proceedings under this Act shall, save as provided in sub-section (3), not be disclosed.

- (2) Notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as otherwise provided in sub-section (3), require any officer appointed or authorised under this Act to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).
- (3) Nothing contained in this section shall apply to the disclosure of,—
  - (a) any particulars in respect of any statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or any other law for the time being in force; or
  - (b) any particulars to the Central Government or the State Government or to any person acting in the implementation of this Act, for the purposes of carrying out the objects of this Act; or
  - (c) any particulars when such disclosure is occasioned by the lawful exercise under this Act of any process for the service of any notice or recovery of any demand; or
  - (d) any particulars to a civil court in any suit or proceedings, to which the Government or any authority under this Act is a party, which relates to any matter arising out of any proceedings under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or
  - (e) any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by this Act; or
  - (f) any particulars where such particulars are relevant for the purposes of any inquiry into the conduct of any officer appointed or authorised under this Act, to any person or persons appointed as an inquiry officer under any law for the time being in force; or
  - (g) any such particulars to an officer of the Central Government or of any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or
  - (h) any particulars when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or
  - (i) any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under this Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a

cost accountant, a chartered accountant or a company secretary, as the case may be; or

- (j) any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or
- (k) any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force; or
- (l) any information relating to any class of taxable persons or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.

### 158.1 Introduction

This Section lays down the guidelines for non-disclosure of information obtained during the course of any proceeding and the situations when such information can be disclosed.

### 158.2 . Analysis

**Non-disclosure:** The following shall be kept confidential and should not be disclosed:

- All details obtained in any statement / returns / accounts / documents which are submitted as per the act
- All details as per the evidence given during any proceeding under the Act or as per any record of proceedings under the Act

Note: All details obtained from any evidence during the proceedings before a criminal court need not be confidential.

**Restrictions on Courts:** Courts shall not have the right

- To require any GST officer to produce before it or
- To require the officer to give evidence before it in relation to matters which cannot be disclosed (covered above in Point (i))

**Exceptions to non-disclosure:** The following details can be disclosed:

- **Situation 1 – required under other Law:** Statement, return, accounts, documents, evidence, affidavit or deposition, for prosecution under the Indian Penal Code / the Prevention of Corruption Act, 1988 / or any other law in force.
- **Situation 2 – for verification purposes:** Particulars which are to be given to the Central / State Government or to any person discharging his functions under this Act, for the purpose of carrying out the object of the Act.
- **Situation 3 – for service of notice / demand:** If such disclosure is necessary for the service of notice or the recovery of demand.
- **Situation 4 – for Civil Court / Tribunal proceeding:** Particulars to be disclosed to a Civil Court.

Note: The disclosure is in relation to any suit or proceeding. In such proceeding, the Government or any authority under the Act is a party. The disclosure relates to any proceeding as per the Act or under any other law authorising any such authority to exercise such powers.

- **Situation 5 – for Audit:** Particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax levied under the Act.
- **Situation 6 – for inquiry on any GST Officer:** Particulars relevant for any inquiry into the conduct of any GST officer, to any person(s) appointed as an inquiry officer under any relevant law.
- **Situation 7 – to levy or realise tax / duty:** Such facts to an officer of the Central / State Government as necessary for the purpose of enabling that Government to levy or realise any tax or duty.
- **Situation 8 – to public servant:** Such particulars, if such disclosure is necessary before a public servant or any statutory authority, due to his or its powers under any law.
- **Situation 9 – to conduct inquiry on professionals:** Such particulars as relevant to any inquiry under the Act conducted into a charge of misconduct against a practising advocate / cost accountant / a chartered accountant, company secretary / tax practitioner to the authority empowered to take disciplinary action against the members practicing such profession. (i.e. ICAI / ICAI (CWA) / ICSI / Bar Council)
- **Situation 10 – to data entry agency for department:** Disclosures to any agency appointed for the purposes of data entry on any automated system or for operating, upgrading or maintaining any automated system (if such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes)
- **Situation 11 – to Government:** Particulars to an officer of the Central / State Government necessary for any law for the time being in force.
- **Situation 12 – for publication:** Information relating to any class of taxpayers / transactions for publication, if, in the opinion of the Competent authority, it is desirable in the public interest, to publish such information.

### 158.3 Comparative review

There are no specific provisions in the existing law to specifically protect the confidentiality of the information obtained during the course of carrying out any functions as a public servant.

### 158.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 156	Deemed as public servants	All officers performing any function under this Act are designated as 'public servants'.

Statute	Section / Rule / Form	Description	Remarks
CGST	Section 157	Immunity from legal proceedings	Protection of action taken in good faith by GST officers and officers of Tribunal

**158.5 FAQs**

Q1. Who is responsible for maintaining confidentiality or non-disclosure of information?

Ans: Every GST Officer must maintain confidentiality or non-disclosure of information obtained by him.

Q2. Can the GST officer disclose the information if required under any law?

Ans: GST Officer shall disclose the information if required under Indian Penal Code / Prevention of Corruption Act or any other law.

Q3. Can the GST officer voluntarily disclose information to professional bodies regarding professional misconduct of any professional?

Ans: No. Voluntary disclosure of information is not covered under the above provision. However, if any inquiry is already underway by the relevant professional regulatory body, then the GST officer can disclose information to such authority relating to the professional misconduct.

Q4. Can information be shared for statistical purposes?

Ans: GST officer can share the information to the Central / State Government regarding compilation of statistics dealing with particular class of taxpayers / class of transactions.

Q5. Can information be shared with Civil Courts?

Ans: GST officer can disclose information in any proceeding before Civil Courts only if the Government is also one of the parties involved and such Courts have been empowered with the power to call for such information.

Q6. Can information be shared with First Appellate Authority?

Ans: GST officer cannot share the information with the First Appellate Authority unless it is authorized under the law to be disclosed before them.

**Statutory provision****159. Publication of information in respect of persons in certain cases**

(1) If the Commissioner, or any other officer authorised by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published such name and particulars in such manner as it thinks fit.

- (2) No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

Explanation.—In the case of firm, company or other association of persons, the names of the partners of the firm, directors, managing agents, secretaries and treasurers or managers of the company, or the members of the association, as the case may be, may also be published if, in the opinion of the Commissioner, or any other officer authorised by him in this behalf, circumstances of the case justify it.

### 159.1 Introduction

- (i) This provision confers powers on the Competent Authority to publish the names and other details of persons in default, as information to the public.
- (ii) This provision also discusses the persons, whose names can be published, if proceedings relate to a company / firm / association of persons.

### 159.2 Analysis

#### Powers to publish details:

- (i) The Competent Authority may ensure that the following details are published:
- Names of any person (and)
  - Other particulars relating to proceedings or prosecutions under the Act, if related to such person.
- (ii) The decision to publish is based on the opinion of the Competent Authority that it is essential or beneficial in the public interest to do so.
- (iii) As the provision indicates that the Competent Authority “*can decide to publish in such manner as it thinks fit*”, Competent Authority can decide:
- the category of proceedings / prosecution cases to be published
  - the category of persons whose details to be published
  - the extent of particulars to be published
  - the manner of publishing,
  - the media wherein the information to be published



(iv) In addition, the Competent Authority may also decide to publish the following:

Nature of Organisation	Additional details
In case of Firm	Names of partners
In case of Company	Names of directors / Managing Agents / Secretaries & Treasurers / Managers
In case of Association of Persons	Names of the members

*Note: However, the additional details can be published only if the Competent Authority opines that the circumstances of the case justify it.*

(v) **Exception:** However, publication can be made in relation to imposition of penalty, only when the following conditions are satisfied:

- The time for presenting an appeal to the First Appellate Authority (u/s 107) has expired and the persons involved, did not present any appeal (OR)
- The appeal is presented and it is disposed of (against such persons).

### 159.3 Comparative review

Similar Provisions as above find place in current laws as under:

Law	Distinction in the GST law
Central Excise (Sec.37E)	The provisions are similar to Sec.37E. However, in the present Central Excise Legislation, as there is a provision to appeal directly to CESTAT against the order of Commissioner, the time limit in relation to publishing information about penalty also includes the time for appeals before CESTAT. In the GST law, there is no such provision for direct appeal to Tribunal and so time limit for appeals before Tribunal is omitted.
Central Excise (Sec.9B)	In the Current Excise Law, as per Sec.9B, Courts have powers to publish the information about conviction of the persons and other information (as mentioned in Sec.9B). However, in the present GST legislation, no such powers are conferred on the Courts. In fact, there is a Circular No.1009/16/2015 – CX dt. 23.10.15, which insists that the power to publish information is being exercised very sparingly by the Courts and has given a clear direction that in deserving cases, the department should make a prayer to the Court to invoke this Section in respect of all persons who are convicted under the Act.
Service Tax (Sec.73D)	As per current service tax provisions, the names and the particulars to be published and the manner in which it has to be published <i>are as prescribed</i> (by the Service Tax (Publication of Names) Rules 2008).

Law	Distinction in the GST law
	<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 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 164 to confer powers to the Governments to frame rules for such publication. Sec.165 has also not listed out the specific areas wherein the Board / Commissioner SGST can frame regulations.</i></p>
VAT Laws	<p>Similar provisions as that of the GST Law are enacted as part of the existing State VAT Laws, but in certain Stat VAT Laws, the powers can be exercised <i>subject to such conditions as may be prescribed. (For e.g. Sec.79 of the TNVAT Act, 2006)</i></p>

#### 159.4 Related provisions

Statute	Section / Rule / Form	Description	Remarks
GST	Section 107	Time Limit for appeal before First Appellate Authority	Information on the penalty imposed on a person can be published only if the time limit for appeals before First Adjudicating Authority is over. So Sec.107 is relevant.

#### 159.5 FAQs

Q1. Should prosecution proceedings alone be published?

Ans: No. Sec.159 uses the words “any proceedings or prosecution”. Hence, even a normal adjudication proceeding can be published if the competent authority thinks fit.

Q2. Is there any guideline available for deciding the situations in which information must be published?

Ans: No. As per the section, the competent authority may form his own opinion and may decide to publish the name and other particulars in such manner as he thinks fit. It is expected that the Government may frame guidelines on publishing information and manner of such publishing.

Q3. What are the media in which the details must be published?

Ans: Sec.159 is silent on such aspect and it gives the power to the competent authority to decide the manner in which it has to be published (*Unless certain guidelines are spelt out by the government*).

Q4. Whether the publishing is to be done only after the adjudication order is passed?

Ans: Sec.159 indicates that the competent authority may publish names and other particulars, in relation to any proceeding or prosecution. There is no condition that the order needs to be passed to publish the details.

Q5. Can the names of persons alone be published by the competent authority?

Ans: Sec.159 indicates the names of any person and any other particulars relating to such person, in respect of such proceedings may be given. So, it is imperative to give the other relevant particulars of the proceedings also.

#### 159.6 MCQs

Q1. Who can publish the names and particulars

- (a) Courts
- (b) Appellate Authority
- (c) Any Adjudicating Authority
- (d) Competent Authority

Q2. Names and particulars relating to prosecutions can be published –

- (a) After Courts Approval
- (b) After expiry of appeal to First Appellate Authority
- (c) At the discretion of the Competent Authority
- (d) Cannot be published at all

Q3. In case of proceedings against the Companies, then the details that can be published are

- (a) Names and Addresses of the Directors
- (b) Only Names of the Directors
- (c) Details of Directors and Auditors
- (d) Photographs of the Directors

#### Statutory provision

##### 160. Assessment proceedings, etc., not to be invalid on certain grounds

- (1) No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any existing law.
- (2) The service of any notice, order or communication shall not be called in question, if the notice, order or communication, as the case may be, has already been acted upon by the person to whom it is issued or where such service has not been called in question at or in the earlier proceedings commenced, continued or finalised pursuant to such notice, order or communication.

**160.1 Introduction**

Very often proceedings under the Act are questioned for their validity even when there are inadvertent errors. This Section saves the proceedings from such challenge when substantive conformity is found but for these errors.

**160.2 Analysis**

Assessment, re-assessment and other proceedings that are listed in this Section will be valid even though there may be:

- Mistake
- Defect or
- Omission

Provided they are in 'substance' and 'effect' in conformity with the intents, purposes and requirements of the Act.

Proceedings listed in this Section are:

- Assessment
- Re-assessment
- Adjudication
- Review
- Revision
- Appeal
- Rectification
- Notice
- Summons
- Other proceedings

Considering the purpose of this Section, no proceedings under the Act are excluded from the operation of this Section. It is interesting to see how such a determination will be made – whether deficiency in the proceedings was a mistake, defect or omission and that it is in substance and effect in conformity with the Act.

Further, where a notice, order or communication has:

- Been acted upon or
- Not called into question at the earliest opportunity available.

Then the opportunity to call such notice, order or communication into question will not be available in the course of subsequent proceedings. Please note that the deficiency that can be so called into question is limited to – notice, order or communication – and not the documents forming part of the other proceedings listed in sub-section (1). Hence, it is important to note that care needs to be taken while making preliminary objections on jurisdiction and validity of communication.

**Statutory provision****161. Rectification of errors apparent on the face of record**

Without prejudice to the provisions of section 160, and notwithstanding anything contained in any other provisions of this Act, any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any officer appointed under this Act or an officer appointed under the State Goods and Services Tax Act or an officer appointed under the Union Territory Goods and Services Tax Act or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be:

Provided that no such rectification shall be done after a period of six months from the date of issue of such decision or order or notice or certificate or any other document:

Provided further that the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission:

Provided also that where such rectification adversely affects any person, the principles of natural justice shall be followed by the authority carrying out such rectification.

**161.1 . Introduction**

While the authority to issue any decision, order, summons, notice, certificate or other document is expected to be free from errors, it is the duty of the authority issuing the same to correct any errors that do not convey the outcome of the process of law resulting in its issuance. This Section provides for an opportunity to make such rectification with some caution and due process being prescribed.

**161.2 Analysis**

This Section begins with caution in stating that:

- no prejudice will be caused to the validity of proceedings listed in Section 161 from the defects that may be present in the documents concerned;
- but overrides all other provisions of the Act that may permit calling into question any deficiency in the documents.

This Section provides for rectification of error or mistake apparent by the authority who has issued the document or on being brought to attention by CGST / SGST authority or the affected person. So there are three ways in which action can be taken under this Section. No person is entitled to take advantage of such errors or mistakes.

The action permitted to be taken is to rectify an error or mistake apparent. Errors or mistakes apparent can cause difficulty in executing the directions contained in the document. This may require seeking the authority's intervention to rectify.

The power/jurisdiction to rectify is for **any error or mistake which is apparent from record**. The error must be self-evident and should not be discoverable by a long process of reasoning, where there is a possibility on points on which there may conceivably be two opinions. But the limiting aspect is that the power cannot be exercised to amend substantive part of the document concerned.

The error may be a) factual, b) legal or c) clerical. All of them are rectifiable once it is shown that they are apparent on face of the record and not within the natural understanding of the authority at the time of issuance of the original document but which has crept in due to inadvertence or by reason other than exercise of judgement. Here the assessee, on a literal interpretation, cannot bring any document or evidence, not already available on record, to substantiate his claim for rectification.

A time limit of 3 months is allowed for the affected person to bring to attention any such error or mistake. This time limit does not apply to a CGST / SGST officer from bringing it to the attention to the issuing authority or for making voluntarily rectification. However, no such rectification is permitted after 6 months from the date of its issuance.

If any such rectification adversely affects any person, it is required that principles of natural justice should be complied with.

### 161.3 Comparative review

Starting from Civil Procedure, all laws have provisions to rectify errors apparent on the face of the records including tax laws such as Income Tax Act, Central Excise, Customs, Service Tax and different Sales tax etc.

### 161.4 Related provisions

Statute	Section / Rule / Form	Description
Central Excise Act, 1984	Section 35C. Orders of Appellate Tribunal.	The Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any mistake apparent from the record, amend any order passed by it
Chapter V of the Finance Act, 1994	Section 74. Rectification of mistake	With a view to rectifying any mistake apparent from the record, the 4[Central Excise Officer] who passed any order under the provisions of this Chapter may, within two years of the date on which such order was passed, amend the order.
Income-tax Act, 1961	Section - 154	With a view to rectifying any mistake apparent from the record an income-tax authority referred to in Section 116 may,— (a) amend any order passed by it under the provisions of this Act;

Statute	Section / Rule / Form	Description
		(b) amend any intimation or deemed intimation under sub-Section (1) of Section 143; (c) amend any intimation under sub-Section (1) of Section 200A; 61[(d) amend any intimation under sub-Section (1) of Section 206CB.

### 161.5 FAQs

Q1. What errors may be rectified under the provision?

Ans. Only errors, which are apparent on the face of the record, may be rectified under the provision.

Q2. What is an error apparent on the face of the record?

Ans. An error is apparent on the face of the record if it is evident from the record itself and does not require long drawn out reasoning.

Q3. What are the types of errors, which can be rectified?

Ans. Any error, which is apparent on the face of the record, may be rectified. Such error can be a) factual, b) legal or c) clerical.

Q4. Is there a time limit to apply for rectification?

Ans. The time limit is 3 months but extendable to 6 months. But in case of clerical or arithmetic mistakes, the 6 months outer limit is not applicable. Such clerical error must be due to accidental slip or omission.

Q5. Who can seek rectification?

Ans. The authority itself, an officer or the affected person can seek rectification.

Q6. If a proceeding is pending before a higher forum can rectification be sought for?

Ans. As the provision is applicable notwithstanding other provisions, pendency of proceeding before higher forums is not a bar to seek rectification.

Q7. If there is a material found out which has bearing on the decision whether rectification can be sought?

Ans. No. For that purpose, the error must be apparent on the face of the record. Therefore, outside material cannot be produced to rectify the decision.

Q8. What is the scope of rectification? Whether any part of the order can be rectified?

Ans. The provision expressly states that it cannot amend the substantive part of the decision etc.

Q9. Whether the assessee is to be given notice?

Ans. If there is an adverse effect then principles of natural justice has to be complied with.

**161.6 MCQs**

- Q1. What errors may be rectified under the provision?
- (a) Only errors which are apparent on the face of the record
  - (b) All errors of law and fact
  - (c) Only clerical error can be rectified
  - (d) Only if the error is by accidental slip or omission
- Q2. What is an error apparent on the face of the record?
- (a) If it can be proved by additional evidence not available at the time of passing the order
  - (b) If it is evident from the record itself and does not require long drawn out reasoning
  - (c) If it is error on points of law
  - (d) If it is only a clerical or arithmetic error
- Q3. What is the time limit to apply for rectification?
- (a) Normally 3 months extendable to 6 months in all cases
  - (b) Normally 3 months and on sufficient cause shown the delay can be condoned
  - (c) Strictly 3 months
  - (d) Normally 3 months extendable to 6 months, but in case of clerical or arithmetic mistakes, the 6 months outer limit is not applicable.
- Q4. Who can seek rectification?
- (a) Only the authority itself
  - (b) The authority itself, an officer or the affected person
  - (c) Only an officer
  - (d) Only the affected person
- Q5. If a proceeding is pending before a higher forum can rectification be sought for?
- (a) No
  - (b) Yes
  - (c) With the permission from the Appellate Authority
  - (d) None of the above
- Q6. What is the scope of rectification? Whether any part of the order can be rectified?
- (a) Once it is proved that there is error apparent any part of the decision can be rectified
  - (b) Only the part dealing with legal aspect can be rectified



- (c) Only the part dealing with clerical or arithmetic aspect can be rectified
  - (d) The authority cannot amend the substantive part of the decision etc.
- Q7. Whether principle of natural justice to be followed?
- (a) As it is a quasi-judicial function the authority must give notice and follow principles of natural justice
  - (b) As it is only a rectification of apparent error principles of natural justice is not applicable
  - (c) If there is an adverse effect then principles of natural justice have to be complied with
  - (d) If it relates to assessment principles of natural justice have to be complied with

### Statutory provision

#### 162. Bar on jurisdiction of civil courts

Save as provided in sections 117 and 118, no civil court shall have jurisdiction to deal with or decide any question arising from or relating to anything done or purported to be done under this Act.

#### 162.1 Introduction

With the advent of administrative law whereby the departmental machinery has been created to deal with disputes, civil court jurisdiction is restricted. Presently whenever a new tax liability is created machinery provisions to deal with disputes is also in-built. Otherwise, civil court has a jurisdiction to deal with all disputes of civil nature. Under Sections 116 and 117, appeal to High Court and Special leave to the Supreme Court are provided. These are the only instances when this bar to approach Court is not applicable, as it is a statutory appeal and only questions of law could be raised.

#### 162.2 Analysis

The basic principle is that every dispute of civil nature can be tried by the civil court. Tax being civil liability its levy, imposition and collection can be challenged before the Civil Court.

Over a period of time, tribunals were created for trying disputes arising under each legislation without the rigours of Civil Procedure Code to be followed, where non-judicial members preside and persons representing are well versed in the specific domain though not always Advocates. Thus, the civil court jurisdiction has been barred. The principle is that if a statute creates a new liability or obligation and provides for machinery, then this impliedly bars civil court's jurisdiction. Under GST law, it is expressly barred.

The clause "any question arising from or relating to anything done or purported to be done under the Act;" makes a strict rule barring even those which are purportedly done under Act. Except to sit in judgement about the vires of the law itself, the appellate machinery created by the law can go into any question of fact or law. However, the clause does not bar the

Constitutional powers of High Court under Art.226 & 227 or Supreme Court under Article. 32,136 etc.

Section 116 relates to appeal on substantial question of law to High Court and Section 117 a leave to appeal therefrom to Supreme Court.

### 162.3 Comparative Review

All existing indirect tax laws bar exercise of jurisdiction by Civil Courts as the tax laws provide for an alternative and effective mechanism to deal with tax disputes.

### 162.4 FAQs

Q1. Why a civil suit cannot be filed against an order passed under the Act?

Ans. Remedies of different nature are provided under the Act. Further, there are constitutional remedies also. Therefore, the Act bars filing of civil suits against any order passed under the Act.

### Statutory provision

#### 163. Levy of Fee

Wherever a copy of any order or document is to be provided to any person on an application made by him for that purpose, there shall be paid such fee as may be prescribed.

#### 163.1 Introduction

This provision empowers the Central Government to collect fees for supplying photo copy of the orders / documents.

#### 163.2 Analysis

Document or order must be served on the party concerned. But to receive an authentic copy of such document or order, a fee is being prescribed. It is important to note that a new procedure of securing an authenticated copy of the document or order is provided for. This is similar to the procedure prescribed under CPC for receiving documents.

#### 163.3 Comparative review

- (i) Under the current legislations (Central Excise / Service Tax / VAT Laws), there is no exclusive provision to give copies of any document or order against payment of fees.
- (ii) This provision will lead to issuance of a separate notification, indicating the fees to be paid for obtaining the copies of the various orders / documents.
- (iii) This could indirectly convey the intention of the Government to give copies of any document / order against the fees.
- (iv) For E.g. If Form ARE 1 (present format for export application) is submitted to the department and the exporter does not have a copy, the exporter may obtain its copy from the department against fixed fees.
- (v) Interestingly the Right to Information law also deals with provision of information/ documents for a prescribed fee.

**163.4 FAQ**

Q1. Should a person pay fees for obtaining copy of Show Cause Notice?

Ans: 'Document' is not defined. It can include Show Cause Notices also.

Q2. How much fees is to be paid?

Ans: It shall be prescribed by a separate notification.

Q3. Should a person pay fees to obtain the application?

Ans: The person may have to pay fees, if prescribed by the notification.

Q4. Will this provision cover the fees for submission of appeals?

Ans: No. This provision deals only with obtaining copies of pre-existing orders / documents and not filing appeal related documents. For appeals fees, the relevant Sections must be referred to.

Q5. Can a person obtain a copy of an internal document of the department?

Ans: The intention of the provision is to obtain the copy of any order / document, to which a person is normally entitled to. He cannot access the internal communication through this provision. However such information/document can be obtained under RTI law.

**163.5 MCQ**

Q1. A person need not pay fees for:

- (a) Primary Copy of the Appellate Order
- (b) Copy of the Show Cause Notice (lost by the assessee)
- (c) Copy of the Adjudication Order
- (d) All of the above

Q2. Fees must be paid

- (a) Before obtaining Copy of Order
- (b) After obtaining Copy of Order

**Statutory provision****164. Power of Government to make rules**

- (1) The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.
- (2) Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
- (3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.

(4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

#### 164.1 Introduction

This is delegation of legislation to the administrative authority, which has become a regular practice and standard feature of modern legislation. This has to be read with the other Section 165 regarding regulations. While under this Section the Government is given the power to make rules, under Section 165 power to make regulation is given to the Board and Commissioner of SGST. There is a general power under sub-section (1) and specific power under sub-section (2) which is also a standard structure.

#### 164.2 Analysis

The reason for the delegation of legislation is that the Legislature cannot take care of all aspects of creating law, due to the enormous responsibility and also that it is better to leave it to the bureaucracy to fill in the gaps, after laying down general principles.

Two important principles are:

- a) The essential legislative function i.e., laying down the policy, has to be carried out by the legislature and only lesser aspects can be left to the administration.
- b) The legislative policy behind the areas where it is delegated must be known from the legislation itself, so that the administrative authority remains within bounds while making the rules.

It is part of the separation of powers that legislative power is exercised by the legislature and executive only administers it. Delegation requires superintendence of the legislature. Although all though express supervisory provisions are not contained in this Section, the boundaries of delegation must be identified by the limits set from the words used to describe the topics on which rules (or regulations) are to be notified.

The general rule making power is granted to the Central and State Governments. The rule making power is subject to a procedural limitation that it can be made only when there is a recommendation by the Council. Such rule making power also includes power to issue notifications with retrospective effect under the rules.

General powers to carry into effect the purposes of this Act are provided by vesting the appropriate Government with the rule making power to fill in the gaps with expression "as may be prescribed". This does not limit the general rule making power to carry out the purposes of the Act.

Legislature has an inherent power to make retrospective laws but the delegated authority can make retrospective rules but not earlier than the date of commencement of this Chapter XXI.

Finally, in order to ensure the rules are enforceable, breach of the rules are recognized as a cause for imposing penalty not exceeding Rs.25,000/-. It is interesting that a particular breach while being a breach of the specific rule attracting penalty may also be the breach of the substantive provision of law attracting penalty under Sections 73/74 of the Act.

**164.3 Comparative review**

Rule making power is an important adjunct of modern Administrative legislation. It features in Income Tax Act, Central Excise, Customs, Service Tax and Different Sales tax and other laws as well.

**164.4 Related provisions**

Statute	Section / Rule / Form	Description
Central Excise Act, 1984	Section 37. Power of Central Government to make rules.	(1) The Central Government may make rules to carry into effect the purposes of this Act. (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for specific matters.
Chapter V of the Finance Act, 1994	<b>94. Power to make rules. -</b>	(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter. 7(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the specific matters stated therein.

**164.5 FAQ**

Q1. What is the purpose of making rules?

Ans: The principal legislation lays down policy in general. It requires specifics and details for implementation. These are taken care of by the Rules.

**164.6 MCQ**

Q1. Whether the rules can be made with retrospective effect?

- (a) Yes
- (b) No
- (c) Yes. Subject to the limitation that it cannot be made beyond the date on which the chapter comes into force
- (d) None of the above

**Statutory provision****165. Power to make regulations**

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

**165.1 Introduction**

While topics for rule making are listed under Section 164 leaving the domain to the

appropriate Government, topics for making regulation listed under Section 165 are reserved for the Board. These are mutually exclusive domains.

### **165.2 Analysis**

The Board is empowered to notify regulations consistent with the objects of the Act. No recommendation of the GST Council is called for in this case.

Specific topics to issue regulations are also provided for though not listed for the time being.

### **165.3 Comparative review**

Section 156 and 157 of Customs Act where topics are allocated to Central Government and Central Board of Excise and Customs.

Section 37 of the CE Act

### **Statutory provision**

#### **166. Laying of rules, regulations and notifications**

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be after it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

#### **166.1 Introduction**

This Section lays down the general procedure of laying delegated legislations before the Parliament for a prescribed duration.

#### **166.2. Analysis**

- (a) The Act permits making of rules by Government, issuance of regulation by Board and issuance of notification by the Government.
- (b) Such rule, regulation and notification, which is a part of delegated legislation is placed before the Parliament.
- (c) It is laid before the Parliament, as soon as may be after it is made or issued, when the Parliament is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions
- (d) Before the expiry of the session or successive sessions both Houses may make suitable modifications and would have effect in such modified form.

- (e) However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

### 166.3. Comparative Review

Similar provisions are there in the existing tax laws as well.

### Statutory provision

#### 167. Delegation of Powers

The Commissioner may, by notification, direct that subject to such conditions, if any, as may be specified in the notification, any power exercisable by any authority or officer under this Act may be exercisable also by another authority or officer as may be specified in such notification.

#### 167.1 Introduction

This enables the Competent Authority to delegate the power exercisable by one authority to another.

#### 167.2 Analysis

The power conferred on one officer or authority under the Act can be exercised by another authority or officer if directed by the Competent Authority. This direction of the Competent Authority must be notified in the Gazette. Such power can be limited by conditions specified in the notification. Significantly, there is no condition, criterion or circumstance stated for exercising this power by the Competent Authority. It is important to note that upon notification of such direction by the Competent Authority, it does exclude the first authority or officer who was originally delegated from exercising such power.

This is an administrative power to ensure swift response to situations where an authority or officer better placed to carry out the duties (by exercising the power) has not been originally conferred with the power by delegation. In such cases, instead of awaiting the revision in delegation, the delegation is permitted to be redirected at the discretion of the Competent Authority for purposes of the Act.

#### 167.3 Comparative review

Delegation of powers for administrative exigencies is part of laws dealing with administrative powers

#### 167.4 Related provisions

Statute	Section / Rule / Form	Description
Central Excise Act, 1944	Section 37A. Delegation of powers	The Central Government may, by notification in the Official Gazette direct that subject to such conditions, if any, as may be specified in the notification - (a) any power exercisable by the Board under this Act may

Statute	Section / Rule / Form	Description
		<p>be exercisable also by a Chief Commissioner of Central Excise or a Commissioner of Central Excise empowered in this behalf by the Central Government;</p> <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>

**167.5 FAQs**

Q1. How does the assessee know whether an officer is properly delegated?

Ans. As the delegation has to be through notification, by referring to the notification it can be ascertained whether the officer is properly delegated or not.

**167.6 MCQs**

Q1. Which of the following statements is correct?

- (a) An officer may delegate his powers to his subordinate
- (b) The delegation can be done by way of an internal memo
- (c) No conditions can be imposed
- (d) The delegation can be done only by a competent authority by way of a notification

Q2. Who can delegate the powers?

- (a) The officer who is exercising the power
- (b) Appropriate Government
- (c) The Competent Authority
- (d) All of the above



**Statutory provision****168. Power to issue instructions or directions**

- (1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act, issue such orders, instructions or directions to the central tax officers as it may deem fit, and thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions.
- (2) The Commissioner specified in clause (91) of section 2, sub-section (3) of section 5, clause (b) of sub-section (9) of section 25, sub-sections (3) and (4) of section 35, sub-section (1) of section 37, sub-section (2) of section 38, sub-section (6) of section 39, sub-section (5) of section 66, sub-section (1) of section 143, sub-section (1) of section 151, clause (l) of sub-section (3) of section 158 and section 167 shall mean a Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

**168.1 Introduction**

This Section empowers the Competent Authority to issue orders, instruction or directions to the lower authorities to bring in uniformity in the implementation of the Act.

**168.2 Analysis**

There are three aspects to the provision, namely:

- authority issuing the instruction
- persons whom it binds, and
- its efficacy

It is the Competent Authority who is empowered to issue the orders, instruction or directions. The purpose is to bring in uniformity in the implementation of the Act; and it is binding on all GST officers.

Thus, any circular which is general or administrative in nature is binding on the assessing officer and other officers at basic level. Once the circular is cited they cannot ignore it and decide the matter independently. The circular or instruction is not binding on the assessee. As regards contrary views regarding binding force of a Circular which is against the legal provisions on the assessee or the Authorities is not expressly addressed in this Section. However, officers are not liable for passing orders contrary to law involving interpretation by higher judiciary if it can be shown that such orders are in conformity with orders, instruction or directions issued under this Section.

Sub-section (2) designates the Commissioner or Joint Secretary posted in the Board for exercising certain powers conferred under specific provisions. Such powers would be exercised with the approval of the Board.

**168.3 Comparative review**

Central Excise, Customs, majority of the State VAT enactments and Income Tax contain similar provisions.

**168.4 Related provisions**

Statute	Section / Rule / Form	Description
Central Excise Act, 1984	Section 37B. Instructions to Central Excise Officers. -	The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board : <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 b) so as to interfere with the discretion of the Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.

**168.5 MCQs**

1. The Competent Authority can issue instruction to the field formation to bring in uniformity to all officers
  - (a) True
  - (b) False

**Statutory provision****169. Service of notice in certain circumstances**

- |   |
|---|
| <p>(1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely:—</p> <ol style="list-style-type: none"> <li>(a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in</li> </ol> |
|---|

- connection with the business, or to any adult member of family residing with the taxable person; or
- (b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
  - (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
  - (d) by making it available on the common portal; or
  - (e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or
  - (f) if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.
- (2) Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).
- (3) When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

### 169.1 Introduction

Service of communication is an essential step of any process of law. This Section details the mode of service that is considered valid.

### 169.2 Analysis

- (i) **Communication:** Any decision, order, summons, notice or other communication under the Act or the rules.
- (ii) **Modes of Communication:** The above documents can be served on the assessee in the following modes:
  - (a) **Mode 1 – Physical Delivery:**
    - Giving or tendering it directly or
    - Delivery through a messenger including a courier
    - The documents can be delivered to:
      - (i) The addressee / the taxpayer / to his manager /

- (ii) The agent duly authorized / an advocate / a tax practitioner (who holds authority to appear in the proceeding on behalf of the taxpayer)/
  - (iii) A person regularly employed by him in connection with the business /
  - (iv) Any adult member of family residing with the taxpayer or
- (b) **Mode 2 – Regd. Post /speed post or Courier with acknowledgement due:**  
It should be sent to intended person or his authorised representative at his last know place of business or residence.
- (c) **Mode 3 – Electronic Means**  
— Email or notifying in common portal (GSTN).
- (d) **Mode 4 – Media:** Publication in a newspaper (in the locality in which the taxpayer or the person to whom it is issued is known to have resided, carried on business or personally worked for gain)
- (e) **Mode 5 – Other Modes:** If above modes fail, then it can be served by
- Affixing it in some conspicuous place at his last known place of business or residence or
  - If above mode is not practicable, service of notice can be by affixing a copy on the notice board of the officer or authority issuing such communication.
- (iii) **Date of service**
- **Normal Cases:** The above communications shall be treated as served on the date on which it is tendered or published or a copy thereof is affixed (as mentioned above)
  - **Registered or Speed Post:** If such communications are sent by registered/ speed post, it shall be treated as received by the addressee at the expiry of the normal period taken by such post in transit (unless the contrary is proved).

### 169.3 Comparative review

The following are the major improvements / inclusions made in the GST Law as against the existing provisions available in Central Excise / Service Tax:

Points of Distinction	Remarks
New Modes of Service included	<ul style="list-style-type: none"> <li>— Delivery through a messenger including a courier</li> <li>— Courier (no specific mention about whether it is approved by CBEC)</li> <li>— Electronic Means (E-mail/common portal)</li> <li>— Publication in Newspaper</li> </ul>
Additional Addressees (if main addressee is	Delivery through messenger or by courier to following persons are accepted:

not available)	A person regularly employed by him in connection with the business / Any adult member of family residing with the taxpayer
Deemed Delivery under registered post	A specific clause is added under the GST Law which indicates that if communications are sent by registered/speed post, <b>it shall be treated as received by the addressee at the expiry of the normal period taken by such post in transit.</b>
Type of communication	The proposed Section covers any communication issued under the law. In the present Central Excise Law, Section 37C covers <b>decision / order / summons / notice.</b> Any communication might include intimation letters sent under the law, trade letters issued, acknowledgments issued etc.

#### 169.4 Related provisions

Section 169 relates to all communications issued under the law and hence any communication given under any provision, shall be governed by this provision.

#### 169.5 FAQs

Q1. What are the approved modes of communication?

Ans: Physical Delivery, Registered Post, Courier, Email, common portal, publication in newspaper, affixing of notice on place of business or residence of the addressee, notice board of the Authority which has issued notice.

Q2. If post is used but acknowledgment due is not given, is it approved?

Ans: Post with Acknowledgment due is essential to make it valid.

Q3. If mail is sent to an invalid mail ID, is it valid?

Ans: Mail sent to the last known Mail ID of the Addressee shall be considered valid communication. However, if the addressee is able to prove that such communication is not received by him, it can be invalid.

Q4. Whether notice must be sent to the person intended and to his authorized agent also or any one of them is sufficient?

Ans: The provision provides that if the notice is sent by courier or physical delivery to the person to whom it is intended or his authorized agent, it is sufficient.

Q5. Whether advertisement in local talks is considered valid service?

Ans: The provision provides that display in the newspaper shall be a valid service of notice. Hence, local talks prevalent in the place where the addressee normally resides or has place of business shall be treated as valid.

**169.6 MCQs**

- Q1. Among the following, which method is not approved?
- (a) Post
  - (b) Courier
  - (c) Email
  - (d) Notice to Addressee's Debtors
- Q2. Among the following, to whom the notice cannot be served?
- (a) Authorised Agent
  - (b) Family Member
  - (c) Employee
  - (d) Partner
- Q3. In case of registered post, if acknowledgment is not received within time, what shall be the date of service of notice?
- (a) Reasonable Time
  - (b) Not considered as delivered
  - (c) 30 days from sending the registered post
  - (d) 45 days from sending the registered post

**Statutory provision****170. Rounding off of tax, etc.**

The amount of tax, interest, penalty, fine or any other sum payable, and the amount of refund or any other sum due, under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee consisting of paise, then, if such part is fifty paise or more, it shall be increased to one rupee and if such part is less than fifty paise it shall be ignored.

**170.1 Introduction**

This provision enables the tax payers and also the departmental authorities to round off the amounts calculated as per the law, if the amounts are in fraction of a rupee.

**170.2 Analysis**

- (i) **Amounts covered:** Tax, interest, penalty, fine or any other sum payable, and refund or any other sum due, under the Act.

- (ii) The above amounts shall be rounded off as under:

If amount contains a part of the rupee	Effect
≥ 50 paise	Must be increased to one rupee
< 50 paise	Part to be ignored

- (iii) In case of the assessee, the rounding off must be done for every part of the tax contained in the invoice.
- (iv) The above provision is applicable for the assessee, for the department (while issuing show cause notice or passing the order, etc.) and also for the Appellate Authorities.

### 170.3 Comparative review

Similar enabling provisions are available in Central Excise Act (Sec.37D), Service Tax Provisions (Sec.83 of the Finance Act 1994) and also in State VAT Provisions.

### 170.4 Related provisions

This provision shall apply to any amount calculated under the other provisions of the Act.

### 170.5 FAQs

- Q1. If the Show Cause Notice mentions the tax as Rs.102.30 and penalty as Rs.102.30, then what is the amount payable?

.Ans: As per Sec.170, if the paise is less than 50 then that part has to be ignored. Total amount payable is Rs.102 + Rs.102 = Rs.204.

- Q2. Whether the rounding off provision applies to Pre-deposit?

Ans: Yes, any amount payable under the act is subject to rounding off provisions. Hence, even Pre-Deposit is rounded off as per the above Section.

- Q3. If the assessee has raised multiple invoices, then the rounding off is to be made for the consolidated amount of tax or for the tax amount mentioned in each invoice?

Ans: Rounding off must be made for the tax payable under the Act. It applies to each invoice as tax is payable on each invoice. Further, the rounding off must be made for each part of tax (CGST and SGST separately).

### 170.6 MCQs

- Q1. If the amount of tax is Rs.2,15,235.50, then the amount shall be rounded off as:

- (a) 2,15,236
- (b) 2,15,235
- (c) 2,15,235.50
- (d) 2,15,240

- Q2. What are the amounts that can be rounded off as per this Section?

- (a) Interest
  - (b) Tax
  - (c) Penalty
  - (d) All of the above
- Q3. Which of the following shall be rounded off?
- (a) CGST
  - (b) SGST
  - (c) Both
  - (d) None of the above

### Statutory provision

#### 171. Anti-profiteering measure

- (1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.
- (2) The Central Government may, on recommendations of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the goods or services or both supplied by him.
- (3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.

#### 171.1 Introduction

The objective of this section is to ensure that with the introduction of GST, taxable persons are not getting excessive profits, but shall pass on the reduction in price to the consumers.

The Central Government may by law constitute an Authority or entrust an existing authority for this purpose.

#### 171.2 Analysis

The registered person is expected to reduce the price on account of availment of input tax credit or reduction in tax rates. An authority would be notified for this purpose, who would exercise powers and discharge functions in a prescribed manner.

#### 171.3 Comparative Review

There is no such provision in the existing tax laws. Similar provisions are there in other countries.

#### 171.4 FAQs

- Q1. Who will constitute the authority for anti profiteering measure?



Ans. The Central Govt. would notify.

Q2. What is the responsibility of the authority?

Ans. To examine whether a. Input tax credit availed by a taxable person have actually resulted in commensurate reduction in price of goods/services;

The reduction in price on account of reduction in tax rate has actually resulted in a commensurate reduction in price of goods/services.

### Statutory provision

#### 172. Removal of difficulties

(1) If any difficulty arises in giving effect to any provisions of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

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

#### 172.1 Introduction

The responsibility to implement the legislatures' will is of the appropriate Government. In doing this, the Act empowers the appropriate Government with the necessary power to remove any difficulty that may arise.

#### 172.2 Analysis

- (i) If the Government identifies that there is a difficulty in implementation of any provision of the GST Legislations, it has powers to issue a general or special order, to carry out anything to remove such difficulty.
- (ii) Such activity of the Government must be consistent with the provisions of the Act and should be necessary or expedient.
- (iii) Maximum Time limit for passing such order shall be 3 years from the date of effect of the CGST Act.

#### 172.3 Comparative review

The above provisions are present in all tax legislations, to ensure that any practical difficulties in implementation can be addressed.

#### 172.4 Related provisions

This is an independent Section and would be applicable for implementation of all provisions of the GST Law.

**172.5 FAQs**

Q1. Will the powers include the power to notify the effective date for implementation of particular provisions?

Ans. Yes. All powers regarding implementation of any provision of the GST law is covered.

Q2. Will the powers include bringing changes in any provision of law?

Ans. No. The Government has power only to decide on the practical implementation of law. But it cannot amend the legislation through this Section.

Q3. What is the maximum time limit for exercising the powers under Section 172?

Ans. The maximum time limit is 3 years from the date of effect of CGST Act.

Q4. Whether the reasons be mentioned in the order?

Ans. The order is issued only when there is a necessity or expediency for it. Specific reasons may not be mentioned in the order.

**172.6 MCQs**

1. Who can issue the Order?
  - (a) Central Government
  - (b) State Government
  - (c) Either
  - (d) None
2. Whether Prior approval of the Parliament is necessary?
  - (a) Yes
  - (b) No
3. What is the maximum period for exercising this power?
  - (a) 4 years
  - (b) 3 years
  - (c) 2 years
  - (d) 1 year

**Statutory provision****173. Amendment of Act 32 of 1994**

Save as otherwise provided in this Act, Chapter V of the Finance Act, 1994 shall be omitted.

**Statutory provision****174. Repeal and Saving**

- (1) Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.
- (2) The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act", as the case may be) to the extent mentioned in the sub-section (1) or section 173 shall not—
  - (a) revive anything not in force or existing at the time of such amendment or repeal; or
  - (b) affect the previous operation of the amended Act or repealed Acts and orders or anything duly done or suffered thereunder; or
  - (c) affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended Act or repealed Acts or orders under such repealed or amended Acts: Provided that any tax exemption granted as an incentive against investment through a notification shall not continue as privilege if the said notification is rescinded on or after the appointed day; or
  - (d) affect any duty, tax, surcharge, fine, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed against the provisions of the amended Act or repealed Acts; or
  - (e) affect any investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and any other legal proceedings or recovery of arrears or remedy in respect of any such duty, tax, surcharge, penalty, fine, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, inquiry, verification (including scrutiny and audit), assessment proceedings, adjudication and other legal proceedings or recovery of arrears or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, fine, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so amended or repealed;
  - (f) affect any proceedings including that relating to an appeal, review or reference, instituted before on, or after the appointed day under the said amended Act or repealed Acts and such proceedings shall be continued under the said amended Act or repealed Acts as if this Act had not come into force and the said Acts had not been amended or repealed.
- (3) The mention of the particular matters referred to in sub-sections (1) and (2) shall not be held to prejudice or affect the general application of section 6 of the General Clauses Act, 1897 with regard to the effect of repeal.

**174.1 Introduction**

These provisions indicate the extent of current indirect tax laws, which would continue upon introduction of CGST Act. It also provides for exceptions as to continuation of certain provisions of the existing laws for the sake of smooth transition. Further certain Acts would be repealed upon introduction of CGST Act.

**174.2 Analysis**

- (a) These provisions have to be read along with the Transition provisions in chapter XX.
- (b) It would come into force on the date of enactment of the CGST Act.
- (c) Whenever an enactment is repealed or substituted by a new enactment then the new enactment should provide for a clause relating to repeal or saving of certain provisions under the old law.
- (d) This would ensure that the rights, powers, liabilities, duties, privileges, obligations etc created under the old laws are intact and are not affected by the enactment of new law by repealing the old laws.
- (e) Entry 84 of the Union List and Entry 54 of the State List, both forming part of the VII Schedule to the Constitution as amended by the Constitutional (101<sup>st</sup> Amendment) Act 2016 would continue to apply to certain goods.
- (f) For the said purpose, the General Sales Tax/VAT / CST laws and Central Excise Act, 1944 and Central Excise Tariff Act, 1985 would continue to apply – Eg. Certain petroleum products, tobacco products.
- (g) Thus these laws would operate even after the GST is introduced and are not repealed.
- (h) In other words its application is restricted to few products/goods only.
- (i) The following laws would be repealed, as the taxes are subsumed by GST law:
  - *State laws:*
    - (i) *Entry Tax laws.*
    - (ii) *Entertainment Tax laws.*
    - (iii) *Luxury Tax laws.*
  - *Central laws:*
    - (i) *Duty of Excise on Medicinal and Toilet Preparation Act.*
    - (ii) *Chapter V of the Finance Act, 1994 (Service Tax law).*
- (j) However such restricted application or repeal of old laws would not affect or revive the following:
  - Revive anything not in force or existing at the time at which the amendment or repeal takes effect. *To illustrate, if a person has not taken credit in the earlier regime due to restrictions on time limit, he does not get a chance to claim it after such time limit is removed due to repeal of ST law.*

- Affect the previous operation of the amended/repealed Acts or anything duly done or suffered there under. *To illustrate, if a person has duly filed returns under the old regime it cannot be questioned now by the department. Similarly, if a person has been penalised earlier for delay in filing returns and has paid late filing fee, it cannot be questioned now by the assessee.*
- Affect any right, privilege, obligation, or liability acquired, accrued or incurred under the amended/repealed Acts. *To illustrate, a right of appeal, which accrues under the old regime and duly exercised before the CESTAT or Commissioner (Appeals) does not fail due to restricted application of the old laws. Similarly, the mandatory pre-deposit made under section 35F of the Central Excise Act, 1944, to pursue an appeal cannot be claimed as refund after GST is introduced.*
- Affect any tax, surcharge, penalty, interest as are due or may become due or any forfeiture or punishment incurred or inflicted in respect of any offence or violation committed under the provisions of the amended/repealed Acts. *For example, if a Central Excise case is decided by the Supreme Court after enactment of GST and the party's appeal is rejected then the liabilities can still be enforced even though the CE Act may be repealed or applied in a restricted manner.*
- Affect any investigation, enquiry, assessment proceeding, any other legal proceeding or remedy in respect of any such tax, surcharge, penalty, interest, right, privilege, obligation, liability, forfeiture or punishment, as aforesaid, and any such investigation, enquiry, assessment proceeding, adjudication and other legal proceeding or remedy may be instituted, continued or enforced, and any such tax, surcharge, penalty, interest, forfeiture or punishment may be levied or imposed as if these Acts had not been so restricted or not so enacted. *To illustrate, if on the date of enactment of GST law, the matter is under investigation, it can be continued and the SCN can be issued subsequently invoking the old provisions.*
- Affect any proceeding including that relating to an appeal, revision, review or reference, instituted before the appointed day under the earlier law and such proceeding shall be continued under the earlier law as if this Act had not come into force and the said law had not been repealed. *To illustrate, all the pending matters before the Commissioner (Appeals), Revisionary Authority, CESTAT, High Court and Supreme Court, would be continued and would not abate due to introduction of GST law.*

### 174.3 Comparative review

It would be interesting to refer to the Supreme Court decision in Kolhapur Canesugar Works Limited Vs UOI, 2000 (119) ELT 257 (SC), which has explained the effect and importance of repeal or saving clause by referring to section 6 of the General Clauses Act, 1887. Since there is a special provision in the GST Act, it would apply. Wherever the specific provision does not address a particular issue relating to repeal or saving, it is necessary to fall back on the provisions of General Clauses Act.

**174.4 FAQs**

- Q1. Which are the State laws repealed after introduction of GST?  
Ans. Entry Tax laws, Entertainment Tax laws and Luxury Tax laws.
- Q2. Which are the Central laws repealed after introduction of GST?  
Ans. (i) Duty of Excise on Medicinal and Toilet Preparation Act.  
(ii) Chapter V of the Finance Act, 1994 (Service Tax law).
- Q3. Which are the State laws applied in a restricted manner after introduction of GST?  
Ans. General Sales Tax/VAT would continue to apply – Eg.certain petroleum products.
- Q4. Which are the Central laws not repealed after enactment of GST?  
Ans. CST Act, 1956, CE Act, 1944 and CE Tariff Act, 1985, would continue to apply – Eg. Certain petroleum products.
- Q5. Central Excise law would apply to which goods after introduction of GST?  
Ans. Certain petroleum products and tobacco products.
- Q6. Which are the goods or products to which VAT laws would apply even after GST is introduced?  
Ans. Entry 84 of the Union List and Entry 54 of the State List, both forming part of the VII Schedule to the Constitution as amended by the Constitution (101<sup>st</sup> Amendment) Act, 2016, would continue to apply to certain goods. Consequently VAT laws would continue to that extent.
- Q7. After introduction of GST what is the fate of all departmental appeals filed during the pre-GST regime?  
Ans. It would continue and would not abate.
- Q8. After introduction of GST whether Department can continue to investigate the offences allegedly committed under the old regime?  
Ans. Investigation can continue and SCN can be issued later.
- Q9. Can the Supreme Court dismiss all indirect tax appeals pending before it on the ground that GST Act has been introduced?  
Ans. The appeals already instituted would be heard by the Supreme Court and would not abate or be dismissed.

**174.5 MCQs**

- Q1. The \_\_\_\_\_ law is repealed after enactment of GST.
- (a) Entry Tax law
  - (b) VAT law
  - (c) Company law

(d) Central Excise law.

Ans. (a) Entry Tax law.

Q2. Central Excise law would continue to apply in respect of goods covered by Entry \_\_\_\_\_ of Union List of VII Schedule to the Constitution.

(a) 84

(b) 85

(c) 54

(d) 47

Ans. (a) 84

Q3. State sales tax and VAT laws would continue to apply in respect of goods covered by Entry \_\_\_\_\_ of State List of VII Schedule to the Constitution.

(a) 84

(b) 85

(c) 54

(d) 47

Ans. (c) 54.

Q4. After enactment of GST law, all departmental appeals filed in respect of Central Excise and Service Tax would \_\_\_\_\_

(a) continue

(b) abate

(c) fail

(d) none of the above.

Ans. (a) continue