

## 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.*

<b>Section or Rule (CGST / SGST)</b>	<b>Description</b>
Section 2(19)	Definition of Capital Goods
Section 2(52)	Definition of Goods
Section 2(68)	Definition of Job-work
Section 2(88)	Definition of Principal
Section 2(94)	Definition of Registered Person
Section 19	Taking input tax credit in respect of inputs sent for job work

**Relevant circulars, notifications, clarifications issued by Government:**

1. Notification No. 09/2017 – Central Tax dated 28.06.2017 Seeks to appoint 01.07.2017 as the date on which the provisions of this Section are effective.
2. Notification No.07/2017 - Integrated Tax dated:14/09/2017 grants Exemption from registration to Job-workers making Inter-State Supply of services to a Registered Person from the requirement of obtaining registration.
3. Notification No.20/2017 - Central Tax (Rate) Dated 22/08/2017 lays down the GST Rate on Job work for textile & textile products, printing service of books, newspapers to be 5%
4. Notification No.46/2017 - Central Tax (Rate) Dated 14/11/2017 lays down that the GST Rate on Job work on “Handicrafts Goods” to be Reduced to 5%
5. Circular 38/2018 dtd:26.03.2018 clarifies certain issues in relation to a Job work

**143.1. Introduction**

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

In a business scenario, it may not be possible for an industry to carry out all processes of manufacturing the product within its own premises. In such an eventuality, the manufacturing unit will have to get the work done i.e. processing of the raw materials or intermediate product from other businesses. The process performed by a person on the goods belonging to another registered person is commonly understood as Job Work.

**Meaning of job work and job worker:** Section 2(68) of CGST Act, 2017 defines the meaning of the term ‘job work’. In terms of the said provision, it means a person undertaking any treatment or processing of goods belonging to another registered person. Any person who executes such job work will be considered as “Job worker”. As per the Section 2(68) the Job worker may or may not be registered but the principal is required to be registered.

This definition is much wider than the one provided in the Notification No. 214/86 – CE dated 23rd March, 1986 as amended, wherein job-work has been defined in such a manner so as to ensure that the activity of job-work must amount to manufacture. However, the definition of job-work under GST laws reflects the change in basic scheme of taxation relating to job-work.. Works such as fabrication, repair, etc which are not related to manufacture also gets included under the term “job work”.

**143.2. Analysis****Definition of Job-work**

The definition of job work contains three important phrases, namely:

- **treatment or process** – there is no indication here that the result of the treatment or

process must be manufacture; that is, the emergence of a distinct new product. This implies that whether or not the treatment or process results in manufacture, the treatment or process *per se* will always be treated as a supply of services when read along with paragraph 3, schedule II of the CGST Act viz., any treatment or process which is applied to another person's goods is a supply of services. However, irrespective of whether the treatment or process amounts to manufacture resulting in a distinct new product the process would amount to job work. Therefore, the services provided by the job-worker will be classified under HSN 9988 and treated as supply of services;

- **goods belonging to another person** – The basic requirement that could be considered, is that, on the one hand this requirement ought not to be understood that 100% of the goods required for the treatment or process must necessarily be provided by the principal and on the other hand it cannot be satisfied where non-essential or ancillary goods alone are provided by the principal and yet attempt to operate under the job work model. A reasonable approach demands that at least one, if not more, of the primary material must be provided by the principal where the intention is to secure the services of – treatment or process – offered by the job worker to be expended on these primary materials of the principal. The transaction would not fail to be a job work when the job worker adds his own material, whether secondary or ancillary, but in addition to the primary material provided by the principal. And a case where all goods other than the primary material are provided by the principal, care needs to be taken in making the decision as to whether it qualifies for the facility under section 143 and no one-fits-all answer should be attempted in this case;
- **such person being a registered person** – this is very interesting that unless the principal is himself already registered, the entire transaction will fail to be job work. In other words, job work will be job work only if the principal is registered and if the principal is unregistered then, job work will merely be work. And the classification available for job work under HSN 9988 will not be available and other classification as appropriate to the processed goods will need to be followed.

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

This provision enables a **registered 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 is clarified vide Circular No. 38/2018 dated 26.03.2018 that the details of job-work challans filed in Form GST ITC – 04 will itself serve as an intimation as envisaged under Section 143(1). On this basis, it could be inferred that non-declaration of job-work challans erroneously could be termed as non-intimation and accordingly, the exemption claimed under Section 143(1) shall be denied. In such a scenario, the goods sent to job-worker will qualify as supply and the principal would be liable to pay GST along with interest.

It is further clarified that the principal shall issue the challan in triplicate in terms of Rule 45 and Rule 55 for sending the goods for job-work and send two copies of the challan with the

goods to a job-worker. The goods can be returned by the job-worker along with one challan and the job worker will retain the other. In case goods are sent from one job-worker to another, either the job-worker or the principal may issue a separate challan or alternatively, the original challan issued by the principal can be endorsed. It shall be noted here that the goods if sent in piecemeal, the job-worker shall issue a separate challan for returning the goods or to send it to another job-work.

Rule 55 of CGST Rules, 2017 provides that transaction of goods sent for job work can be without an invoice, but a proper delivery challan containing specific details must be issued while sending goods to the job worker. serial number of such delivery challan shall also be provided in Table No. 13 of GSTR -1.

The Circular referred to above has also clarified that the principal shall issue an invoice on the date on which the time period of one year / three years has lapsed and shall declare such invoice in the return filed for such tax period. It is further clarified that the date of sending the goods shall be termed as the date of supply and accordingly, the principal should pay the tax along with interest.

The details of the Delivery Challan shall be as follows:

- (i) date and number of the delivery challan,
- (ii) name, address and GSTIN of the consigner, if registered,
- (iii) name, address and GSTIN or UIN of the consignee, if registered,
- (iv) HSN code and description of goods,
- (v) quantity (provisional, where the exact quantity being supplied is not known),
- (vi) taxable value,
- (vii) tax rate and tax amount – central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee,
- (viii) place of supply, in case of inter-State movement, and
- (ix) signature.

The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner: –

- (a) the original copy being marked as ORIGINAL FOR CONSIGNEE;
- (b) the duplicate copy being marked as DUPLICATE FOR TRANSPORTER; and
- (c) the triplicate copy being marked as TRIPLICATE FOR CONSIGNER.

Where goods are being transported on a delivery challan in lieu of invoice, the principal should declare the details of goods and generate an e-way bill for movement of goods.

### Receipt of inputs or capital goods from the job worker after completion of 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 within One year/Three Year-

- (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

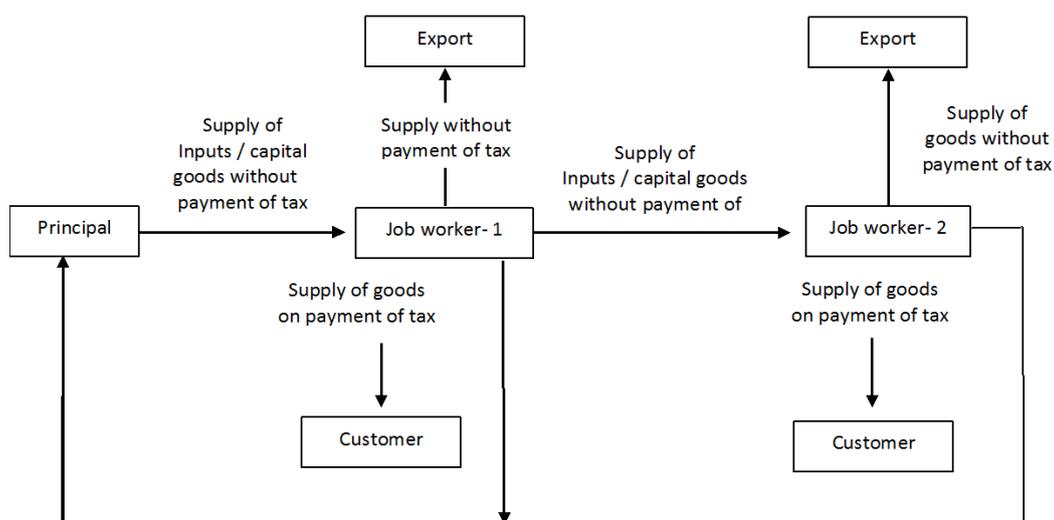
The goods can be supplied directly from the place of business of job worker by the principal only when the principal declares the place of business of the job worker as his additional place of business. However, the exceptions are -

- (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

The principal is responsible and accountable for keeping proper accounts of the inputs or capital goods and 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.

**Inter-State job-work**

Job-work activity can be undertaken in inter-State trade as 'issue' of inputs and capital goods to job worker which is exempt from payment of tax irrespective of whether the job-worker is located within the State or otherwise. Therefore, whether the job worker is located in a different State/UT as that of the Principal does not alter the operation of section 143. One of the additional features is that the Principal is permitted to supply the processed goods directly from the premises of the job worker provided that 'the location of the job worker is included as an additional place of business' of the Principal. Where the principal being registered in one State and the job worker is located in another State, such a principal will not be able to satisfy the above condition to be allowed to make supplies directly from the premises of the job worker. This is due to the fact that the principal is not a registered person in the State where the job worker is located although he may otherwise be registered in his own State. Accordingly, if the principal desires to directly supply processed goods from the premises of the job worker located in a State different from the State where the principal is registered, the principal will not be permitted to avail this facility allowed by section 143. Accordingly, goods sent on job-work to another State can be further supplied after job-work, from the premises of such job-worker only if the job-worker is registered and not otherwise.

For example, if the principal registered in Hosur, Tamil Nadu, purchases a chassis from a factory in Hosur and sends the same to a job worker in Amritsar, Punjab for carrying out body building works on the chassis to manufacture a bus; and then, if the principal finds a customer in Chandigarh, it would not be economical to bring the finished bus all the way back to Tamil Nadu (to satisfy the requirement of section 143) and send the bus back to customer in Chandigarh. For this reason, if the principal desires to directly supply the finished bus from the job worker's premises in Punjab directly to the customer in Chandigarh, it would not be possible as the principal cannot include Amritsar in his registration obtained in Tamil Nadu. The principal has no option but to bring the bus all the way back and send it again. Alternatively, the supply can be effected from the premises of job-worker (Amritsar) if such job-worker seeks registration.

**Inputs sent to Job Worker not received back within 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 GST along with interest from the date inputs were sent out.

**Capital Goods Sent to Job Worker not received back within 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 pay GST along with interest from the date capital goods were sent out.

In this regard, the Circular referred to above clarifies that the principal shall issue an invoice on the expiry of one year (inputs) / three years (capital goods) and declare such invoice in the return filed for such month. Since, it is deemed to be a supply effected on the date of sending the goods to the job-worker, the tax shall be paid along with applicable interest.

It is also important to note that the requirement of bringing back the goods sent to the job worker is not applicable on moulds and dies, jigs and fixtures, or tools. Hence such items may remain with the job worker.

#### **Waste and Scrap generated at Job workers' premises**

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. Aspects relating to taking input tax credit in respect of inputs/capital goods sent for job-work have been specifically dealt in Section 19, which provides that the credit of taxes paid on inputs or capital goods can be taken in the specified manner.

#### **Application of certain provisions of CGST Act, 2017 under IGST Act, 2017**

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

#### **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:

<b>Section / Rule / Form</b>	<b>Description</b>	<b>Remarks</b>
Sub-section (68) of Section 2	Job work definition	The job work has been defined to mean undertaking any treatment or process on goods belonging to another registered person.
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	Aggregate turnover of the registered job worker does not include the turnover of the Principal

**143.5. Issues and concerns**

Interest on reversal of ITC: if goods sent for job work not received within in a specified period - the principal to retain ITC on goods sent to job work provided, they are received back within a specified period. Else, the section requires reversal of ITC on expiration of such periods, and permits re-availing of the same when the goods are finally received.

**143.6. FAQs**

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 inputs 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.

Q5. Under what circumstances can the principal directly supply goods from the premises of job worker without declaring the premises of job worker as his additional place of business?

Ans. The goods can be supplied directly from the place of business of job worker without declaring it as additional place of business in two circumstances namely where the job worker is a registered taxable person or where the principal is engaged in supply of such goods as may be notified by the Commissioner.

Q6. Is a job worker required to take registration?

Ans. Yes, as job work is a service, the job worker would be required to obtain registration if his aggregate turnover exceeds the prescribed threshold (i.e Rs. 20 lac ).

Q7. Whether intermediate goods can also be sent for job work?

Ans. Yes. The term inputs, for the purpose of job work, includes intermediate goods arising from any treatment or process carried out on the inputs by the principal or job worker.

Q8. Are provisions of job work applicable to all categories of goods?

Ans. No. The provisions relating to job work are applicable only when registered taxable person intends to send taxable goods. In other words, these provisions are not specifically applicable to exempted or non-taxable goods or when the sender is a person other than registered taxable person. [sending exempted or non-taxable goods by a Registered person can also be undertaken u/s 143 as per my understanding]

Q9. Should job worker and principal be in same State or Union territory?

Ans. No this is not necessary as provisions relating to job work have been adopted in the IGST Act as well as in UTGST Act and therefore job-worker and principal can be located either in same State or in same Union Territory or in different States or Union Territories.

Q10. As per Section 143, Principal have to intimate to proper officer regarding goods sent for Job work without payment of Tax. What is the process to send this intimation?

Ans: Filling of form ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act, 2017.

#### 143.6 MCQs

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. (a) 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. (c) Three years

Q6. What is the time limit to receive back the tools and dies or jigs and fixtures sent to job worker's place?

- (a) 1year
- (b) 3years
- (c) 5years
- (d) No time limit specified under GST

Ans. (d) No time limit specified under GST

Q7. Can principal take input tax credit on the inputs and/or capital goods sent directly to jobworker?

- (a) Yes
- (b) No
- (c) Yes subject to section 143
- (d) ITC on capital goods sent directly to job-worker's premise is not eligible unless the same is received in the premises of the principal

Ans (c) Yes subject to section 143

Q8. Which section specifies the conditions to be fulfilled for claiming ITC on inputs and/or capital goods sent to job-worker?

- (a) 19
- (b) 55
- (c) 143

(d) 177

Ans. (a) 19

Q9. Will the inputs and/or capital goods supplied from the job-worker's premises be considered for calculating the aggregate turnover of the job-worker?

- (a) Yes
- (b) No
- (c) Partially true
- (d) None of the above

Ans. (b) No

Q10. Which form is required to be filled quarterly by principal stating details of challans issued for job work?

- (a) ITC-01
- (b) ITC-02
- (c) ITC-03
- (d) ITC-04

Ans. (d) ITC-04

Q11. How frequently ITC-04 needs to be filled by Principal in a year?

- (a) Monthly
- (b) Quarterly
- (c) Half yearly
- (d) Annually

Ans. (b) Quarterly

### Statutory provisions

#### **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.*

**Related provisions of the Statute**

Section or Rule	Description
Section 2(41)	Definition of Document
Section 35	Accounts and records
Section 67	Power of inspection, search and seizure

**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. Matters that need to be proved are those that are disputed. In other words, matters that are not disputed need not be proved. Proof varies in the degree of evidentiary value available to establish their existence or absence. More serious a matter, more persuasive should be the evidence. Contemporaneous documents, events and records score high in evidentiary value due to their generation in the ordinary course of transactions. Special evidence produced needs to first pass the test of admissibility and then pass the test of adequacy of what they stand to evidence.

This presumption is rebuttable, since, any contrary evidence provided by the assessee, negates such presumption and such presumption is not a conclusive evidence. The words "shall presume" in the Act suggest that the judge cannot refuse to draw the presumption. Presumption does not mean assumption. Presumption only means that the authority may proceed expecting the thing required to be presumed to be true. That is, the authority may proceed on the supposition that the thing exists, unless disproved. Evidence produced to the contrary can displace this presumption. But evidence is that which produces a persuasion in the mind about the existence or absence of the thing that it evidences. Evidence produced that is incompatible with the innocence of the circumstances of its generation is not satisfactory. That nothing has not been satisfactorily proved, does not mean that anything has been disproved. Only when the thing has been satisfactorily established not to exist can it be said that it has been disproved. In other words, not approved is the failure to prove and disprove is a success to prove the contrary.

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 the 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.

Balance of probability is where the existence of a thing is admitted by substandard and circumstantial evidence that leans in favor of likelihood and not beyond reasonable doubt. The degree of proof required under the GST Laws, in matters relating to prosecution is beyond reasonable doubt and not merely the likelihood of offense. However, in matters invoking penalty, balance of probability may be applied.

Plausible explanation is not possible explanation. The reasons attributed for the failure to comply with GST law or for the delay in filing appeal within the time prescribed or any other similar matter, the 'standard of proof' is guided by the nature of wrongdoing being inquired. Plausible is possible coupled with probability in the circumstances of the case. The dismissal of evidence in one proceeding cannot expunge "that evidence" for all proceedings. For example, where income tax assessment has been carried out on the basis of best judgment after the rejection of books of accounts, the same books of accounts can still supply evidence of contemporaneous transaction in a proceeding under GST law.

The term 'document' has been defined under section 2(41) so as to include written or printed record of any sort and electronic record as defined in the Information Technology Act, 2000. 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 in which it was produced is required.

### 145.3 Relevant rules

It may be noted that Rule 56 of CGST Rules, mandates to maintain specific records at related place of business as mentioned in the certificate of registration

### 145.4 Comparative Review

#### Comparison to Central Excise:

Sections 144 and 145 of the CGST Act are like 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.

### 145.5 Landmark Judgements:

- In the case of Commissioner of Central Excise and Customs, Surat - Vs. Vinod Kumar Gupta, a computer printout 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 Hon'ble Gujarat High Court has held that such reliance on such material was impermissible in view of non-fulfilling the conditions sub-section (2) of Section 36-B of the Central Excise Act.

### 145.6 MCQs

- Q1. Document includes:
- (a) Written record

- (b) Printed Record
- (c) Electronic
- (d) All of the above

Ans. (d) All of the above

### Statutory provisions

#### **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.*

### Related provisions

Section or Rule	Description
Section 2(26)	Definition of common portal"

#### **146.1. Introduction**

This section deals with notification of common portal for various purposes upon recommendation by the GST Council. The Central government has vide Notification No. 4/2017-Central Tax dated 19-06-2017 notified [www.gst.gov.in](http://www.gst.gov.in) as the Common Goods and Services tax Electronic portal and [www.ewaybillgst.gov.in](http://www.ewaybillgst.gov.in) as the Common Goods and Services Tax Electronic Portal for furnishing electronic way bill vide Notification No.09/2018 – Central Tax dated 23-01-2017.

#### **146.2. Analysis**

This common portal would facilitate registration, tax payment, filing of returns, computation and settlement of integrated tax, electronic way bill and other prescribed purposes. It is important to note that the extensive data that will reside in the common portal can facilitate preparation of analytical reports in respect of profitability, product-wise supply profile and other information that can form the basis of further investigation. The common portal is not merely a platform or a repository of invoices uploaded by taxpayers.

Nationwide E-way bill system will be driven by common portal [www.ewaybillgst.gov.in](http://www.ewaybillgst.gov.in). This would facilitate Generation, cancellation and rejection of E-way bill, access to various reports in E-way bill, creation of various masters and other prescribed purpose.

#### **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, statements, etc.

**146.4 FAQs**

Q1. What are the compliances which can be done only online through GST Portal?

Ans. The Common Goods and Services Tax Electronic Portal used 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.

**146.5 MCQs**

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.*

**Relevant circulars, notifications, clarifications issued by Government:**

1. Notification No. 48/2017-Central Tax dated 18.10.2017 which notifies certain supplies as deemed exports under Section 147 – supply of goods against advance authorisation, supply of capital goods against EPCG authorisation & supply of goods to EOU; supply of gold by Bank / PSU specified in notification 50/2017 : Customs – 30/06/2017 against advance authorisation;
2. Notification No. 49/2017-Central Tax dated 18.10.2017 which notifies the evidences required to be produced by the supplier of deemed export supplies for claiming refund;
3. Chapter Twenty-five of the compilation of the GST Flyers as issued by the CBIC can be referred to for a gist of the statutory provisions, titled 'Deemed Exports in GST'.

**Related provisions**

Section or Rule	Description
Section 2(39)	Definition of Deemed exports
Section 2(52)	Definition of Goods

Section 2(56)	Definition of India
Section 2(72)	Definition of manufacture

### 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, if such goods are manufactured in India although they do not leave India and payments are received in Indian rupees or convertible foreign exchange.

This section authorizes the government to notify transactions which will be declared to be deemed exports. Interestingly, there is no section that authorizes deemed exports to enjoy zero rated benefit except inclusion of deemed exports within the machinery provisions for claiming refund under section 54 read with rule 89. It is remarkable that all other transactions where the funds are available such as, refunds to UIN-holders under section 55 of CGST Act, the refunds to exporters under section 16 of IGST Act, refunds in case of inverted tax-rate under section 54(3) of CGST Act, etc, are available. However, there is no section granting entitlement to refund in respect of deemed exports. The promise by the government alone provides the necessary entitlement.

### 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.

- Supply to 100% EOU from DTA was treated as deemed exports under excise law but these are not treated as deemed exports under GST, resulting in denial of duty free imports of inputs under “advance authorisation” scheme
- EOU are like any other suppliers under GST and all the provisions of GST will apply to it but the benefit of BCD exemption on import will continue for EOU. Supplies from EOU are not exempted from GST except zero rated like exports or supply to SEZ

### 147.4 Related provisions

Section 2(39) of the CGST Act, 2017 defines the term ‘deemed exports’. This would be relevant for extending refund benefit under section 54 of the CGST Act.

### 147.5 Related Rules

Rule 89 of CGST Rules,2017 is relevant for claiming refund in respect of deemed exports. This rule prescribes forms & procedures for claiming refund in case of supplies made to a special economic zone.

Second proviso to Rule 89(1) says that

“provided also that in respect of supplies regarded as deemed exports, the application shall be filled by recipient of deemed export supplies.

#### **147.6. Documents Required For Refund Under Deemed Export**

1. Acknowledgment by the Jurisdictional Tax officer of the Advance Authorisation holder or Export Promotion Capital Goods Authorisation holder, as the case may be, that the said deemed export supplies have been received by the said Advance Authorisation or Export Promotion Capital Goods Authorisation holder, or a copy of the tax invoice under which such supplies have been made by the supplier, duly signed by the recipient Export Oriented Unit that said deemed export supplies have been received by it.
2. An undertaking by the recipient of deemed export supplies, that no input tax credit on such supplies has been availed of by him.
3. An undertaking by the recipient of deemed export supplies that he shall not claim the refund in respect of such supplies and the supplier may claim the refund.

#### **147.7 FAQs**

Q1. What is the time line for obtaining refund on the GST paid?

- Ans
- I. For 90% of the total amount claimed as refund excluding the amount of input tax credit, provisional refund will be granted within 10 days of making of application or within 7 days of issuance of acknowledgement of the application.
  - II. Refund of the balance 10% will be granted after verification of documents furnished by the applicant

Q2 Can an exporter get exemption from the payment of GST on the export product?

Ans An exporter would get exemption from the payment of GST on the final product and get refund of GST paid on inputs.

Q3. What are the GST refund options available to the exporters?

Ans An exporter would be eligible to claim refund under one of the following two options, namely - (a) He may export under bond, without payment of IGST and claim refund of unutilized input tax credit in; (b) He may export on payment of IGST and claim refund of IGST paid on goods and services exported. The SEZ developer or SEZ unit receiving zero rated supply can claim refund of IGST paid by the firm making supply to SEZ.

Q4. How will exports be treated under GST?

Ans All exports will be deemed as inter-State supplies. Exports of goods and services will be treated as zero rated supplies. The exporter has the option either to export under bond/Letter of Undertaking without payment of tax and claim refund of ITC or pay IGST by utilizing ITC or in cash at the time of export and claim refund of IGST paid.

**Statutory provisions****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. In other words, even though there may be a requirement to the CGST Act, by exercise of powers under section 148, the Government can alter the said requirement on matters relating to registration, filing of returns, tax payment and other administrative matters. The powers to vary the general prescription in these areas applies only in respect of categories of registered persons notified here.

It is very interesting that, say, provisions regarding filing of returns can be overruled, in relation to persons notified under 148. The special procedures to be applied does not enjoy *non obstante* powers but considering that such special procedures would only be more favourable may not be questioned unless the 'conditions' and 'safeguards' are prescribed and adhered to.

It is important to note that the power that is not delegated cannot be assumed to be vested with the delegatee. Power that is exercised by the Act itself, in relation to certain persons cannot be permitted to be exercised by any delegatee, in relation to certain other persons. And delegation cannot alter the nature of the compliance and any variation, at most, can be limited to matters that do not amount to substantive deviation, that is, require the same compliance but at lesser frequency or extended time for compliance.

In exercise of this power, we find certain measures to have been taken by the Government and similar provisions are simultaneously required to be taken under the respective SGST / UTGST laws so as to be in harmony. And without issuing notifications afresh, 17/2017-UT dated 24 Oct, 2017 adopts CGST notifications *mutatis mutandis* in relation to matters of UT. Reference may also be had to the discussion in the context of section 168 where such deviation from standard procedures are permitted.

**148.3 Notifications Issued**

The Government has issued the following notifications under section 148:

40/2017-Central Tax, dt. 13-10-2017	Now redundant - Seeks to make payment of tax on issuance of invoice by registered persons having aggregate turnover less than Rs 1.5 crores – superseded by notification 66/2017 / 15/11/2017
57/2017-Central Tax ,dt. 15-11-2017	Seeks to prescribe quarterly furnishing of FORM GSTR-1 for those taxpayers with aggregate turnover of upto Rs.1.5 crore
66/2017-Central Tax ,dt. 15-11-2017	Seeks to exempt all taxpayers from payment of tax on advances received in case of supply of goods
04/2018 – Central Tax (Rate) dt. 25.01.2018	Seeks to notify the time of supply for registered persons being developer and land owner in case of joint development.

#### 148.4 Analysis of the Notifications

##### 148.4.1 Notification No 66/2017 & 57/2017- Central Tax dated 15<sup>th</sup> November, 2017 respectively

###### 148.4.1.1 Class of persons notified

- Registered Person (other than persons registered under composition scheme) having aggregate turnover of less than Rs. 1.5 crores in the preceding financial year or,
- Registered Person (other than persons registered under composition scheme) whose aggregate turnover in the year of registration is likely to be less than Rs. 1.5 crores

###### 148.4.1.2 Relaxations provided

- The class of persons specified above will not be required to pay tax on advances received against supply of goods. The time of supply of goods shall be the date of issue of invoice or the last date on which the invoice is to be issued as per section 31(1). It is important to note that no special provisions have been notified in respect of time of supply of services and therefore tax would need to be paid on advances received against supply of services – Notification No 66/2017. The effective date of this provision is 15/11/2017.
- The said persons shall furnish the details of outward supply of goods or services or both in FORM GSTR-1 as per following schedule – Notification No 57/2017.

SI No.	Quarter for which the details in FORM GSTR-1 are furnished	Time period for furnishing the details in FORM GSTR-1
1	July - September, 2017	10 <sup>th</sup> January, 2018
2	October - December, 2017	15 <sup>th</sup> February, 2018
3	January - March, 2018	30 <sup>th</sup> April, 2018

**148.4.2 Notification No 66/2017- Central Tax dated 15<sup>th</sup> November, 2017****148.4.2.1 Class of persons notified**

All Registered Persons other than persons registered under composition scheme

**148.4.2.2 Relaxations provided**

The class of persons defined above will not be required to pay tax on advances received against supply of goods. The time of supply of goods shall be the date of issue of invoice or the last date on which the invoice is to be issued as per section 31(1). It is important to note that no special provisions have been notified in respect of time of supply of services and therefore tax would need to be paid on advances received against supply of services –The effective date of this provision is 15<sup>th</sup> November, 2017.

Therefore, w.e.f 15<sup>th</sup> November, 2017 no tax needs to be paid on advances received by registered persons against goods supplied. W.e.f. 13<sup>th</sup> October, 2017 to 15<sup>th</sup> November, 2017, this benefit was available to suppliers having aggregate turnover less than Rs. 1.5 crores only. It must be understood that when a beneficial notification stands superseded it will be subject to certain conditions. For instance the notification 66/2017 dated 15.11.2017 provides for such a condition which reads “except as respects things done or omitted to be done before such supersession”.

**148.4.3. Notification No. 04/2018 dated 25.01.2018:** The notification specifies the time when the registered persons being the land owner and the developer should remit the tax on the supply of service viz., supply of works contract service by developer to the land owner and supply of development rights by the land owner to the developer *inter-se*. The notification specifies that the date when the possession / right in the constructed portion is transferred would be the date relevant for remittance of GST on such services.

**Statutory provisions****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 registered person would be rated based on certain parameters. It also provides that the rating would be published in the public domain.

### 149.2 Analysis

With the aim of increasing governance by publishing information about the extent of compliance by each taxable person, this section provides a compliance rating that varies periodically. The proposed compliance rating system is a unique form of rating the performance of the registered persons. The parameters which would be considered for performance rating would be prescribed / notified.

Among others, the rating of a registered person would be relevant to show reliability of the supplier to pay taxes on time so that recipient of supplies can exercise some caution based on the published compliance rating of suppliers and for selection for scrutiny and other administrative / monitoring purposes.

This section provides as follows:

- Every registered person 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/UTGST. The details of parameters and methodology for rating would be prescribed.
- The compliance rating score will be updated periodically and will be-
  - Intimated to the registered person; and
  - placed in the public domain.

### 149.3 Comparative Review

Previously there was 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 in determining compliance rating have not been prescribed yet.

### 149.5 MCQs

Q1. How will the compliance rating be communicated?

- (a) 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 provisions****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 information return:

Nature of persons who would be required to file the information 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> </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> </ul>

<ul style="list-style-type: none"> <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 on recommendation of the Council</li> </ul>	<ul style="list-style-type: none"> <li>• Transaction of purchase</li> <li>• Sales</li> <li>• Exchange of goods or property</li> <li>• Right or interest in a property</li> </ul>
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### 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
CGST	Section 123	Penalty for non-filing of Information Return

**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 provisions****151. Power to Collect Statistics**

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

**151.1 Introduction**

This section authorises the Commissioner for the purpose of 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 have not been prescribed yet.

### 151.3 Related provisions

Statute	Section / Rule / Form	Description
CGST	Section 152	Disclosure of information collected under Section 151

### Statutory provisions

#### **152. Bar on disclosure of information**

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

#### **152.1 Introduction**

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

#### **152.2 Analysis**

- Any information obtained shall not be published so as to enable any particulars to be identified as referring to a particular taxpayer, without the previous consent of the tax payer or his authorised representative. This consent should be in writing. Further the information so obtained shall not be used for the purpose of any proceedings under this Act.
- A person who is not engaged in the collection of statistics under this Act or compliance or computerisation for the purpose of Act, shall not be permitted to see or have access to any information or any individual return.

However, for the purpose of prosecution under the Act, or under any other Act, access to such information can be given.

- Any person who is engaged in connection with collection of statistics under Section 151 or compilation or computerisation wilfully 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.
- Imprisonment for a term which may extend to six months or fine which may extend to ` 25000 or with both

### 152.3 Related provisions

Statute	Section / Rule / Form	Description
CGST	Section 150	Obligation to file information return
CGST	Section 151	Provisions for collection of statistics and filing of returns
CGST	Section 133	Liability of officers & certain other persons

### Statutory provisions

#### **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, Chartered Accountants 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 provisions

#### **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 from the possession of the taxable person.

### Statutory provisions

#### **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 Chapter V (Input Tax Credit) 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 under Chapter-V (Input Tax Credit) of CGST Act, 2017.

**155.4 MCQs**

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 provisions****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. By availing the services of officials of other departments or Ministries, all those officials will be able to exercise the authority under GST law.

**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 provisions****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. Actions taken in exercise of official functions cannot result in liability devolving on the officers. It is this protection that officers enjoy while exercising authority vested in the law without fear or favour.

**157.3 Related provision**

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 provisions****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 contained in any statement / returns / accounts / documents which are submitted as per the Act.
- All details contained in any evidence given during any proceeding under the Act or in 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

**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 in public interest:** 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 erstwhile 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'.
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 provisions

#### **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:

<b>Nature of Organisation</b>	<b>Additional details</b>
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 under erstwhile laws as under:

Law	Distinction in the GST law
Central Excise (Sec.37E)	<p>The provisions are similar to Sec.37E.</p> <p>However, in the extant 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.</p> <p>In the GST law, there is no such provision for direct appeal to Tribunal and so time limit for appeals before Tribunal is omitted.</p>
Central Excise (Sec.9B)	<p>In the extant 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.</p> <p>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.</p>
Service Tax (Sec.73D)	<p>As per extant 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).</p> <p>In the above rules, the situations for publication and the detailed process flow along with documentation are prescribed.</p> <p><i>The words “as prescribed” do not find place in the 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 extant State VAT Laws, but in certain State VAT Laws, the powers can be exercised <i>subject to such conditions as may be prescribed.</i> (For e.g. Sec.79 of the TNVAT Act, 2006)</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 it 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 that 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

Ans (d) Competent Authority

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

(a) After Courts Approval

(b) After expiry of appeal to First Appellate Authority

(c) At the discretion of the Competent Authority

(d) Cannot be published at all

Ans. (c) At the discretion of the Competent Authority

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

(a) Names and Addresses of the Directors

(b) Only Names of the Directors

(c) Details of Directors and Auditors

(d) Photographs of the Directors

Ans. (b) Only Names of the Directors

### Statutory provisions

#### **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 erstwhile 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 provisions****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.

The 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 be followed in these proceedings also. Once an application for rectification has been made, it must conclude in an order. This original order will be substituted by the rectified order. One may note that if the application for rectification is rejected, then the original order stands. Any time limit for preferring an appeal will be counted from the date of the original or rectified order, as the case may be. Time lost in process of rectification can impair the remedy of appeal. Rejection of application for rectification is also an appealable order but this itself does not vacate the original order. But once the rectification is ordered and a rectification order is passed, then the rectified order will replace the original order. All further appeals on matters arising from the rectified order will be counted from the date of such rectified order.

### 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,	Section 35C. Orders of	The Appellate Tribunal may, at any time within six months from the date of the order, with a view to rectifying any

Statute	Section / Rule / Form	Description
1984	Appellate Tribunal.	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; (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; (d) amend any intimation under sub-Section (1) of Section 206CB.

### 161.5 Related rules / forms

Rule 142 provides that rectification of the order shall be in form GST DRC-08

### 161.6 FAQs

Q1. What errors may be rectified under the provision?

Ans. Only those 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 from the date of issue of such decision or order or notice or certificate or any other document. 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.

#### 161.7 MCQs

Q1. What errors may be rectified under the provision?

- (a) Only errors which are apparent on the face of the record
- (b) All errors of law and fact
- (c) Only clerical error can be rectified
- (d) Only if the error is by accidental slip or omission

Ans (a) Only errors which are apparent on the face of the record

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

- (a) If it can be proved by additional evidence not available at the time of passing the order
- (b) If it is evident from the record itself and does not require long drawn out reasoning
- (c) If it is error on points of law
- (d) If it is only a clerical or arithmetic error

Ans. (b) If it is evident from the record itself and does not require long drawn out reasoning

Q3. What is the time limit to apply for rectification?

- (a) Normally 3 months extendable to 6 months in all cases
- (b) Normally 3 months and on sufficient cause shown the delay can be condoned

- (c) Strictly 3 months
- (d) Normally 3 months extendable to 6 months, but in case of clerical or arithmetic mistakes, the 6 months outer limit is not applicable.

Ans (d) Normally 3 months extendable to 6 months, but in case of clerical or arithmetic mistakes, the 6 months outer limit is not applicable

Q4. Who can seek rectification?

- (a) Only the authority itself
- (b) The authority itself, an officer or the affected person
- (c) Only an officer
- (d) Only the affected person

Ans. (b) The authority itself, an officer or the affected person

Q5. If a proceeding is pending before a higher forum can rectification be sought for?

- (a) No
- (b) Yes
- (c) With the permission from the Appellate Authority
- (d) None of the above

Ans. (b) Yes

Q6. What is the scope of rectification? Whether any part of the order can be rectified?

- (a) Once it is proved that there is error apparent, any part of the decision can be rectified
- (b) Only the part dealing with legal aspect can be rectified
- (c) Only the part dealing with clerical or arithmetic aspect can be rectified
- (d) The authority cannot amend the substantive part of the decision etc.

Ans (a) Once it is proved that there is error apparent, any part of the decision can be rectified

Q7. Whether principle of natural justice to be followed?

- (a) As it is a quasi-judicial function the authority must give notice and follow principles of natural justice
- (b) As it is only a rectification of apparent error principles of natural justice is not applicable
- (c) If there is an adverse effect then principles of natural justice have to be complied with
- (d) If it relates to assessment principles of natural justice have to be complied with

Ans (a) As it is a quasi-judicial function the authority must give notice and follow principles of natural justice

### Statutory provisions

#### **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. Earlier whenever a new tax liability was created machinery provisions to deal with disputes were also in-built. Otherwise, civil court had 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 a 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 from the judiciary. In order to avoid duplication of judicial for a, 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. This however, does not bar the writ jurisdiction and appellate jurisdiction of High Courts and Supreme Court.

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 Article 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 erstwhile 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 Relevant rules**

Though the civil courts do not have jurisdiction to deal with any question relating to this Act, however as per Rule 146 for the purpose of recovery of tax from a defaulter the civil court will have to pass a decree on request by a proper officer.

**162.5 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 provisions****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 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 extant 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) If an order served to the registered person is lost the same may be obtained by paying a prescribed fee
- (v) The Right to Information law also deals with provision of information/ documents for a prescribed fee.

**163.4 FAQs**

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 MCQs

Q1. A person need not pay fees for:

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

Ans. (a) Primary copy of the Appellate Order

Q2. Fees must be paid

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

Ans. (a) Before obtaining the Copy of Order

### Statutory provisions

#### **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 a standard feature of modern legislation. This has to be read with Section 165 regarding regulations. While under this Section the Government is given the power to make rules, under Section 165 power to make regulations 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 / Officials 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 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. 10,000/-. It is interesting that a particular breach while being a breach of the specific rule attracting penalty may also be the breach of the substantive provision of law attracting penalty under Sections 73/74 of the Act.

### 164.3 Comparative review

Rulemaking 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>Section 94</b> Power to make rules. -	(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter. (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 Relevant rules

Central Government has notified Rules via *notification no. 3/2017- Central tax dated 19.06.2017* which has been further amended by *notification no. 7/2017- central tax dated 27.06.2017*, *notification no. 10/2017 –central tax dated 28.06.2017*, *notification no. 15/2017-central tax dated 1.07.2017*, *notification no. 17/2017-central tax dated 27.07.2017*, *notification no. 22/2017-central tax dated 17.08.2017*, *notification no. 27/2017-central tax dated 30.08.2017*, *notification no. 34/2017-central tax dated 15.09.2017*, *notification no. 36/2017-central tax dated 29.09.2017*, *notification no. 45/2017-central tax dated 13.10.2017*, *notification no. 47/2017-central tax dated 18.10.2017*, *notification no. 51/2017-central tax dated 28.10.2017* and *notification no. 55/2017-central tax dated 15.10.2017*

### 164.6 FAQs

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.

**164.7 MCQs**

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-XXI comes into force
- (d) None of the above

Ans. (c) Yes, subject to the limitation that it cannot be made beyond the date on which the Chapter-XXI comes into force

**Statutory provisions****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 Central Excise Act, 1944

**Statutory provisions****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 erstwhile tax laws as well.

### **Statutory provisions**

#### **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 section 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	<p>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 -</p> <p>(a) any power exercisable by the Board under this Act may be exercisable also by a Chief Commissioner of Central Excise or a Commissioner of Central Excise empowered in this behalf by the Central Government;</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

Ans. (d) The delegation can be done only by a competent authority by way of a notification

Q2. Who can delegate the powers?

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

Ans. (c) The Competent Authority

**Statutory provisions****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) of section 168 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**

<b>Statute</b>	<b>Section / Rule / Form</b>	<b>Description</b>
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

Statute	Section / Rule / Form	Description
		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 so as to interfere with the discretion of the Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.

### 168.5 Relevant orders

Various orders have been brought in by the Board from time to time under this Section the gist of which are as follows:

Order-02/2018-GST	Incidence of GST on providing catering services in train
Order-01/2018-GST	Extension of date for submitting the statement in FORM GST TRAN-2 under rule 117(4)(b)(iii) of the Central Goods and Service Tax Rules, 2017
Order-11/2017-GST	Extension of time limit for intimation in FORM GST CMP-03
Order-10/2017-GST	Seeks to extend the due date for revision of FORM GST TRAN-1
Order-09/2017-GST	Seeks to extend the due date for submitting FORM GST TRAN-1
Order-08/2017-GST	Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 120A
Order-07/2017-GST	Extension of time limit for submitting the declaration in FORM GST TRAN-1 under rule 117
Order-06/2017-GST	Extension of time limit for submitting application in FORM GST REG-26
Order-05/2017-GST	Extension of time limit for intimation of details of stock in FORM GST CMP-03
Order-01/2017-Central Tax	To remove difficulties in implementing provisions of composition scheme.

Order-04/2017-GST	Extension of time limit for intimation of details in FORM GST CMP-03
Order-03/2017-GST	Extension of time limit for submitting the declaration in FORM GST TRAN-1
Order-02/2017-GST	Extension of time limit for submitting the declaration in FORM GST TRAN-1
Order-01/2017	Extension of date for filing option for composition scheme

**Circulars pertaining to Sec 168 of CGST Act, 2017**

<b>Circular No.</b>	<b>Summary</b>
02/2017 dt 04-07-2017	Issues related to furnishing of Bond/ Letter of Undertaking for Exports-Reg
04/2017 dt. 07-07-2017	Regarding issues related to Bond/Letter of Undertaking for exports without payment of integrated tax – Reg.
05/2017 dt 11-08-2017	Circular on Bond/LUT in case of exports without payment of integrated tax
08/2017 dt 04-10-2017	Clarification on issues related to furnishing of Bond/LUT for exports
10/2017 dt 18-10-2017	Clarification on movement of goods on approval basis
17/2017 dt 15-11-2017	Manual filing and processing of refund claims in respect of zero-rated supplies
22/2017 dt 21-12-2017	Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries
23/2017 dt 21-12-2017	Issues in respect of maintenance of books of accounts relating to additional place of business by a principal or an auctioneer for the purpose of auction of tea, coffee, rubber etc
24/2017 dt 21-12-2017	Manual filing and processing of refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger
25/2017 dt 21-12-2017	Manual filing of applications for Advance Ruling and appeals before Appellate Authority for Advance Ruling
26/2017 dt 29-12-2017	Filing of returns under GST
33/2018 dt 23-02-2018	Directions under Section 168 of the CGST Act regarding non-transition of CENVAT credit under section 140 of CGST Act or non-utilization thereof in certain cases-reg..

36/2018 dt 13-03-2018	Processing of refund application for UIN entities
37/2018 dt 15-03-2018	Clarifications on exports related refund issues
38/2018 dt 26-03-2018	Clarifications on issues related to Job Work
40/2018 dt 06-04-2018	Clarification on issues related to furnishing of Bond/Letter of Undertaking for exports – Reg.
42/2018 dt 13-04-2018	Clarifying the procedure for recovery of arrears under the existing law and reversal of inadmissible input tax credit.
43/2018 dt 13-04-2018	Clarifying the issues arising in refund to UIN.

**168.6 MCQs**

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

Ans (a) True

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

- (1) Any decision, order, summons, notice or other communication under this Act or the rules made thereunder shall be served by any one of the following methods, namely: —
- (a) by giving or tendering it directly or by a messenger including a courier to the addressee or the taxable person or to his manager or authorised representative or an advocate or a tax practitioner holding authority to appear in the proceedings on behalf of the taxable person or to a person regularly employed by him in connection with the business, or to any adult member of family residing with the taxable person; or
- (b) by registered post or speed post or courier with acknowledgement due, to the person for whom it is intended or his authorised representative, if any, at his last known place of business or residence; or
- (c) by sending a communication to his e-mail address provided at the time of registration or as amended from time to time; or
- (d) by making it available on the common portal; or
- (e) by publication in a newspaper circulating in the locality in which the taxable person or the person to whom it is issued is last known to have resided, carried on business or personally worked for gain; or

- (f) *if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence and if such mode is not practicable for any reason, then by affixing a copy thereof on the notice board of the office of the concerned officer or authority who or which passed such decision or order or issued such summons or notice.*
- (2) *Every decision, order, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed in the manner provided in sub-section (1).*
- (3) *When such decision, order, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.*

### 169.1 Introduction

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

### 169.2 Analysis

- (i) **Communication:** Any decision, order, summons, notice or other communication under the Act or the rules.
- (ii) **Modes of Communication:** The above documents can be served on the assessee in the following modes:
- (a) **Mode 1 – Physical Delivery:**
- Giving or tendering it directly; or
  - Delivery through a messenger including a courier;
  - The documents can be delivered to:
    - (i) The addressee / the taxpayer / to his manager;
    - (ii) The agent duly authorized / an advocate / a tax practitioner (who holds authority to appear in the proceeding on behalf of the taxpayer);
    - (iii) A person regularly employed by him in connection with the business;
    - (iv) Any adult member of family residing with the taxpayer.
- (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 known place of business or residence.
- (c) **Mode 3 – Electronic Means:**  
Email or notifying on 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 erstwhile 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 not available)	Delivery through messenger or by courier to following persons are accepted: A person regularly employed by him in connection with the business / Any adult member of family residing with the taxpayer
Deemed Delivery under registered post	A specific clause is added under the GST Law which indicates that if communications are sent by registered/speed post, <i>it shall be treated as received by the addressee at the expiry of the normal period taken by such post in transit.</i>
Type of communication	The proposed Section covers any communication issued under the law. In the extant Central Excise Law, Section 37C covers <i>decision / order / summons / notice.</i>

	Any communication might include intimation letters sent under the law, trade letters issued, acknowledgments issued etc.
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#### 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 E-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 Debtor

Ans: (d) Notice to Addressee's Debtor

Q2. Among the following, to whom the notice cannot be served?

- (a) Authorised Agent

- (b) Family Member
- (c) Employee
- (d) Partner

Ans (a) Authorised Agent

Q3. In case of registered post, if acknowledgment is not received within time, what shall be the date of service of notice?

- (a) Reasonable Time
- (b) Not considered as delivered
- (c) 30 days from sending the registered post
- (d) 45 days from sending the registered post

Ans (a) Reasonable Time

### Statutory provisions

#### **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:

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

- (iii) The rounding off need not be done for every part of the tax contained in the invoice, whereas consolidated payment to Government has to be rounded off.
- (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

Ans (a) 2,15,236

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

- (a) Interest
- (b) Tax
- (c) Penalty
- (d) All of the above

Ans: (d) All of the above

Q3. Which of the following shall be rounded off?

- (a) CGST

- (b) SGST
- (c) Both
- (d) None of the above

Ans: (c) Both

### Statutory provisions

#### **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.

### Extract of the relevant rules from the CGST Rules, 2017

#### **122. Constitution of the Authority**

The Authority shall consist of,-

- (a) a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and
- (b) four Technical Members who are or have been Commissioners of State tax or central tax for at least one year or have held an equivalent post under the existing law, to be nominated by the Council.

#### **123. Constitution of the Standing Committee and Screening Committees**

- (1) The Council may constitute a Standing Committee on Anti-profiteering which shall consist of such officers of the State Government and Central Government as may be nominated by it.
- (2) A State level Screening Committee shall be constituted in each State by the State Governments which shall consist of-
  - (a) one officer of the State Government, to be nominated by the Commissioner, and
  - (b) one officer of the Central Government, to be nominated by the Chief Commissioner.

#### **124. Appointment, salary, allowances and other terms and conditions of service of the Chairman and Members of the Authority**

- (1) The Chairman and Members of the Authority shall be appointed by the Central

Government on the recommendations of a Selection Committee to be constituted for the purpose by the Council.

- (2) The Chairman shall be paid a monthly salary of Rs. 2,25,000 (fixed) and other allowances and benefits as are admissible to a Central Government officer holding posts carrying the same pay:

*Provided that where a retired officer is selected as a Chairman, he shall be paid a monthly salary of Rs. 2,25,000 reduced by the amount of pension.*

- (3) The Technical Member shall be paid a monthly salary and other allowances and benefits as are admissible to him when holding an equivalent Group 'A' post in the Government of India: *Provided that where a retired officer is selected as a Technical Member, he shall be paid a monthly salary equal to his last drawn salary reduced by the amount of pension in accordance with the recommendations of the Seventh Pay Commission, as accepted by the Central Government.*

- (4) The Chairman shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment:

*Provided that a person shall not be selected as the Chairman, if he has attained the age of sixty-two years.*

*Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Chairman at any time.*

- (5) The Technical Member of the Authority shall hold office for a term of two years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment:

*Provided that a person shall not be selected as a Technical Member if he has attained the age of sixty-two years.*

*Provided further that the Central Government with the approval of the Chairperson of the Council may terminate the appointment of the Technical Member at any time.*

#### **125. Secretary to the Authority**

*An officer not below the rank of Additional Commissioner (working in the Directorate General of Safeguards) shall be the Secretary to the Authority.*

#### **126. Power to determine the methodology and procedure**

*The Authority may determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.*

#### **127. Duties of the Authority**

*It shall be the duty of the Authority,-*

- (i) *to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of*

*commensurate reduction in prices;*

*(ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;*

*(iii) to order,*

*(a) reduction in prices;*

*(b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;*

*(c) imposition of penalty as specified in the Act; and*

*(d) cancellation of registration under the Act.*

*(iv) to furnish a performance report to the Council by the tenth day of the close of each quarter.*

**128. Examination of application by the Standing Committee and Screening Committee**

*(1) The Standing Committee shall, within a period of two months from the date of the receipt of a written application, in such form and manner as may be specified by it, from an interested party or from a Commissioner or any other person, examine the accuracy and adequacy of the evidence provided in the application to determine whether there is prima-facie evidence to support the claim of the applicant that the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has not been passed on to the recipient by way of commensurate reduction in prices.*

*(2) All applications from interested parties on issues of local nature shall first be examined by the State level Screening Committee and the Screening Committee shall, upon being satisfied that the supplier has contravened the provisions of section 171, forward the application with its recommendations to the Standing Committee for further action.*

**129. Initiation and conduct of proceedings**

*(1) Where the Standing Committee is satisfied that there is a prima-facie evidence to show that the supplier has not passed on the benefit of reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, it shall refer the matter to the Director General of Safeguards for a detailed investigation.*

*(2) The Director General of Safeguards shall conduct investigation and collect evidence necessary to determine whether the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices.*

*(3) The Director General of Safeguards shall, before initiation of the investigation, issue a*

*notice to the interested parties containing, inter alia, information on the following, namely:-*

- (a) the description of the goods or services in respect of which the proceedings have been initiated;*
  - (b) summary of the statement of facts on which the allegations are based; and*
  - (c) the time limit allowed to the interested parties and other persons who may have information related to the proceedings for furnishing their reply.*
- (4) The Director General of Safeguards may also issue notices to such other persons as deemed fit for a fair enquiry into the matter.*
- (5) The Director General of Safeguards shall make available the evidence presented to it by one interested party to the other interested parties, participating in the proceedings.*
- (6) The Director General of Safeguards shall complete the investigation within a period of three months of the receipt of the reference from the Standing Committee or within such extended period not exceeding a further period of three months for reasons to be recorded in writing as may be allowed by the Authority and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.*

**130. Confidentiality of information**

- (1) Notwithstanding anything contained in sub-rules (3) and (5) of rule 129 and sub-rule (2) of rule 133, the provisions of section 11 of the Right to Information Act, 2005 (22 of 2005), shall apply mutatis mutandis to the disclosure of any information which is provided on a confidential basis.*
- (2) The Director General of Safeguards may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of the party providing such information, the said information cannot be summarised, such party may submit to the Director General of Safeguards a statement of reasons as to why summarisation is not possible.*

**131. Cooperation with other agencies or statutory authorities**

*Where the Director General of Safeguards deems fit, he may seek opinion of any other agency or statutory authorities in the discharge of his duties.*

**132. Power to summon persons to give evidence and produce documents**

- (1) The Director General of Safeguards, or an officer authorised by him in this behalf, shall be deemed to be the proper officer to exercise the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing under section 70 and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908 (5 of 1908).*
- (2) Every such inquiry referred to in sub-rule (1) shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).*

**133. Order of the Authority**

- (1) *The Authority shall, within a period of three months from the date of the receipt of the report from the Director General of Safeguards determine whether a registered person has passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.*
- (2) *An opportunity of hearing shall be granted to the interested parties by the Authority where any request is received in writing from such interested parties.*
- (3) *Where the Authority determines that a registered person has not passed on the benefit of the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices, the Authority may order-*
  - (a) *reduction in prices;*
  - (b) *return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount including interest not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Fund referred to in section 57;*
  - (c) *imposition of penalty as specified under the Act; and*
  - (d) *cancellation of registration under the Act.*
- (4) *If the report of the Director General of Safeguards referred to in sub-rule (6) of rule 129 recommends that there is contravention or even non-contravention of the provisions of section 171 or these rules, but the Authority is of the opinion that further investigation or inquiry is called for in the matter, it may, for reasons to be recorded in writing, refer the matter to the Director General of Safeguards to cause further investigation or inquiry in accordance with the provisions of the Act and these rules.*

**134. Decision to be taken by the majority**

- (1) *A minimum of three members of the Authority shall constitute quorum at its meetings.*
- (2) *If the Members of the Authority differ in their opinion on any point, the point shall be decided according to the opinion of the majority of the members present and voting, and in the event of equality of votes, the Chairman shall have the second or casting vote.*

**135. Compliance by the registered person**

*Any order passed by the Authority under these rules shall be immediately complied with by the registered person failing which action shall be initiated to recover the amount in accordance with the provisions of the Integrated Goods and Services Tax Act or the Central Goods and Services Tax Act or the Union territory Goods and Services Tax Act or the State Goods and Services Tax Act of the respective States, as the case may be.*

**136. Monitoring of the order**

*The Authority may require any authority of central tax, State tax or Union territory tax to monitor the implementation of the order passed by it.*

**137. Tenure of Authority**

*The Authority shall cease to exist after the expiry of two years from the date on which the Chairman enters upon his office unless the Council recommends otherwise.*

*Explanation.-For the purposes of this Chapter,*

- (a) "Authority" means the National Anti-profiteering Authority constituted under rule 122;*
- (b) "Committee" means the Standing Committee on Anti-profiteering constituted by the Council in terms of sub-rule (1) of rule 123 of these rules;*
- (c) "interested party" includes-*
  - a. suppliers of goods or services under the proceedings; and*
  - b. recipients of goods or services under the proceedings;*
  - c. any other person alleging, under sub-rule (1) of rule 128, that a registered person has not passed on the benefit of reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices.*
- (d) "Screening Committee" means the State level Screening Committee constituted in terms of sub-rule (2) of rule 123 of these rules.*

**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.

**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.

Anti-Profiteering Rules (Rule 122 to Rule 137) as per Chapter-XV of CGST Rules, 2017 as notified by Central Government vide Notification No. 10/2017-Central tax dated 28-Jun-17 w.e.f. 1-Jul-17 which provides for Powers and Duties of Anti-Profiteering Authority and Compliances of Orders Passed by the authority.

On 16<sup>th</sup> November, 2017, the Union Cabinet has approved the establishment of the National Anti-Profiteering Authority. This is against the backdrop of reduction in GST rates for various goods and services effective from 15<sup>th</sup> November, 2017 after the 23<sup>rd</sup> GST Council Meeting on 6<sup>th</sup> November, 2017.

The newly established mechanism empowers the affected consumers to apply for relief to the Screening Committee in their state citing that the reduction in rates or increase of input tax credit has not resulted in a commensurate reduction in prices. Upon examination by the State

Level Screening Committee, the Screening Committee will forward the application along with its recommendations to the Standing Committee. In case, the incident of profiteering relates to an item of mass impact with 'All India Ramification', the application can directly be made to the Standing Committee. After forming a prima facie view that there is an element of profiteering, the Standing Committee will refer the matter for detailed investigation to the Director General of Safeguards, CBEC which will report the finding to the National Anti-Profiteering Authority. If the authority confirms the necessity to apply the anti-profiteering measure, it can order the business to reduce its prices or return the undue benefit along with interest to the recipient of goods or services. If the benefit cannot be passed on to the recipient, it can be ordered to be deposited with the Consumer Welfare Fund. In certain extreme cases, a penalty on the defaulting business entity and even an order for cancellation of GST registration may be issued. Its constitution aims to bolster the confidence of consumers to get the benefit of reduction in GST rates.

**Department of Consumer Affairs allows change in MRP on unsold stock prior to implementation of GST till 30th September 2017**

On account of implementation of GST w.e.f. 1st July, 2017, there may be instances where the retail sale price of a pre-packaged commodity is required to be changed. In this context, Ministry for Consumer Affairs, Food & Public Distribution has vide *Circular No. WM-10(31)/2017 dt. 4<sup>th</sup> July 2017* allowed the manufacturers or packers or importers of pre-packaged commodities to declare the change retail sale price (MRP) on the unsold stock manufactured/ packed/ imported prior to 1st July, 2017 after inclusion of the increased amount of tax due to GST if any, in addition to the existing retail sale price (MRP), for three months w.e.f. 1st July 2017 to 30th September, 2017. Declaration of the changed retail sale price (MRP) shall be made by way of stamping or putting sticker or online printing, as the case may be.

It is also clarified that 'for reducing the Maximum Retail Price (MRP), a sticker with the revised lower MRP (inclusive of all taxes) may be affixed and the same shall not cover the MRP declaration made by the manufacturer or the packer, as the case may be, on the label of the package'.

Use of unexhausted packaging material/wrapper has also been allowed upto 30th September, 2017 after making the necessary corrections.

The phrase "*the increased amount of tax due to GST, if any*" means "the effective increase in the tax liability calculated after taking into consideration extra availability of input tax credit under GST (including deemed credit available to the traders under CGST)"

Thus, the declaration of new MRP on unsold stock manufactured/packed/ imported prior to 1st July 2017 should not be done mechanically but after factoring in and taking into consideration extra availability of input tax credit under GST (including deemed credit available to traders under proviso to subsection (3) of section 140 of the CGST Act,2017).

**171.3 Decisions of National Anti-Profiteering Authority:**

- a. An application was filed before the National Anti-profiteering Authority alleging that the reduced rate of tax under GST regime was not passed on to the applicant. The application was preferred on the grounds that rate of tax applicable to motor vehicle in pre-GST regime was 51% which was reduced to 29% in GST regime and such reduced tax rate benefit was not passed on to the applicant. The Authority perusing the details of value and tax charged made an observation that applicable rate of tax in pre-GST regime was 31.254% and not 51% as claimed by the applicant. Accordingly, it was observed that the applicant was only entitled for the tax rate benefit of 2% only which was rightly passed on to the applicant by way of reduction in sale price. As such, it is held that no additional benefit on account of ITC is required to be paid by the respondent and therefore, the application was dismissed as not valid. On these lines, the Authority held that the respondent has not contravened the provisions of Section 171. [*Sh. Dinesh Mohan Bhardwaj vs. M/s Vrandavaneshwree Automotive Private Limited reported in 2018-VIL-01-NAA*]
- b. An application was filed before the National Anti-Profiteering Authority on the grounds that the benefit of reduced rate of tax was not passed on to the consumers of 'India Gate Basmati Rice' since, there is an increase in MRP on the advent of GST which may have led to increase in the margin of the Respondent. The application was examined by the Standing Committee on Anti-Profiteering and was forwarded to the Director General Safeguards (DGSG) for detailed investigations. Upon perusal of the detailed report of the DGSG and the returns filed by the Respondent it was observed that the GST rate of tax applicable to such product is 5% which was at 0% in pre-GST regime. The input tax credit was available to the Respondent in the range of 2.69% to 3% as a percentage of value of taxable supplies and post implementation of GST the purchase price of paddy is also increased. Upon such observations, the Authority dismissed the application on the grounds that the increase in MRP of the product is attributable to the increase in rate of tax and increase in purchase price of paddy and is not on account of non-passing of the GST benefit to the consumers. [*Kumar Gandharv vs. KRBL Ltd., reported in 2018 (5) TMI 760 – National Anti-Profiteering Authority*]

**171.4 Comparative Review**

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

**171.5 FAQs**

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

Ans. The Central Government, on recommendation of the Council, would notify.

Q2. What is the responsibility of the authority?

Ans. To examine whether:-

- a. Input tax credit availed by a taxable person have resulted in commensurate reduction in price of goods/ services;

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

### Statutory provisions

#### **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 be 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 Relevant orders**

The Central Government has issued order no. 01/2017-central tax under the Central Goods and Services Tax (Removal of Difficulties) Order, 2017 dated 13<sup>th</sup> October, 2017. Through this order it has been clarified that if a person supplies goods and / or services referred to in

clause (b) of paragraph 6 of Schedule II (restaurants, outdoor caterers etc.) and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme subject to the fulfilment of all other conditions. It is further clarified that in computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

### 172. 6 FAQs

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

### 172.7 MCQs

1. Who can issue the Order?

- (a) Central Government
- (b) State Government
- (c) Either
- (d) None

Ans: (a) Central Government

2. Whether Prior approval of the Parliament is necessary?

- (a) Yes
- (b) No

Ans: (b) No

3. What is the maximum period for exercising this power?

- (a) 4 years

- (b) 3 years
- (c) 2 years
- (d) 1 year

Ans: (b) 3 years

### Statutory provisions

#### 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 provisions

#### 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",) 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 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 erstwhile indirect tax laws, which would continue upon introduction of CGST Act. It also provides for exceptions as to continuation of certain provisions of the erstwhile 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 came into force on the date of enactment of the CGST Act i.e.01-07-2017.
- (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 – E.g. 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) Subject to the above comments 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;*
    - (iv) *Value added Tax laws;*
    - (v) *laws on Advertisement;*
    - (vi) *laws on lottery, Betting and Gambling;*
    - (vii) *CST Act.*
  - *Central laws:*
    - (i) *Duty of Excise on Medicinal and Toilet Preparation Act;*
    - (ii) *Chapter V of the Finance Act, 1994 (Service Tax law);*
    - (iii) *Central Excise Act, 1944; (except in respect of goods included in entry 84 of the seventh schedule to the constitution)*
    - (iv) *Additional duties of Excise (Goods of Special Importance Act, 1957);*
    - (v) *Additional duties of Excise (Textile and textile products Act, 1978);*
    - (vi) *Additional Custom Duty (CVD);*
    - (vii) *Special Additional Duty of Customs (SAD).*
    - (viii) *Medical & toilet preparations (excise duties) Act, 1955*
    - (ix) *Central excise tariff Act, 1985*
- (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.*

**Section 6 in The General Clauses Act, 1897**

**Effect of repeal.** *Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not—*

- (a) *revive anything not in force or existing at the time at which the repeal takes effect; or*
- (b) *affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder; or*
- (c) *affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed; or*

- (d) *affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed; or*
- (e) *affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, and any such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act or Regulation had not been passed.*

### 174.3 Comparative review

It would be interesting to refer to the Supreme Court decision in Kolhapur Cane sugar 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, Value added Tax, laws on Advertisement, laws on lottery, Betting and Gambling, CST Act.

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).
- (iii) Central Excise Act;
- (iv) Additional duties of Excise (Goods of Special Importance);
- (v) Additional duties of Excise (Textile and textile products);
- (vi) Additional Custom Duty (CVD);
- (vii) Special Additional Duty of Customs(SAD)
- (viii) Medical & toilet preparations (excise duties) Act,1955Central excise tariff Act,1985

Q3. Which are the State laws applied in a restricted manner after introduction of GST?

Ans. General Sales Tax/VAT would continue to apply on certain goods – E.g. 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 – E.g. 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 which is not repealed after enactment of GST.
- (a) Entry Tax law  
(b) VAT law  
(c) Company law  
(d) Central Excise law.
- Ans. (c) Company 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