

Background Material on GST Acts and Rules



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

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Foreword

Implementation of Goods and Services Tax (GST) in India is one of the major economic reforms. GST aims to make India a common market with common tax rates and procedures and remove the economic barriers thus, paving the way for an integrated economy at the national level. The Government of India is taking up various initiatives for smooth implementation of GST and the GST Council is also meeting at regular intervals for taking decisions to resolve the issues being faced by trade & industry. As a partner in nation building, the ICAI also has been providing necessary support to the Government agencies at every stage in addition to the various suggestion on the GST Law submitted for making law simple & transparent.

The Institute has also been taking various initiatives for increasing awareness among its members, revenue officers and public at large about GST by making suggestions for enabling GST Implementation, organizing certificate course, virtual certificate course, E-learning on GST, programmes, workshops on GST, releasing monthly E-Newsletter on GST, new publications etc. One of the efforts in this direction is updated edition of *Background Material on GST Act & Rules* which contains a clause by clause analysis of the GST Law along with FAQ's & MCQ's, Flowcharts and illustrations etc.

I appreciate the efforts put in by CA. Madhukar N. Hiregange, Chairman, CA. Sushil Kumar Goyal, Vice-Chairman and other members of the Indirect Taxes Committee of ICAI for undertaking this task and revising the material in a short span of time.

I welcome the readers for a fruitful and enriching experience.

CA. Nilesh S. Vikamsey
President
ICAI

Date: 28.12.2017

Place: New Delhi

Preface

The GST roll-out on 1st July 2017 has paved the way for realization of the goal of One Nation - One Tax - One Market. GST is expected to benefit Indian economy overall with most tax compliant businesses getting favourably impacted. It should in time reduce the cost of goods & services, giving a boost to the export of products and services. It would also foster 'Make in India' initiative. GST promotes the concept of common market with common tax rates & procedures and removal of economic barriers thus improving ease of doing business.

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We are partners in Nation building initiatives have always been supporting Government with our intellectual resources, expertise and efforts to make the GST transition a great success. This Committee prides itself on our role as "Partner in GST Knowledge Dissemination". To make the knowledge dissemination process smoother. We have updated the 4 editions of "**Background Material on GST Acts and Rules**". This Background Material is comprehensive, containing clause by clause analysis of the GST Law along with FAQ's, MCQ's, Flowcharts and Illustrations etc. to make the reading and understanding easier.

We thank CA. Nilesh Vikamsey, President, CA. Naveen ND Gupta, Vice-President, ICAI for giving us the space to deliver and support for this initiative. We would like to acknowledge the members of the Study Group(s) and Indirect Taxes Committee for their contribution and support in the basic as well as revised edition(s). Special thanks to the untiring effort of CA S. Venkatramani, CA Jatin Christopher and CA. Gaurav Gupta. We also appreciate the Secretariat for their unstinted support and efforts.

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

CA. Madhukar Narayan Hiregange
Chairman
Indirect Taxes Committee

CA. Sushil Kumar Goyal
Vice-Chairman
Indirect Taxes Committee

Date: 28.12.2017
Place: New Delhi

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Chapter I

Preliminary

1. Short title, extent and commencement
2. Definitions

Statutory Provision

- | |
|---|
| <p>1. Short title, extent and commencement</p> <p>(1) <i>This Act may be called the Central Goods and Services Tax Act, 2017.</i></p> <p>(2) <i>It extends to the whole of India except the State of Jammu and Kashmir.</i></p> <p>(3) <i>It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:</i></p> <p><i>Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.</i></p> |
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- | |
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| <p>1. <i>The Central Goods and Services Tax Act, 2017 has been implemented in the State of Jammu and Kashmir from 8th July, 2017 through Constitution (Application to Jammu and Kashmir) Amendment Order, 2017, the Central Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017 and the Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017.</i></p> <p>2. <i>Certain provisions were came into force on 22.6.17 and remaining provisions on 1.7.17 as notified by the Central Government and hence appointed day for the CGST Act, IGST, UTGST Acts, SGST Acts was 1st July, 2017. However, the appointed day for the State of Jammu and Kashmir was 8th July, 2017.</i></p> |
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Title:

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

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

Extent:

Part I of the Constitution of India states: "India, that is Bharat, shall be a Union of States". It provides that territory of India shall comprise the States and the Union Territories specified in

the First Schedule of the Constitution of India. The First Schedule provides for twenty-nine (29) States and seven (7) Union Territories.

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

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

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

Therefore, the State of Jammu & Kashmir were required to pass special laws to be able to implement the Goods and Services Tax Acts. Accordingly, the assembly of J&K passed the GST bill in the first week of July. Subsequently, Honourable President of India had promulgated two ordinances, namely, the CGST (Extension to Jammu and Kashmir) Ordinance, 2017 and the IGST (Extension to Jammu and Kashmir) Ordinance, 2017 making the CGST/ IGST applicable to the State of Jammu and Kashmir, w.e.f. 8th July, 2017. Once the laws are passed by the State of Jammu & Kashmir, the Union Government will have to amend the Central Goods and Services Act, 2017 to delete the phrase that such provisions do not apply to the State of Jammu & Kashmir. After the promulgation of ordinance, the India has adopted GST in its form across the country.

Commencement:

The CGST Act came into operation on 01.07.2017, the date appointed by the Central Government. However, certain provisions i.e. Sections 1,2,3,4,5,10,22,23,24,25,26,27,28,29, 30,139, 146,164 were made effective from 22.6.2017.

2. Definitions

In this Act, unless the context otherwise requires-

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

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

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

The following aspects need to be noted:

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

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

"Address of delivery" is relevant to determine Place of Supply of goods (other than imports/ exports).

It is understood that the address of delivery would be a crucial pointer towards the location of goods at the time of delivery to the recipient. The place of supply of goods or services or both (other than imports/ exports) would primarily be the location of the goods or services or both at the time of delivery to the recipient.

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

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

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

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

- (a) The Central Board of Excise and Customs
- (b) Revisional Authority
- (c) Authority for Advance Ruling
- (d) Appellate Authority for Advance Ruling
- (e) Appellate Authority
- (f) Appellate Tribunal

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

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

This definition appears to illustrate the principle of agency defined in Section 182 of the Indian Contract Act, 1872. Agency is a relationship that can be formed validly even without consideration in terms of Section 185 of the Indian Contract Act, 1872. Agent can work purely on commission basis. Even e-commerce companies like Flipkart, Amazon and Uber may be covered in some fact situations. But the relevance of being an agent is more pronounced while examining whether a transaction between a principal and agent is itself a supply under para 3, schedule I. Very often, the word agent or agency is used without necessarily implying that the transaction is one of agency as understood under Indian Contract Act such as, recruitment agency, travel agency etc. Care must be taken to identify whether the parties intended to constitute an agency as understood in law and nothing less.

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

The phrase “aggregate turnover” is widely used under the GST laws. Aggregate Turnover is an all-encompassing term covering all the supplies effected by a person having the same PAN. It specifically excludes:

- Inward supplies effected by a person which are liable to tax under reverse charge mechanism; and
- Various taxes under the GST law, Compensation cess.

The different kinds of supplies covered are:

- (a) Taxable supplies;
- (b) Exempt Supplies:
 - supplies that have a ‘NIL’ rate of tax;
 - supplies that are wholly exempted from SGST, UTGST, CGST, IGST or Cess; and
 - supplies that are not taxable under the Act (alcoholic liquor for human consumption and articles listed in section 9(2) and in schedule III);
- (c) Export of goods or services or both, including zero-rated supplies.

The following aspects among others need to be noted:

- Aggregate turnover is relevant to a person to determine:
 - Threshold limit to opt for composition scheme: Rs. 75 Lakhs in a financial year;
 - Threshold limit to obtain registration under the Act: 20 Lakhs (or 10 Lakhs in case

of supplies effected from Special Category States, as explained in our analysis on Section 22) in a financial year.

- Inter-State supplies between units of a person with the same PAN will also form part of aggregate turnover.
- For an agent, the supplies made by him on behalf of all his principals would have to be considered while analysing the threshold limits.
- For a job-worker, the following supplies effected on completion of job work would **not** be included in his 'aggregate turnover':
 - Goods returned to the principal
 - Goods sent to another job worker on the instruction of the principal
 - Goods directly supplied from the job worker's premises (by the principal): It would be included in the 'aggregate turnover' of the principal.

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

- (a) by own labour, or*
- (b) by the labour of family, or*
- (c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family;*

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

It may be noted that the scope of the definition is restricted to an Individual or a Hindu Undivided Family. Any other "person" as defined in section 2(84), carrying on the activity of agriculture will not be considered as an Agriculturist and hence will not be exempted from registration provisions as provided in section 23 (1)(b), of the Act.

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

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

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

It refers to an authority before whom a person aggrieved by a decision/ order under the CGST/ SGST/ UTGST Act passed by the Appellate Authority/ Revision Authority may appeal. An

order passed by the Appellate Tribunal would be final and binding on all the parties. If a person is further aggrieved by the order passed by the Appellate Tribunal, he may prefer an appeal before the High Court.

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

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

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

The types of assessment covered under the Act are:

- (a) Self-assessment (Section 59)
- (b) Provisional assessment (Section 60)
- (c) Summary assessment (Section 62) including best judgement assessment

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

- (a) Scrutiny of returns filed by registered persons (Section 61)
- (b) Assessment of non-filers of returns (Section 62)
- (c) Assessment of un-registered persons (Section 63)

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

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

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

- In such cases, the time of supply will be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.
- This in turn means that provisional entries made at the time of closure of books of account for a year (on accrual basis) may trigger GST liability in the hands of the recipient, under section 7(1)(b).

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

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

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

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

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

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

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

- (a) His relative/ regular employee;
- (b) Practicing advocate who is not debarred;
- (c) Practicing Chartered Accountant, Cost Accountant or Company Secretary who is not debarred;
- (d) Retired Officer of the Commercial Tax Department of any State/ Union Territory not below the post of Group-B Gazetted Officer of 2 years' service;
- (e) GST practitioner

The following persons cannot act as authorized representatives:

- (a) Who is dismissed/ removed from Government service;
- (b) Who is convicted of an offence under any law dealing with imposition of taxes;
- (c) Who is guilty of misconduct by the prescribed authority;
- (d) Who is adjudged as an insolvent.

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

(17) "business" includes—

- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;*
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);*
- (c) any activity or transaction sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;*
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;*

- (e) *provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;*
- (f) *admission, for a consideration, of persons to any premises;*
- (g) *services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;*
- (h) *services provided by a race club by way of totalisator or a licence to book maker in such club; and*
- (i) *any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;*

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

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

- (a) **General activity** - trade, commerce, etc., including incidental activities whether or not there is volume, frequency, continuity or regularity of such transactions. Principle of *ejusdem generis* provides that similar activity would be determined by the previous enumerated ones.
- (b) **Specific activity** – acquisition of goods including capital goods, supply by association/ club, admission of persons to a premises and services by a race club.

The following aspects need to be noted:

- 'Wager' is also included in the definition of business to impose GST on betting transactions;
- Educational services would be covered under profession or business;
- Charitable or religious activities are not specifically covered;
- Clause (g) may require understanding of employment as differentiated from profession. For instance, if a CA in practice provides services as Independent Director, the service provided by him may be treated as 'business' and not 'employment'.
- Clause (i) is also very important as 'any' activity or transaction by Government is included in the definition of business this will have far-reaching implications as the responsibility to pay tax in respect of services by Government is covered under reverse charge mechanism. Due to the expansive words used here, there is no room to differentiate payments made to any Government department on the ground that it is not 'business' activity.

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

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

- (a) the nature of the goods or services;*
- (b) the nature of the production processes;*
- (c) the type or class of customers for the goods or services;*
- (d) the methods used to distribute the goods or supply of services; and*
- (e) the nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;*

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

The following aspects need to be noted:

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

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

An attempt has been made to align the meaning of capital goods to the generally accepted

standards of accounting. Goods will be regarded as capital goods if the following conditions are satisfied:

- (a) The value of such goods is capitalised in the books of account of the person claiming input tax credit;
- (b) Such goods are used or intended to be used in the course or furtherance of business.

The following aspects need to be noted:

- (a) Assuming that the value of capital goods was not capitalised in the books of account, the person purchasing the capital goods would still be eligible to claim input tax credit on such capital goods since the definition of 'input tax' applies to goods as a whole (including capital goods).
- (b) Capital goods lying at the job-workers premises would also be considered as 'capital goods' in the hands of the purchaser as long as the said capital goods are capitalized in his books of account.

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

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

- (a) Occasionally, and not on a regular basis;
- (b) Either as principal or agent or in any other capacity;
- (c) In a State/ Union Territory where he has no fixed place of business.

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

Although in most cases a registered taxable person in one State may be a casual taxable person in any other State, there is no necessity that this must always be the case. A non-resident who holds a PAN number undertaking occasional business-like activities may also be a casual taxable person.

The following aspects need to be noted:

- The threshold limits for registration would not apply and he would be required to obtain registration irrespective of his turnover;
- He is required to apply for registration at least 5 days prior to commencement of business;

- The registration would be valid for 90 days or such period as specified in the application, whichever is shorter;
- An advance deposit of the estimated tax liability is required to be made along with the application for registration.

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

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

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

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

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

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

(25) *“Commissioner in the Board” means the Commissioner referred to in section 168;*

It refers to the Commissioner or Joint Secretary posted in the Central Board of Excise and Customs. Such a Commissioner or Joint Secretary is empowered to exercise the function of the Commissioner with the approval of the Board.

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

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

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

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

The relevance of working days primarily arises in relation to registration provisions. Every person obtaining a registration under the Act is required to make an online application in the GST portal. The application for registration, along with the accompanying documents will be

examined by the Proper Officer and if found in order, the registration will be granted within 3 working days. If the proper officer fails to take any action within 3 working days, the application is deemed approved.

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

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

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

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

- (a) Authority authorised to issue completion certificate (local municipal authorities like BDA/BBMP in Bangalore, PMC in Pune)
- (b) Architect
- (c) Chartered Engineer
- (d) Licensed Surveyor

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

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

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

- (a) The supply should consist of two or more taxable supplies;
- (b) The supplies may be of goods or services or both;
- (c) The supplies should be naturally bundled;
- (d) They should be supplied in conjunction with each other in the ordinary course of business;
- (e) One of the supplies should be a principal supply (Principal supply means the predominant supply of goods or services of a composite supply and to which any other supply is ancillary).

The following aspects need to be noted:

- The way the supplies are bundled must be examined. Mere conjoint supply of two or more goods or services does not constitute composite supply.
- The two (or more) supplies must appear natural when bundled and presented to the recipient.

- The ancillary supply becomes necessary only because of the acceptance of the predominant supply. Such predominance is neither guided by the predominant component in the total price of the supply nor guided by the predominant material involved. The test of predominance must be gathered from the 'predominant object' for which the recipient approached the supplier;
- The method of billing, assignment of separate prices etc. may not be relevant. In other words, whether separate prices are charged for each of the components of supply or a single consolidated price charged, the identity of each of the components of supply must be unmistakably distinct in the arrangement;
- The tax treatment of a composite supply would be as applicable to the principal supply.

Illustrations of composite supply are as follows:

- (a) Supply of laptop and carry case;
- (b) Supply of equipment and installation of the same;
- (c) Supply of repair services on computer along with requisite parts;
- (d) Supply of health care services along with medicaments.

Not all supplies must always be a composite supply merely because there are more than one taxable supplies simultaneously supplied. Unrelated, unconnected and independent taxable supplies that are supplied simultaneously for individual prices where each of them are intended to be the predominant object for which the recipient approached the supplier and may, to contrast with composite supply, be referred as non-composite supply.

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

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

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

The following aspects need to be noted:

- It refers to the payment received by the supplier in relation to the supply, whether from the recipient or any other person. Therefore, a third party to a contract can also contribute towards consideration;

- Consideration, therefore, is not the amount that the recipient pays but the amount that the supplier collects whether from the recipient or any third party. This would be particularly relevant in dealing with complex arrangements in digital economy and new-age business;
- Consideration can be in the form of **money or otherwise**. E.g.: Under a JDA model, the flats handed by the developer to the landowner will be considered as 'consideration' for the development rights given to the developer by the landowner;
- Clause (b) appears to cast the net so wide to leave nothing to escape its grasp. Reference may be had to the discussion under section 15 on valuation for the far-reaching implications of the expansive language used in this clause. Sufficient to state here that every act or abstinence that is a motivation to induce a person is already consideration and there is no requirement for it to be in monetary form. Transactions that involve negative consideration or abstinence from doing anything are all examples of consideration due to the language in this clause. Consideration can therefore be – increase in cash or other assets, increase in debt or other liabilities or abstinence/tolerance of any act;
- Deposits, as such, are not liable to tax. However, where such deposits have been applied as consideration for the supply it would tantamount to making of advances and in such cases, will be liable to tax. Merely altering the nomenclature of the payment as 'deposit' would not change the nature of the receipt. However, trade practices and the terms, used play an important role in identifying whether an amount is a 'deposit' or an 'advance' or any payment as consideration for the supply;
- The suppliers may have to place the deposits in a separate bank account in case of refundable deposits, to comply with this provision. However, whether the amount is refundable or not is not a criterion to determine whether such amount is a 'deposit';
- This is an inclusive definition.

(32) "continuous supply of goods" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

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

The following aspects need to be noted:

- It should be a contract for supply on a recurrent basis and cannot be a one-time supply contract;
- The contract should be a case of periodic billing and periodic payments - viz., the billing and receipts thereto should be on a periodic basis (e.g.: every fortnight; every Monday

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

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

Examples of continuous supply of goods are:

- (a) Open purchase orders with an understanding of fortnightly billing;
- (b) VMI (vendor managed inventory) where the agreed periodicity for billing is, say, monthly/ fortnightly etc.;
- (c) Supply of gases through pipeline with a weekly billing schedule;
- (d) Supply of say, 5 litre water cans on an as and when required basis with a frequency of monthly billing under a contract.

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

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

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

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

- (a) where due date of payment is ascertainable: On or before the due date of payment;
- (b) where the due date of payment is not ascertainable: Before or at the time of receipt of payment;
- (c) where the payment is linked to the completion of an event (milestones): On or before the date of completion of that event.

The following aspects need to be noted:

- It should be a contract for supply on a recurrent basis and cannot be a one-time supply contract;
- The period of contract of supply should be more than 3 months - viz., services should be supplied on a recurring basis for at least 3 months;

- The contract should be a case of periodic billing and periodic payments - viz., the billing and receipts thereto should be on a periodic basis (say for e.g.: every fortnight; every Monday etc.) and not one-time. Further, the contract should specify this periodicity/ frequency of billing/ payment;
- The Government is empowered to notify certain supplies as continuous supply of goods.

Examples of continuous supply of services:

- Annual maintenance contracts;
- Licensing of software or brand names;
- Renting of immovable property

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

It can be understood as a medium of transportation.

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

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

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

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

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

- Administration of the GST laws
- Specify the taxes to be levied and collected by the Centre, States and Union Territories under the GST regime
- Specify the goods or services or both that will be subjected/ exempted under the GST regime
- Specify the GST rates
- Specify the threshold limits for registrations and payment of taxes
- Apportionment of IGST between Centre and States/ Union Territories
- Approval of compensation to be paid to the States (for loss on account of implementation of GST)
- Levy of any special rate or rates of tax for a specified period, to raise additional resources during any natural calamity or disaster.

- (i) Resolution of disputes arising out of its recommendations
- (j) Imposition of additional taxes in times of calamities and disasters

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

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

- (a) The taxable value shown in the invoice exceeds the taxable value of the supply;
- (b) The tax charged in the invoice exceeds the tax payable on the supply;
- (c) The goods supplied are returned by the recipient;
- (d) The goods/ services are found to be deficient.

The following aspects need to be noted:

- Where there is no change in the taxable value/ tax amount, a credit note need not be issued unlike existing business practices;
- A credit note has to be issued by the supplier. A credit note issued by a recipient, say for accounting purposes, is not a relevant document for GST purposes;
- Once a credit note is issued, the details of the credit note should be declared by the supplier in the return of the month of the issue of credit note. However, if not declared in that month, it can be declared in any return prior to September of the year following the year in which the original tax invoice was issued (or filing of annual return, whichever is earlier);
- The supplier will not be permitted to claim reduction in the output tax liability if the incidence of tax and interest has been passed on to any person, or if the recipient fails to declare the details of the credit note in his returns;
- The issuance of credit note would not be relevant if the recipient treats the return of goods as an outward supply and raises a tax invoice in this regard;
- Credit note that is issued in any other circumstance (not permitted by section 34) would not be permissible and make itself indicate a supply in the opposite direction (requiring an invoice under section 31). Care should be taken while examining any practice of issuing financial or accounting credit note that is not in accordance with section 34.

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

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

- (a) The taxable value shown in the invoice is lesser than the taxable value of the supply; or
- (b) The tax charged in the invoice is less than the tax payable on the supply.

The following aspects need to be noted:

- Where there is no change in the taxable value/ tax amount, a debit note need not be issued;

- A debit note has to be issued by the supplier. A debit note issued by a recipient, say for accounting purposes, is not a relevant document for GST purposes;
- The details of the debit note have to be declared by the supplier in the return of the month of the issue of debit note;
- Debit note includes a supplementary invoice.

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

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

- (a) The goods supplied do not leave India;
- (b) Payment for such supplies is received in Indian Rupees/ Convertible Foreign Exchange; and
- (c) Such goods are manufactured in India.

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

Therefore, a provision has been made under the Act to notify certain transactions as ‘deemed export’ to avoid situations where the persons might claim refund of taxes on ‘deemed export’ defined in the FTP 2015-20. While deemed exports may be notified under section 147, the nature of benefit available in respect of deemed exports requires a provision in the Act conferring such entitlement. Section 54 would be the machinery provision for disposal of refund applications. And deemed exports will not come within section 54(3).

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

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

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

An electronic record, in terms of Section 2(t) of the Information Technology Act, 2000 means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche. A document includes both manual and electronic forms of records. This is an important provision that can play a significant role going forward bringing various electronic communications within the scope of admissible documentary proof of the underlying transaction. Digitally signed documents are also admissible but using words such as ‘the season electronically generated document and does not require signature’ do not enjoy the status of being a admissible document.

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

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

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

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

- (a) Tax
- (b) Interest
- (c) Penalty
- (d) Fees or
- (e) Any other amount payable.

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

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

Digital or electronic network does not always mean website on mobile app. A telephone network or a call centre using the fancy/easy number can also constitute digital or electronic network.

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

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

While an aggregator (Ola, Swiggy, etc.) only connects the customer with the supplier/ service provider, an e-commerce operator (Flipkart) facilitates the entire process of the supply of

goods/ provision of service. Under the GST law, even aggregators would be covered under the definition of 'electronic commerce operator'.

Setting up a website by a supplier for 'own use' also comes within the scope of this definition however the compliances that are triggered by being such an electronic commerce operator under section 52 cannot be attracted unless there are three distinct persons – customer, supplier and electronic commerce operator. A supplier creating an online channel for sale of product in addition to his off-line retail chain of stores is included in the definition of electronic commerce operator. The implications of being an electronic commerce operator will apply in such cases only if the distinct person who owns or manages the electronic or digital network and the distinct person who stores and distributes the product are independent of each other.

It may be noted that the threshold limits for registration would not apply and he would be required to obtain registration irrespective of his turnover;

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

Electronic credit ledger means the input tax credit register required to be maintained in an electronic form by each registered person. As a process, based on details of outward supplies filed by the suppliers, the electronic credit ledger of the recipient of goods/ services would be auto populated in the GSTN under the categories matched, un-matched and provisional. The tax payer claiming input credits should review the same and accept the relevant ones for claiming input credit.

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

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

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

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

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

Exempt supplies comprise the following 3 types of supplies:

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

- (b) Supplies that are wholly or partially exempted from CGST or IGST, by way of a notification;
- (c) Non-taxable supplies as defined under Section 2(78) – supplies that are not taxable under the Act (viz. alcoholic liquor for human consumption).

The following aspects need to be noted:

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

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

This covers all the erstwhile Central and State laws (along with the relevant notifications, orders, and regulations), relating to levy of tax on goods or services like Service Tax law, Central Excise law, State VAT laws, etc. Therefore, laws that do not levy tax or duty on goods or services, such as the Indian Stamp Act, 1899, would not be covered here.

(49) "family" means, —

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

The relevance of the term 'family' is to:

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

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

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

- (a) Having a sufficient degree of permanence;
- (b) Having a structure of human and technical resources; and
- (c) Other than a registered place of business.

The following aspects need to be noted:

- A fixed establishment refers to a place of business which is not registered;

- The person should undertake supply of services or should receive and use services for own needs in such place;
- Not every temporary or interim location of a project site or transit-warehouse will become a fixed establishment of the taxable person.
- Temporary presence of staff in a place by way of a short visit to a place or so does not make that place a fixed establishment;
- E.g.: A service provider in the business of renting of immovable property services has his registered office at Bangalore (place of business) and the property for rent along with an office is located in Chennai (place of supply). In this case, the registered office will be the principal place of business but the property in Chennai will NOT be regarded as a fixed establishment of the service provider as the degree of permanence required in representing the interests of the supplier does not exist in Chennai.
- E.g.: A contract is for supply and installation of equipment where the duration of installation work at the site is (say) 15 days at Indore and the fabrication of equipment undertaken at the factory at Jaipur. After the fabrication is completed, the material is transported to the site along with installation team. For the limited duration that the installation team will be present at the site (Indore), surely the supplier will not put in place all the resources – technical and human – so as to create at the site an establishment with sufficient degree of permanence ‘to supply’ or ‘to receive’ services. In this case also, the factory will be the principal place of business (Jaipur) but the site (Indore) will NOT be regarded as a fixed establishment of the supplier.
- E.g.: A project undertaken for construction of a highway (expansion, strengthening and resurfacing of two-lane carriageway into four-lane carriageway) is expected to be undertaken over a three-year duration in Gandhidham. As such, the supplier cannot practically manage to undertake the activities that the project site (entire length of the alignment) remotely from the registered office in Delhi. Although all decisions are authorized by the central team in Delhi, these decisions are effectively delegated to be carried out by its competent team located at the site with all necessary resources – technical and human – so as to create at the site an establishment with sufficient degree of permanence ‘to supply’ or ‘to receive’ services. In this case, the site (Gandhidham) WILL BE a fixed establishment of the supplier.

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

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

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

The following aspects need to be noted:

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

(53) "Government" means the Central Government;

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

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

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

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

- (a) Furnish details of outward and inward supplies;
- (b) Furnish monthly, quarterly, annual or final return;
- (c) Make deposits in the Electronic Credit Ledger;
- (d) File a claim for refund;
- (e) File an application for amendment/ cancellation of registration.

The following aspects need to be noted:

- A person desirous of being enrolled as a GST Practitioner should make an application in Form GST PCT-1 and satisfy the conditions required;
- The GST practitioner is required to affix his digital signature on the statements prepared by him/ electronically verify using his credentials;

- The responsibility of correctness of the details furnished will lie on the registered person only.

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

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

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

(57) *“Integrated Goods and Services Tax Act” means the Integrated Goods and Services Tax Act, 2017;*

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

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

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

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

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

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

The second condition for goods to be treated as inputs, is that they must be used or intended to be used by the person who has inwarded (say by way of purchase, exchange, etc.) those goods ‘in the course or furtherance of business’. This phrase encompasses a wide range of functions within the business.

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

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

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

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

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

The meaning of the term “service” under the GST law is very vast to include everything that is not goods, barring securities, and monies that do not amount to activity relating to the use of money or conversion of money. Therefore, anything received by a person who is a supplier,

which is not goods, and is neither securities nor money as such, would be treated as 'input service', so long as it is used or meant to be used in the course or furtherance of business.

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

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

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

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

Generally, the head office of the person, or the corporate office, by whatever name called, would be the location to which the services would be billed. However, there is no implication by law that an ISD must be the head office. In order to ensure that the office registered as ISD does not itself undertake any activity in the nature of outward supply, not receive inward supplies of its own or not attract RCM liability. Therefore, a single company may choose to have multiple regional offices based on its business requirements.

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

- Issue of an ISD invoice to each recipient of credit on every distribution.
- Recipients of credit to be those taxable persons to whom it is attributable (whether or not they are registered), being persons having the same PAN (as issued under the Income Tax Law) as that of the ISD.

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

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

- (a) the integrated goods and services tax charged on import of goods;
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

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

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

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

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

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

- The specific inclusions are of two types, i.e., the integrated tax applicable on import of goods (in lieu of the previously applicable CVD and SAD), and the taxes payable on reverse charge basis on account of supplies being those supplies that are notified in this regard, or on account of being inward supplies from unregistered persons. From the

language used, it must be understood that these inclusions are not limited to those that have been discharged, on the premise that the law used the words “charged” or “taxable” and not “paid”.

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

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

(63) “input tax credit” means the credit of input tax;

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

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

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

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

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

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

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

Every taxable supply of service that is an intra-State supply shall be liable to both central tax and the respective State tax (or Union territory tax), unless otherwise exempted. The ‘place of supply’ should be determined in accordance with Section 12 or Section 13, as the case may

be, of the IGST Act that provides situation-specific conditions for determining the 'place of supply'.

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

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

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

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

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

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

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

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

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

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

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

The following aspects need to be noted:

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

- If the Principal is an unregistered person, then the job worker is not a job worker. Classification of the work undertaken may need to be examined whether it is manufacture or not to attract the appropriate rate of tax applicable to the goods so manufactured and not rate of tax applicable to services of job-work;
- is important to note that the job worker is not an Agent of the Principal and the relationship *inter se* are that of Principal to Principal.

(69) “local authority” means—

- (a) a “Panchayat” as defined in clause (d) of article 243 of the Constitution;
- (b) a “Municipality” as defined in clause (e) of article 243P of the Constitution;
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;
- (f) a Development Board constituted under article 371 of the Constitution; or
- (g) a Regional Council constituted under article 371A of the Constitution;

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

(70) “location of the recipient of services” means, —

- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the recipient;

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

Broadly, the meaning given to the phrase “location of the recipient of services” is oriented towards determining the place of supply of the services. The most relatable location of the

recipient can be determined in the following order – if the place of supply of the service happens to be:

- (a) a 'place of business' which is a registered place of business, such place;
- (b) a 'place' which is a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources), such fixed establishment;
- (c) at multiple 'places' which may include places of business or fixed establishments, that one place to which the supply is most directly attributable;
- (d) a place that cannot be identified from the above three clause, the usual location of the recipient (address where the person is legally registered/ constituted in case of recipients other than individuals).

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

- (a) *where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;*
- (b) *where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*
- (c) *where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and*
- (d) *in absence of such places, the location of the usual place of residence of the supplier;*

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

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

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

- Composition levy: The composition tax rate in case of manufacturers is different as compared to that of suppliers not being manufacturers (expected cap rate of 2% as against 1%, respectively, being the aggregate of central and State tax/ Union Territory tax). Further, manufacturers of certain notified goods would not be eligible to exercise

the option to avail the benefit of composition scheme. Such a restriction is however, not placed on other classes of persons, say traders of the same notified goods.

- Concept of deemed exports: One of the pre-conditions for any such supply to qualify as deemed export is that the goods in question must be manufactured in India. Therefore, even where the goods are of the nature that are notified by the Government as goods that qualify as “deemed exports” on meeting certain conditions, if such goods are not manufactured in India (or, any processing performed on any imported goods does not result in manufacture), they cannot enjoy the benefit of the deeming fiction.
- Maintenance of accounts: A manufacturer shall be required to maintain a record of production/ manufacture of goods, in addition to recording the details of inward and outward supplies.

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

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

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

The meaning of the term ‘related’, must be understood from the definition provided in respect of ‘related persons’ under Section 15.

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

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

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

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

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

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

Illustrations for consideration:

- (a) Supply of toothpaste, brush, plastic container for the two: The three goods can be said to be naturally bundled and supplied in the ordinary course of business. While the plastic container is ancillary to the supply, both toothbrush and toothpaste could be the predominant elements of the supply. In a composite supply, there can be only one principal supply and therefore, this supply would be a mixed supply.
- (b) Supply of laptop and printer: Although a printer is used for the purpose of printing, the commands for which can be given through the laptop, the two goods are not naturally bundled and supplied conjointly in the ordinary course of business. Therefore, this supply is a mixed supply.
- (c) Supply of lectures in a coaching centre and monthly excursions such as trekking, etc.: The two services are not naturally bundled in the ordinary course of business. Therefore, this supply is a mixed supply.

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

It is important to ensure there is a single price is assigned in respect of the various supplies that are involved. And the supplies so involved are unnaturally bundled together for such single price. If the price were not one single amount but the visible aggregation of individual prices then, even if supplied together, each of them may be regarded as an individual non-composite supply.

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

The meaning attributed to this term in the GST law is a polished adoption of the definition provided under the Service Tax law. Additionally, money as defined in the GST law includes any foreign currency as well. The significance of this term is that it is out of the scope of taxation under GST. Money would neither be goods nor services under the GST law. However,

there is no exemption given to activities relating to the use of money or its conversion. So also, sale of money, say a coin collection set of 100 coins, would be chargeable to tax, as such coins are held for their numismatic value.

It is also interesting to note that this term is no longer relevant for understanding whether a transaction is for consideration, as the meaning assigned to the term 'consideration' under the GST law may be in money or in another form.

The words "...or any other instrument recognised by the Reserve Bank of India..." demands a mention of the Payments and Settlement Systems Act, 2007 which allows RBI to authorize the development and distribution of a system of settlement of payments in the form of prepaid instruments (PPIs) that are not Indian legal tender but are yet used as a consideration to settle an obligation. Such PPIs are often confused with voucher (defined in section 2(119) below). This form of interchangeable usage would be an error. Since the PPI is included in the definition of money it cannot also be included in the definition of voucher. PPIs are not vouchers but money. Tax treatment applicable on the receipt of money must be applied even when receipt is through PPI's.

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

Section 2(28) reads as under:

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

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

When motor vehicle has been defined by reference to another Act, all interpretation that is allowed under that Act be equally apply under GST. Motor vehicles such as its excavators, wheel loaders, back hoe, road rollers, etc. will also come within the same restrictions applicable to motor vehicles under GST law. Merely because these articles are used more in the nature of plant and machinery and less in the form of motor vehicles is of no avail.

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

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

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

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

Due to applicability of higher rate of withholding under Income-tax Act on remittances made from India, non-residents who have no active business presence in India are also found to have secured PAN numbers. Accordingly, such non-residents would not be NRTPs but CTPs under GST law.

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

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

The following aspects need to be noted:

- Stock transfers to unit within the State for which no separate registration is obtained, which does not qualify as a 'supply' as defined under Section 7 of the CGST Act, cannot be said to be a non-taxable supply.
- Transactions specified in Schedule III which are treated as neither a supply of goods nor a supply of services, would also not qualify as non-taxable supplies.
- Supplies that enjoy the benefit of being wholly exempted from taxes, nil-rated supplies and zero-rated supplies are also not covered under the umbrella of 'non-taxable supplies' given that the goods or services are in fact liable to tax, and such tax is exempted by virtue of an exemption notification, or the tax rate is nil.
- Only those supplies that are excluded from the scope of taxation under GST are covered by this definition – i.e., alcoholic liquor for human consumption, articles listed in section 9(2) or in schedule III.

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

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

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

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

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

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

The Central Government and the State Governments are empowered to issue notifications to give effect to certain provisions such as goods and services that would be liable to tax on reverse charge basis, supplies that are exempted from tax, supply of goods that shall be treated as supply of services, etc. For a notification to be valid under GST, it must be published in the Official Gazette of India, as published by the Government of India's Department of Publication, Ministry of Urban Development.

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

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

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

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

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

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

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

The following aspects need to be noted:

- While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the law from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but who have failed to obtain registration.
- The amount covered under this term is the amount of tax that is 'chargeable', and not the amount that is 'charged'. Therefore, in case a person wrongly charges tax, or charges an excess rate of tax, as compared to the applicable tax rate, such excess would not qualify as output tax.
- Some experts are of the view that taxes payable by recipient of supply, on account of making inward supplies of such categories of supply as are notified for the purpose of reverse chargeability of tax, or making inward supplies from unregistered persons, would also be out of the scope of 'output tax'.
- The implication of the exclusions mentioned above is that the input tax credit cannot be utilised for making payment of any amount that does not qualify as output tax. Discharge of liability in such cases has to be by way of cash payments (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).
- The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the tax paid on such supplies as output tax in the hands of the supplier.

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

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

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

The following aspects need to be noted:

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

(84) "person" includes—

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;
- (d) a firm;
- (e) a Limited Liability Partnership;
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;
- (h) any body corporate incorporated by or under the laws of a country outside India;
- (i) a co-operative society registered under any law relating to co-operative societies;
- (j) a local authority;
- (k) Central Government or a State Government;
- (l) society as defined under the Societies Registration Act, 1860;
- (m) trust; and
- (n) every artificial juridical person, not falling within any of the above;

This definition is to be read along with the fiction in Section 2(107) where a 'taxable person' is understood to be sub-units of a person such that transactions between two taxable persons is

also a taxable supply. Every 'person' is understood to have a separate identity, under the GST law.

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

(85) "place of business" includes—

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called;

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

Place of business therefore is not only any place where business is ordinarily carried on but it would also be a place where goods are located and kept ready for supply. Ex-works supplies, to a registered person from another State, without the goods immediately being transported out to that State, would also come within the definition of place of business. Therefore, there is no need to be concerned that location of supplier of goods is not defined in the law because unlike services, there is sufficient trail available in transactions involving supply of goods.

Below are other implications in relation to place of business:

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

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

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

There is no provision in the law that declares that GST is a ‘destination based tax’. Place of supply is therefore the destination of supply attracting tax under this law. Place of supply is not left out as a question of fact that each supplier has to determine but is a question of law that is left to only be discovered by an application of the law.

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

- (a) Goods, other than supply of goods imported into, or exported from India.
- (b) Goods imported into, or exported from India.
- (c) Services where location of supplier and recipient is in India.
- (d) Services where location of supplier or location of recipient is outside India.
- (e) Online information and database access or retrieval services (OIADARS) provided by a person located in a non-taxable territory to a non-taxable online recipient (i.e., Government, governmental or local authorities, individuals, other persons receiving such services for purpose other than commerce, industry, business, profession, but located in taxable territory).

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

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

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

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

Agent of the principal is one who carries on the business of supply or receipt of goods or services or both on behalf of another person, being the principal. The agent functions as an

extended arm of the principal and therefore, supplies (inward and outward) effected by an agent on behalf of the principal will be treated as supplies effected by the principal.

Note the remarkable resemblance to the reference in parallel to paragraph 3, schedule I.

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

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

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

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

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

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

- (a) Supply of laptop and a carry case – In this case, the case only adds value to the supply of laptop and therefore, the case would be ancillary while the laptop comprises the predominant element of the supply. Even where the brand of the case is not the same as that of the laptop, and the supplier can establish that the case is naturally bundled with the laptop in the ordinary course of his business, the supply can be treated as a composite supply.
- (b) Supply of equipment and installation/ commissioning of the same – While the recipient actually purchases the equipment, making the equipment the principal supply, the installation makes the equipment usable by the recipient. Even if there is a separate charge for the installation of the equipment, since the service is naturally bundled and provided in the ordinary course of business, the supply would be a composite supply.
- (c) Supply of repair services of laptop with parts – As such, it is the skill and expertise of the supplier that makes the laptop function as desired. Whether replacement is necessary or a mere resetting of the existing parts restores the functionality of the laptop is not known to the customer. Where the object of the contract is unknown to the customer, that object cannot be the purpose of the contract. The only object that is

known to the customer is the 'repair service' which makes it the predominant object of supply. This would be the position even if the cost of the parts replaced is higher than the cost of service. *However, this theory can apply only where such a replacement is done in the ordinary course of the business of repairing laptops, and such a replacement is naturally bundled with the repair service.*

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

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

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

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

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

- (a) January, February and March;
- (b) April, May and June;
- (c) July, August and September; and
- (d) October, November and December.

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

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

- (a) *where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;*
- (b) *where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and*
- (c) *where no consideration is payable for the supply of a service, the person to whom the service is rendered,*

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) Goods (in addition to services) that may be notified, even if the supplier is registered;
- (b) Services (in addition to goods), for taxation on reverse charge basis where the supplier is unregistered, and the recipient is registered.

The following aspects need to be noted:

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

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

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

(100) “Schedule” means a Schedule appended to this Act;

The following three schedules are provided under the CGST Act to describe the extent/ limitation of the meaning of the term ‘supply’:

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

- Permanent transfer or disposal of business, supplies between related persons or taxable persons having the same PAN, supply of goods by a principal to his agent and vice versa, import of services for business purpose, by a taxable person from a related person.
- (b) **Schedule II:** Activities to be treated as supply of goods or supply of services
 - Goods: Transfer of title in goods under an agreement where property in goods passes upon payment of full consideration, supply of goods by any unincorporated association or body of persons to a member for cash, deferred payment or other valuable consideration, etc.
 - Services: Transfer of right or undivided share in goods without transfer of title, treatment/ process applied to another person's goods, renting of immovable property, temporary transfer/ permitting the use or enjoyment of IPRs, development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software, works contract, etc.
- (c) **Schedule III:** Activities or transactions which shall be treated neither as a supply of goods nor a supply of services
 - Services by employee to employer in the course/ relation to employment, Services of funeral, burial, crematorium or mortuary, sale of land, sale of completed buildings, actionable claims (other than lottery, betting and gambling), services by any court or Tribunal, the functions performed by the Members of Parliament, etc.

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

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

- (i) *shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*
 - (ia) *derivative;*
 - (ib) *units or any other instrument issued by any collective investment scheme to the investors in such schemes;*
 - (ic) *security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*
 - (id) *units or any other such instrument issued to the investors under any mutual fund scheme;*
- (ii) *Government securities;*
 - (iia) *such other instruments as may be declared by the Central Government to be securities; and*
 - (iib) *rights or interest in securities.*

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

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

Express exclusion of goods implies its inclusion within the definition of services. Therefore, understanding the exact scope and boundaries of the definition of goods is required to recognize all those transactions or activities that would fall under the meaning of 'services', on being left out of the definition of 'goods'. Transactions in money (other than its conversion) are excluded both from the definition of goods and from the definition of services. 'Anything' includes everything and leaves nothing – services includes goods and for this reason 'other than goods' appears in the definition. But for such exclusion it would have been included. And services includes immovable property as well. Transactions involving immovable property to the extent excluded by paragraph 5, schedule III only. All other transactions involving immovable property comes squarely within the scope of services.

Services is therefore not a verb but a noun. As such, there is no need to search for the activity performed in a transaction involving services but sufficient to note that it is not goods then it will be services. If this manner of drafting the definition that allows tax to be imposed on transactions of tolerating an act or abstaining from an act as found in paragraph 5(e), schedule II.

The following aspects need to be noted:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- Non-resident taxable persons, casual taxable persons making any taxable supply
- Persons making any inter-State taxable supply;
- Recipients of supplies of goods or services that are notified for tax on reverse charge basis;

- Persons such as agents who make taxable supplies on behalf of other taxable persons;
- Electronic commerce operator and persons effecting supplies through them;
- Person supplying OIADAR services from a place outside India to an unregistered person in India.

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

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

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

(109) *“taxable territory” means the territory to which the provisions of this Act apply;*

The scope of taxable territory extends to the whole of India.

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

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

(111) *“the State Goods and Services Tax Act” means the respective State Goods and Services Tax Act, 2017;*

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

(112) *“turnover in State” or “turnover in Union territory” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a*

taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess;

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

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

(113) "usual place of residence" means—

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

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

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

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

(a) the Andaman and Nicobar Islands;

(b) Lakshadweep;

(c) Dadra and Nagar Haveli;

(d) Daman and Diu;

(e) Chandigarh; and

(f) other territory.

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

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

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

It refers to the tax charged under the UTGST Act on intra-State supply of goods or services or both (i.e., supplies effected within a Union Territory not having a Legislature), in addition to the

tax levied under the CGST law. The rate of UT tax is capped at 20%, and will be notified by the Central Government based on the recommendation of the Council.

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

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

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

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

The following aspects need to be noted:

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

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

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

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

Reference maybe had to the discussion in the context of money under section 2(75) about Payments and Settlement Systems Act, 2007 where RBI is authorized to issue pre-paid

instruments (PPIs) apart from Indian legal tender to be used to settle obligations to pay consideration. All vouchers are not money if they are not so recognized by RBI. And if the vouchers are recognized by RBI then they will take the character of money. Reference may be had to the discussion in the context of time of supply under section 12(4)/13(4) for a detailed discussion on the types of vouchers and implications in GST.

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

The expression ‘works contract’ is limited to contracts to do with immoveable property, unlike the erstwhile understanding of the phrase which also extends to moveable property. A contract will amount to a ‘works contract’ only where the resultant which is immovable property. Transactions resulting in movable property, however, would be treated as a ‘composite supply’ of goods or services depending on the principal supply (refer analysis of Section 8).

The 14 adjectives used in the definition of works contract are neither exhaustive nor limiting the scope of works contract. Conspicuous by their absence are adjectives like manufacture, assembly, printing and so on. As stated earlier the presence of certain objectives of the absence of certain others limit the scope of what works contract is under GST. If the resultant is bringing into existence of immovable property, then the supply is a works contract. Obviously, pre-existing immovable property being involved in a transaction will be saved to the extent of paragraph 5, schedule III.

For GST law, works contract as defined above will be treated as a supply of service, thereby putting a closure to the deliberation on the methodology of segregating the works contract between goods and services. Due to such treatment as a supply of services, transactions such as sales returns, cancellation, non-approval of work done, carrying forward of work-in-progress, etc. are faced with restrictions in GST as no provision appears to be made to accommodate such transactions which are akin to goods even when works contracts are treated as supply of services.

(120) words and expressions used and not defined in this Act but defined in the Integrated Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;

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

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

From the extent-clause provided in Section 1 of the CGST Act, the CGST Act is now applicable in the State of Jammu and Kashmir. Wherever a reference to another law is drawn in the CGST Act, (say reference to the Service tax laws), for the State of Jammu and Kashmir, such a reference should be understood as a reference to the corresponding operational law in the State (i.e., the Jammu And Kashmir General Sales Tax Act, 1962).

Chapter II

Administration

3. **Officers under this Act**
4. **Appointment of officers**
5. **Powers of officers**
6. **Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances**

Statutory Provision

3. Officers under this Act

The Government shall, by notification¹, appoint the following classes of officers for the purposes of this Act, namely: —

- (a) *Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,*
- (b) *Chief Commissioners of Central Tax or Directors General of Central Tax,*
- (c) *Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,*
- (d) *Commissioners of Central Tax or Additional Directors General of Central Tax,*
- (e) *Additional Commissioners of Central Tax or Additional Directors of Central Tax,*
- (f) *Joint Commissioners of Central Tax or Joint Directors of Central Tax,*
- (g) *Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,*
- (h) *Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and*
- (i) *any other class of officers as it may deem fit:*

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

The Government vide Notification No.2/2017 – Central Tax dated 19.06.2017 has appointed the following classes of officers for the purposes of this Act: —

- (a) *Principal Chief Commissioners of Central Tax and Principal Directors General of Central Tax,*
- (b) *Chief Commissioners of Central Tax and Directors General of Central Tax,*
- (c) *Principal Commissioners of Central Tax and Principal Additional Directors General of Central Tax,*

- (d) *Commissioners of Central Tax and Additional Directors General of Central Tax,*
- (e) *Additional Commissioners of Central Tax and Additional Directors of Central Tax,*
- (f) *Joint Commissioners of Central Tax and Joint Directors of Central Tax,*
- (g) *Deputy Commissioners of Central Tax and Deputy Directors of Central Tax,*
- (h) *Assistant Commissioners of Central Tax and Assistant Directors of Central Tax,*
- (i) *Commissioners of Central Tax (Audit),*
- (j) *Commissioners of Central Tax (Appeals),*
- (k) *Additional Commissioners of Central Tax (Appeals) and*
- (l) *any other class of Central Tax officers sub-ordinate to them as central tax officers may deem fit;*

3.1 Introduction

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

3.2 Analysis

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

Statutory Provision

4. Appointment of Officers

- (1) *The Board may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think fit to be the officers under this Act.*
- (2) *Without prejudice to the provisions of sub-section (1), the Board may, by order, authorise any officer referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.*

4.1 Introduction

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

4.2 Analysis

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

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

Statutory Provision

5. Powers of Officers

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

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

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

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

5.1 Introduction

Delgatus potest non delegare – the delegate must exercise the power conferred and not sub-delegate. While this is true on the principle of construction of statutes, the very law that creates the power also empowers creation of exception to this principle.

5.2 Analysis

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

Apart from the boundaries laid down, very interestingly power of sub-delegation is conferred on officers of Central Tax. Please note in the event of sub-delegation, the duty to provide superintendence is implicit. While sub-delegation appears to subvert the course of administrative power, in the wisdom of the lawmaker the liberty to sub-delegate can at least be

enabled in such a historical and hard-to-amend legislation. It would be interesting to see how this power would be exercised without causing too much dilution and subversion. All the administrative flexibility is provided or at least enabled have been wisely limited to executive officers and not to appellate authorities.

Statutory Provision

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

- (1) *Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.*
- (2) *Subject to the conditions specified in the notification issued under sub-section (1), —*
 - (a) *where any proper officer issues an order under this Act, he shall also issue an order under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as authorised by the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;*
 - (b) *where a proper officer under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.*
- (3) *Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act shall not lie before an officer appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act.*

6.1 Introduction

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

6.2 Analysis

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

In order to establish non-overlapping of administrative power, it is provided that an officer in respect of central tax is required to duly exercise his authority even in respect of State/UT Tax

where the executive action is in respect of the same taxing base. In so doing, the officer of central tax is required to intimate the officer of State/UT Tax in respect of all his actions. Further administrative power has been invoked by the officer of the State/UT Tax in any proceeding, such action will preclude the officer of central tax from exercising any administrative power in respect of transactions covered by the said proceedings.

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

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

Chapter-III

Levy and Collection of Tax

- 7. Scope of supply
- 8. Tax liability on composite and mixed supplies
- 9. Levy and collection
- 10. Composition levy

Statutory Provision

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| <p>7. Scope of supply</p> <p>(1) <i>For the purposes of this Act, the expression “supply” includes—</i></p> <p>(a) <i>all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;</i></p> <p>(b) <i>import of services for a consideration whether or not in the course or furtherance of business;</i></p> <p>(c) <i>the activities specified in Schedule I, made or agreed to be made without a consideration; and</i></p> <p>(d) <i>the activities to be treated as supply of goods or supply of services as referred to in Schedule II.</i></p> <p>(2) <i>Notwithstanding anything contained in sub-section (1), —</i></p> <p>(a) <i>activities or transactions specified in Schedule III; or</i></p> <p>(b) <i>such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,</i>
<i>shall be treated neither as a supply of goods nor a supply of services.</i></p> <p>(3) <i>Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—</i></p> <p>(a) <i>a supply of goods and not as a supply of services; or</i></p> <p>(b) <i>a supply of services and not as a supply of goods.</i></p> |
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8. Tax liability on composite and mixed supplies

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

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and*
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.*

9. Levy and Collection

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

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

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

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

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

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

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

9.1 Introduction

- (i) Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. The charging section is a must in any taxing statute for levy and collection of tax. Before imposing any tax, it must be shown that the transaction falls within the ambit of the taxable event and that the person on whom the tax is so imposed also gets covered within the scope and ambit of the charging Section by clear words used in the Section. No one can be taxed by implication.
- (ii) Section 9 is the charging provision of the CGST Act. It provides that all intra-State supplies would be liable to CGST. The levy is on supply of all goods or services or both except on the supply of alcoholic liquor for human consumption. Besides, supply of petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel are also included in GST. However, the tax will be levied on these goods only with effect from such date as may be notified by the Government after recommendation of the Council. It also provides for the value on which tax shall be paid, the maximum rate of tax that can be levied on such supplies, the manner of collection of tax by the Government and the person who will be liable to pay such tax.
- (iii) Under the GST law, the levy of tax is as follows:
 - (a) In the hands of the supplier - on the supply of goods and / or services (referred to as tax under forward charge mechanism);
 - (b) In the hands of the recipient – on receipt of goods and / or services (referred to as tax under reverse charge mechanism)
- (iv) In the normal course, the tax would be payable by the supplier of goods and / or services. However, in specific cases (as may be notified), the onus of payment of tax is shifted to the recipient of goods and / or services. To impose tax on reverse charge basis, the following conditions would be mandatory:
 - (a) Notification to be issued by the Central Government specifying the categories of supply of goods and / or services.
 - (b) Should be notified only on recommendation of the Council.
- (v) When the goods/ services are supplied by a supplier, who is un-registered person to a receiver, who is registered person, the liability to pay tax on such supplies will be on recipient under reverse charge basis. Thus, a registered person would be required to pay GST on all supplies received by it from un-registered persons.

Note: This is applicable to both, goods as well as, services.
- (vi) Additionally, where any supply of services is effected through e-commerce operator (commonly known as services provided by aggregator), the law provides that the Central / State Government may on recommendation of the Council specify (notify) that the e-commerce operator will be liable to discharge the tax on such supplies. It is important to note that, in such supplies, the e-commerce operator is neither the actual supplier of service/s nor does he actually receive the services. The actual supplier of services is a third party who provides such service to the customer through e-commerce operator. Instead of levying tax on such actual supplier, the law has imposed levy on e-

commerce operator. Therefore, this would be an exception to the imposition of tax as specified in para supra. It is important to note that this exception is carved out only in respect of supply of services through an e-commerce operator and will not be applicable / relevant to supply of any goods through an e-commerce operator.

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

9.2 Analysis

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

- (i) Supply should involve goods and / or services – viz., either as wholly goods or wholly services. Even where a supply involves both, goods and services, the law provides that such supplies would be classifiable either as, wholly goods or wholly services. Schedule II of the Act provides for this classification.
- (ii) Where a supply involves multiple (more than one) goods or services, or a combination of goods and services, the treatment of such supplies would be as follows:
 - (a) **If it involves more than one goods and / or services which are naturally bundled together:** These are referred to as composite supply of goods and / or services. It shall be deemed to be a supply of those goods or services, which constitutes the principal supply therein.

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

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

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

A supply of more than one goods and / or services as a bundle will be reckoned as 'mixed supply' if: (i) such goods and / or services are supplied together for a single price

(ii) they are not naturally bundled together and (iii) it does not qualify as composite supply.

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

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

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

Description	Composite Supply	Mixed Supply
Naturally bundled	Yes	No
Supplied together	Yes	Yes
Each supply available for supply individually	No	Yes
One is predominant supply for recipient	Yes	No
Other supply(ies) are ancillary or they are received because of predominant supply	Yes	No
Each supply priced separately	Yes / No	No
All supplies can be goods	Yes	Yes
All supplies can be services	Yes	Yes
Some supplies can be goods and others can be services	Yes	Yes

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

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

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

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

Rate and value of tax: The rate of tax will be as specified in the notification no. 1/2017- Central Tax (Rate) for goods and notification no. 11/2017- Central Tax (Rate) for services issued in this regard, subject to a maximum of 20%. The rates would be determined based on the recommendation of the Council and the rate of tax so notified will apply on the value of supplies as determined under Section 15. In order to determine the applicable tax, rate determination has to be made in the following manner:

- (a) Identify HSN of the product or service and applicable rate of Tax as per rate notification
- (b) Once classification is arrived at, look for as to whether such product falls into any specific exemption or not
- (c) One also need to look for special transactions like zero rated supplies (exports and Supply to SEZ)
- (d) If (b) and (c) are not available, tax at determined rate shall be arrived by multiplying value with such rate.

Classification of Goods or Services: In order to apply a particular rate of tax, a taxable person need to determine the classification of his supply as to whether supply constitute a supply of goods or services. Once the same is determined, further classification in terms of HSN in case of goods and SAC in terms of service is to be made by the assessee so as to arrive at the rate of tax at which he is required to pay tax. At the outset, it is important to note that HSN for goods are contained in Chapters from 1 to 98 and HSN for Services are contained in Chapter 99. Since Classification of Goods is older and is based on knowledge gathered from precedents on HSN classification, we shall discuss the steps for classification of goods. The steps for determination of proper classification is as under:

1. It is important to note that classification of each product supplied has to made separately if supply of such product is independent. This shall include all by products, scraps etc.
2. Identify the description and nature of the goods being supplied. One must confirm that the product is also similarly or more specifically covered in the Customs Tariff and HSN 2017. The Section, Notes and Chapter Notes to the Schedule to be read.
3. If there is ambiguity, first reference shall be made to the Rules for interpretation of the Customs Tariff.
 - (a) As per the Rules, first step to be applied is to find the trade understanding of the terms used in the Schedule, if the meaning or description of goods is not clear.
 - (b) If the trade understanding is not available, the next step is to refer to the technical or scientific meaning of the term. If the tariff headings have technical or

scientific meanings, then that has to be ascertained first before the test of trade understanding.

- (c) If none of the above are available reference may be had to the dictionary meaning or ISI specifications. Evidence may be gathered on end use or predominant use.
4. In case of the unfinished or incomplete goods, if the unfinished product bears the essential characteristics of the finished product, its classification shall be same as that of finished product.
 5. If the classification is not ascertained as per above point, one has to look for the nature of product which is more specific.
 6. If the classification is still not determinable, one has to look for the ingredient which gives the article its essential characteristics.

It is important to note that in following cases of supply of services, same rate of central tax as on supply of like goods involving transfer of title in goods would be applicable:

SI No.	Chapter, Section or Heading	Description of Service	Rate (per cent.) of Central Tax	Rate (per cent.) of Integrated Tax
15	Heading 9971 (Financial and related services)	(ii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	Same rate of central tax as on supply of like goods involving transfer of title in goods	Same rate of central tax as on supply of like goods involving transfer of title in goods
		(iii) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	Same rate of central tax as on supply of like goods involving transfer of title in goods	Same rate of central tax as on supply of like goods involving transfer of title in goods
17	Heading 9973 (Leasing or	(iii) Transfer of the right to use	Same rate of central tax as	Same rate of central tax as

	rental services, with or without operator)	any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	on supply of like goods involving transfer of title in goods	on supply of like goods involving transfer of title in goods
		(iv) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	Same rate of central tax as on supply of like goods involving transfer of title in goods	Same rate of central tax as on supply of like goods involving transfer of title in goods
		(vi) Leasing or rental services, with or without operator, other than (i), (ii), (iii), (iv) and (v) above.	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods	Same rate of central tax as applicable on supply of like goods involving transfer of title in goods

Supply:

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

- (i) Sale
- (ii) Transfer
- (iii) Barter
- (iv) Exchange
- (v) License
- (vi) Rental
- (vii) Lease
- (viii) Disposal

The word 'supply' is all-encompassing, subject to exceptions carved out in the relevant provisions. There are various ingredients that differentiate each of these eight forms of supply. A careful consideration of the purposeful usage of these eight adjectives to enlist them as 'forms' of supply, the legislature makes their intention clear by the choice of words that are deliberate and unambiguous. A tentative attempt at identifying the characteristics of each of these forms of supply is provided below for consideration:

Forms of Supply	Two Persons capable to Contract	Consideration in Money (Price)	Willing Buyer	Willing Seller	Delivery of Possession	Permanent alienation of Title	Consensus as to Identity of Object of Supply
Sale	✓	✓	✓	✓	✓	✓	✓
Transfer	✓	✓	✓	✗	✓	✓	✓
Barter	✓	✗	✓	✓	✓	✓	✓
Exchange	✓	✓/✗	✓	✓	✓	✓	✓
License	✓	✓	✓	✓	✗	✗	✓
Rental	✓	✓	✓	✓	✓	✗	✓
Lease	✓	✓	✓	✓	✓	✗	✓
Disposal	✓	✓	✗	✓	✓	✓	✗

Therefore, supply is not a boundless word of uncertain meaning. The inclusive part of the opening words in this clause may be understood to include everything that supply is generally understood to be PLUS the ones that are enlisted. It must be admitted that the general understanding of the word supply is but an amalgam of these 8 forms of supply. Any attempt at expanding this list of 8 forms of supply must be attempted with great caution. Attempting to find other forms of supply has not yielded results however, transactions that do not want to supply have been discovered. Transactions of assignment where one person steps into the shoes of another appears to slip away from the scope of supply as well as transactions where goods are destroyed without a transfer of any kind taking place.

Now looking at 'services', we find that the adjectives used to describe the 8 forms of supply in this clause are akin to transactions involving goods and not services. However, transactions involving services also require to be passed through the same criteria for determination of supply. In so doing, a slight adjustment in the way of looking at transactions involving services is necessary so as to substitute the object of supply from goods to services while administering the tests for determining the forms of supply involving services. In other words, the same 8 forms of supply must be applied in relation to services but with adjustment that is understood by the expression *mutatis mutandis*.

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

Supply should be by a person engaged in business: It is essential that such supplies

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

The word 'supply' should be understood as follows:

- It should involve delivery of goods and / or services to another person;
- The supply will be treated as wholly one supply – goods, or services, based on Schedule II and the provisions pertaining to composite supply and mixed supply;
- It should involve quid-pro-quo – viz., there should be something in return which the person supplying will obtain from the recipient (except in cases of matters specified in Schedule I where it is deemed to be a supply, even if it is made without consideration). It is not important that what is received in return is 'money'; it can be money's worth;
- Transfer of property in goods from the supplier to recipient is not necessary;

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

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

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

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

case of supplies attracting tax on reverse charge basis.

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

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

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

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

E.g.: Goods sent on job work or goods sent for testing or goods sent for certification would not qualify as 'supply' since the transfer is not permanent and there is no consideration flowing from the job-worker back to the principal for having given the inputs/capital goods.

Typically, donation of business assets or scrapping or disposal in any other manner (other than as a sale – i.e., for a consideration) would qualify as 'supply' under this clause, where input tax credit has been claimed on the same. In fact, donation requires emotional feel for the cause. And a legal entity would lack this capacity to feel for the cause. When a legal entity is found to make voluntary contributions of business assets (other than money), it is the directors who draw the assets out of the business – this is supply under entry 2 of schedule I – and then they distribute it to the charitable cause. Please note that donations are allowed as a deduction under Chapter VI-A of Income-tax Act and not as expense while computing income from business/profession.

- (ii) Supply of goods and / or services between related person, or between distinct persons as specified in Section 25(4) or 25(5), when made in the course or furtherance of business: Any supply of goods and / or services in the course of business or furtherance of business by a taxable person to a related person (as defined by way of explanation below Section 15(5)), or by one taxable person to another taxable person (as provided in Section 25 of the Act), when made without consideration, would qualify as 'supply'.

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

- (iii) Supply of goods by a principal to his agent, where the agent undertakes to supply such goods on behalf of the principal: E.g. A company is in the suburbs and

employs an agent in the city to undertake sales on behalf of the company. Goods transferred by the company to the premises of the agent in the city would qualify as a 'supply'.

- (iv) Supply of goods by an agent to his principal, where the agent undertakes to receive such goods on behalf of the principal: E.g. A company is in the suburbs and employs an agent in the small town nearby to undertake purchases on behalf of the company. Goods procured and transferred by the agent to the company would qualify as a 'supply'.
- (v) Import of services by a taxable person from a related person, or from any of his other establishments outside India, in the course or furtherance of business: Importation of services as covered by the definition does not include importation without consideration. Therefore, this clause is inserted to rope in such services that are received from related persons / their establishments outside India. E.g.: ABC Inc. is incorporated in the US by A Ltd in India, for its operations in the US. A Ltd. together with B Ltd. in India, holds C Ltd. Where services are imported by B Ltd from ABC Inc. in the US without consideration, the import will be deemed to be a supply for Schedule I.

'Consideration' is the central concept here requires to go back and the notes provided after the definition in section 2(31). Further, it is important to understand that consideration is not the money that is paid by the buyer to the seller. In fact, both parties to a contract must to receive consideration to make it a valid contract. In the case of a sale, the seller receives consideration in the form of money paid by the buyer and the buyer receives his consideration in the form of the goods that he receives from the seller. This principle can be applied in all forms of contracts and not necessarily only in relation to a sale contract. On carefully considering the essential ingredients of a valid contract, it cannot be disputed that a contract without consideration is not a contract at all. The reference made to 'transactions without consideration' In Schedule I does not imply that avoided contract is being made valid by GST law. Transactions listed Schedule I are not contracts at all. And even though they are not contracts, by legal fiction, flowing from section 7(1)(c) read with Schedule I, they will be regarded as 'supply' and made taxable. As can be seen from the above, in all other clauses of section 7(1), supply exists within a valid contract but in select circumstances supply is imputed by legal fiction in the absence of a contract. It is therefore important not to extrapolate this legal fiction beyond the specific cases to which the law imputes this fiction.

- (e) **Certain supplies will be neither a supply of goods, nor a supply of services:** The law lists down matters which shall not be considered as 'supply' for GST. This list includes:
 - (a) Activities/ transactions in Schedule III:
 - (i) Services by an employee to an employer in the course or in relation to his employment;

- (ii) Services by any Court or Tribunal established under any law for the time being in force;
 - (iii) Functions performed by MPs, MLAs, etc.; the duties performed by a person who holds any post in pursuance of the provisions of the Constitution in that capacity; the duties performed by specified persons in a body established by the Central State Government or local authority, not deemed as an employee;
 - (iv) Sale of land and Sale of Building (except sale of under-construction premises where the part or full consideration is received before issuance of completion certificate or before its first occupation, whichever is earlier.);
 - (v) Actionable claims, other than lottery, betting and gambling and
 - (vi) Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
- (b) An employer and employee are treated as “related persons” and hence any supply of goods or services by employer to employee without consideration would be considered as supply as per schedule I. However, gifts not exceeding ₹ 50,000 in value in a financial year by an employer to employee shall not be treated as supply of goods or services or both.
- (f) **To be notified:** The Government may notify such activities or other transactions which shall neither be treated as supply of goods nor supply of services. Such notification would be made on recommendation of GST council. The government has notified the following us/ 7(2):
- Services by way of any activity in relation to a function entrusted to Panchayat under Article 243G of the Constitution (*Inserted vide Notification No. 14/2017- Central Tax (Rate) dated 28.06.2017*)
- Further, the inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in Section 25(4) of the Central Goods and Service Tax, 2017, including trains, buses, trucks, tankers, trailers, vessels, containers & aircrafts, carrying goods or passengers or both, or for repairs and maintenance (except in cases where such movement is for further supply of the same conveyance) (*Clarified vide Circular No. 1/1/2017-IGST dated 07.07.2017*).
- (g) The government may on recommendation of GST Council specify any transaction which is:
- i) A supply of goods and not a supply of service
 - ii) A supply of service and not a supply of goods

In summary, supply can be understood as follows:

Section	Specified 'forms' of supply	Furtherance of Business	Presence of Consideration	Supply	
				'made'	'agreed to be made'
7(1)(a)	✓	✓	✓	✓	✓
7(1)(b)	✓	✓/x	✓	✓	x
7(1)(c)	✓	✓	x	✓	✓
7(1)(d)	✓	If required by each entry in Sch II		✓	✓

(h) There is another provision in GST law that regards certain transactions to be 'deemed to be supply' which is not found in section 7 and needs to be mentioned here for benefit of readers. The law expressly uses the phrase 'deemed supply' in section 19(3) and 19(6) in respect of inputs/capital goods sent to a job worker but are not returned back within the time period of 1 year/ 3 years permitted for their return. This provision makes it very clear that sending goods to a job worker by adhering to the propositions of section 19 read with section 143 are not 'supply' within the meaning of section 7 but are 'deemed to be supply' by the fiction provided in section 19. Please refer to the chapter on job work for a more elaborate discussion on this form of deemed supply.

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

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

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

When supplies are notified for payment of tax on reverse charge basis, the liability continues to remain on the recipient to pay the tax even if, due to inadvertence or enthusiasm, the supplier goes ahead and deposits such tax. And a failure on the part of the recipient to pay such tax does not provide recourse to the Government to approach the supplier for recovery of such tax dues.

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

Exemption has also been granted from payment of GST on reverse charge basis in respect of intra state supplies of goods and/ or services received by a registered person from any unregistered supplier to the extent of aggregate value of ₹ 5000/- per day from all or any of such suppliers. (Inserted vide *Notification No. 8/2017-Central Tax (Rate) dated 28.06.2017*). Further, this exemption has been extended to all intrastate and interstate supplies received from unregistered suppliers by registered taxable persons till March 31, 2018. **(Inserted vide Notification No.38/2017-Central Tax (Rate) dated 13.10.2017 and 32/2017-Integrated Tax (Rate) dated 13.10.2017)**. It is important to note that the above exemptions apply only under section 9(4) of CGST Act and section 5(4) of the IGST Act. Liability to pay tax on reverse charge basis under section 9(3) of CGST Act and 5(3) of IGST Act continues to apply undisturbed by this temporary suspension allowed.

Central Government on the recommendation of the GST Council has notified goods in respect of whose intra state supplies, central tax shall be paid by the recipient of such goods under reverse charge. These goods are cashew nuts, Bidi Wrapper leaves & tobacco leaves supplied by the agriculturist, silk yarn supplied by manufacturer of silk yarn from raw silk or silk worm cocoons for supply of silk yarn and supply of lottery by State Government, Union Territory or any local authority to lottery distributor or selling agent. **(Notification No. 04/2017- Central Tax (Rate) dated 28.06.2017)**

Central Government on the recommendation of the Council has notified the category of supply of services on which GST shall be paid by the recipient on reverse charge basis **(Notification No. 13/2017- Central Tax (Rate) dated 28.06.2017)**

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1	Supply of Services by a goods transport agency (GTA) who has not paid central tax @ 6% in respect of transportation of goods by road to- (a) any factory registered under or governed by the Factories Act, 1948(63 of 1948);or (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or	Goods Transport Agency (GTA)	(a) Any factory registered under or governed by the Factories Act, 1948(63 of 1948); or (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or (c) any co-operative society established by or under any law; or (d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the

	<p>(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) anybody corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person.</p>		<p>State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or</p> <p>(e) anybody corporate established, by or under any law; or</p> <p>(f) any partnership firm whether registered or not under any law including association of persons; or</p> <p>(g) any casual taxable person; located in the taxable territory.</p>
2	Services supplied by an individual advocate Including A senior advocate by way of representational services before any court, tribunal or authority, directly or indirectly, to any business entity located in the taxable territory, including where contract for provision of such service has been entered through another advocate or a firm of advocates, or by a firm of advocates, by way of legal services, to a business entity.	An individual Advocate including a Senior advocate or firm of advocates.	Any business entity located in the taxable territory.
3	Services supplied by An arbitral tribunal to a business entity.	An arbitral tribunal.	Any business entity located in the taxable territory.
4	Services provided by way of sponsorship to anybody corporate or partnership firm.	Any person	Any body corporate or partnership firm located in the taxable territory.
5	Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding, - (1) renting of immovable	Central Government State Government Union	Any business entity located in the taxable territory.

	property, and (2) services specified below- (i) services by the Department of posts by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport; (iii) transport of goods or passengers.	territory or local authority	
6	Services supplied by a director of a company or a body corporate to the said company or the body corporate.	A director of a company or a body corporate	The company or a body corporate located in the taxable territory.
7	Services supplied by an insurance agent to any person carrying on insurance business.	An Insurance agent	Any person carrying on insurance business, located in the taxable territory.
8	Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non-banking financial company, located in the taxable territory.
9	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary, dramatic, musical or	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory.

	artistic works to a publisher, Music company, producer or the like.		
10	Supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India.

In addition to the above list given under Central Tax- Rate, following additional category of supply of services is listed under Notification No. 10/2017- Integrated Tax (Rate) on which GST shall be paid by the recipient on reverse charge basis:-

Sl. No.	Category of Supply of Services	Supplier of service	Recipient of Service
(1)	(2)	(3)	(4)
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.
2	Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India	A person located in non-taxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.

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

- (i) In so far as e-commerce operators are concerned, care must be exercised to determine the nature of business of such operators. Essentially, there are four models of e-commerce business:
 - (a) Market-place – the question of supply by the e-commerce operator does not arise. For this reason, they are liable for TCS under section 52.
 - (b) Fulfilment centre – here States have been contesting that this model is one involving ‘buy-sell’ and accordingly liable to GST. The test here is to establish the

fact that the supply is by supplier directly to the end customer and not 'through' the e-commerce operator.

- (c) Hybrid (of above 2) – all though not widely prevalent, this is a case where both buy-sell as well as market-place models are employed. It is important for such business to clearly demarcate the two lines-of-business or choose to merge into either of the two so that the respective incidence of tax follows.
 - (d) Agency – this is employed by few business involving supply of industrial inputs. The *modus operandi* is that the principal logs-in to the portal and routes the supplies to the end customer. The agreements are so framed that the e-commerce operator becomes responsible for the delivery and collection of payment. This renders the e-commerce Operator to constitute an agency involving handling of the inventory themselves. Such arrangements may be reviewed to ensure the inference of agency. And where such transactions inter se come within the operation of entry 3 of Schedule I of the CGST Act states that transactions between Principal and Agent are treated be a supply and liable to tax. This consequence may be borne in mind even by e-commerce businesses.
- (ii) In this regard it may be noted that liability to pay tax on the supply by the e-commerce operator is not another provision imposing tax on the reverse charge basis. Reference to the definition of reverse charge in section 2(98) makes it clear that reverse charge is limited to tax payable under section 9(3) and 9(4) only. It is very important to note the language of this subsection. In this case, liability to pay tax on the supply is placed on the of the e-commerce operator, subject to the transaction attracting this provision, "as if" the e-commerce operator were the "supplier liable to tax". Unlike the language in respect of reverse charge, the marked departure of the language in this subsection makes the following facts very clear:
- (a) the actual supplier is no longer liable to pay any tax. As such, the supplier is not even required to register even though he may exceed the threshold limit. Support can be found for this understanding in the exclusion of supply under section 9(5) from the reckoning for compulsory registration under section 24(ix)
 - (b) the tax that is applicable on the supply is to be paid by the e-commerce operator "as if" such e-commerce operator was the supplier liable to tax. By this section, then the e-commerce operator is made to step into the shoes of the actual supplier, the supply by the e-commerce operator to the actual supplier (facilitation services, commission services or by any service *inter se*) will be made to step out of his own shows in respect of this service and exonerated from payment of tax on this service between the e-commerce operator and the actual supplier
 - (c) If the conditions necessary to architect the provisions of this subsection are not fulfilled then the actual supplier will continue to be liable to pay tax and the e-commerce operator liable for TCS under section 52.

Central Government vide **Notification No. 17/2017-Central Tax (Rate) dated 28.06.2017** has notified following category of services, tax on intra state supplies of which shall be paid by e-commerce operator:-

- (i) Services by way of transportation of passengers by radio taxi, motor cab, maxi cab & motor cycle;
- (ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where person supplying such service is liable to be registered under Section 22(1) of the CGST Act.

9.3 Comparative review

Under the erstwhile tax laws, Central Excise is levied on 'manufacture of goods', VAT / CST is levied on 'sale of goods' and service tax is charged on 'service provided or agreed to be provided'. Unlike such different incidences, under the GST law, it is 'supply' which would be the taxable event. Under the erstwhile law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST on production of necessary forms – however, under the GST law, it would be taxable as a 'supply' if such supplies are between distinct persons under section 25(4) or 25(5). Further, free supplies were liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit; under the GST law, the treatment would be similar to the erstwhile VAT laws, where the supplies are made without any consideration (monetary/ otherwise). However, where the free supplies are made between distinct persons or between related persons then such supplies may be regarded as supply under schedule I, para 2.

In the erstwhile law, there are multiple transactions which apparently qualify as both 'sale of goods' as well as 'provision of services'. E.g.: license of software, providing a right to use a brand name, etc. To avoid this situation, GST law clarifies as to whether a transaction would qualify as a 'supply of goods' or as 'supply of services' by introducing a deeming fiction. A transaction of supply under composite contracts would either qualify as supply of goods or as services, under the GST law (Schedule II of the Act, concept of composite supply and mixed supply).

The payment of VAT in the hands of the purchaser (registered dealer) on purchase of goods from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism in respect of say, advocate services, import of services, sponsorship services etc. are comparable to the 'reverse charge mechanism' prescribed herein. However, the concept of partial reverse charge is not continuing in the GST regime, viz., every supply will be liable either to forward charge or full reverse charge. Further, under erstwhile law, the concept of reverse charge only exists in relation to services. The GST law, however, permits the supply of goods also to be subjected to reverse charge.

9.4 Related provisions

Section	Description
Section 7 read with Schedule I, II and III	Definition of supply
Section 2(17)	Definition of business
Section 2(107) read with 25 (4) & (5)	Meaning of taxable person and distinct persons
Section 2(31)	Meaning of consideration
Section 2(30) read with Section 2(90)	Meaning of composite supply to be read with Principal supply
Section 2(74)	Meaning of mixed supply
Section 49	Payment of tax
Section 8 of IGST Act	Meaning of Intra-State supplies
Section 5 of IGST Act	Levy and collection of IGST

9.5 FAQ

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

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

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

Ans. The receiver of goods who will be registered under this Act would be liable to pay tax under reverse charge. However, the provisions have been deferred till 31st March, 2018.

Q3. In respect of exchange of goods, namely gold watch for restaurant services, will the transaction be taxable as two different supplies or will it taxable only in the hands of the main supplier?

Ans. Yes, the transaction of exchange is specifically included in the scope of “supply” under Section 7. Thus, exchange could be taxable both ways. Provided the person exchanging gold watch is in the business of selling watches (A different view can also be possible. It depends on the facts of the case).

Q4. Whether money is included in service?

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

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

Ans. “Disposals” could include donation in kinds or supplies in a manner other than sale.

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

Ans. Yes, it would be liable to tax on value as may be determined under Section 15, for said sale of donated assets.

9.6 MCQ

Q1. As per Section 9, which of the following would attract levy of CGST?

(a) Inter-State supplies

- (b) Intra-State supplies
- (c) Any of the above
- (d) None of the above

Ans. (b) Intra-state supplies

Q2. Which of the following forms of supply are included in Schedule I?

- (a) Permanent transfer of business assets on which input tax credit has been claimed
- (b) Agency transactions
- (c) Barter
- (d) None of the above

Ans. (a) Permanent transfer of business assets on which input tax credit has been claimed

Q3. Who can notify a transaction to be supply of 'goods' or 'services'?

- (a) Board
- (b) Central Government on the recommendation of GST Council
- (c) GST Council
- (d) None of the above

Ans. (b) Central Government on the recommendation of GST Council

Statutory Provision

10. Composition levy

(1) *Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding, —*

- (a) *one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,*
- (b) *two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and*
- (c) *half per cent. of the turnover in State or turnover in Union territory in case of other suppliers:*

subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.

- (2) *The registered person shall be eligible to opt under sub-section (1), if: —*
- (a) *he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;*
 - (b) *he is not engaged in making any supply of goods which are not leviable to tax under this Act;*
 - (c) *he is not engaged in making any inter-State outward supplies of goods;*
 - (d) *he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and*
 - (e) *he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:*
- Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.*
- (3) *The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).*
- (4) *A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.*
- (5) *If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.*

Relevant Rules relating to Composition levy as provided in CGST Rules, 2017

Rule 3 - Intimation for composition levy

- (1) *Any person who has been granted registration on a provisional basis under clause (b) of sub-rule (1) of rule 24 and who opts to pay tax under section 10, shall electronically file an intimation in **FORM GST CMP-01**, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, prior to the appointed day, but not later than thirty days after the said day, or such further period as may be extended by the Commissioner in this behalf.*
- Provided that where the intimation in **FORM GST CMP-01** is filed after the appointed day, the registered person shall not collect any tax from 1st July 2017 but shall issue bill of supply for supplies made after the said day.*

- (2) Any person who applies for registration under sub rule (1) of rule 8 may give an option to pay tax under Section 10 in Part B of **FORM REG-01** which shall be considered as an intimation to pay tax under the said section.
- (3) Any registered person who opts to pay tax under section 10 electronically file an intimation in **FORM GST CMP-02** duly signed or verified through electronic verification code, on the common portals, either directly or through a Facilitation Centre notified by the Commissioner, prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised and shall furnish the statement in **FORM GST ITC-03** in accordance with the provisions of sub-rule (4) of rule 44 within a period of sixty days from the commencement of the relevant financial year.
- (3A) Notwithstanding anything contained in sub-rules (1), (2) and (3), a person who has been granted registration on a provisional basis under rule 24 or who has been granted certificate of registration under sub-rule (1) of rule 10 may opt to pay tax under section 10 with effect from the first day of the month immediately succeeding the month in which he files an intimation in FORM GST CMP-02, on the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the 31st day of March, 2018, and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 within a period of ninety days from the day on which such person commences to pay tax under section 10:
- Provided that the said persons shall not be allowed to furnish the declaration in FORM GST TRAN-1 after the statement in FORM GST ITC-03 has been furnished.
- (4) Any person who files an intimation under sub rule (1) to pay tax under section 10 shall furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax under the said section, electronically, in **FORM GST CMP-03**, on the common portal, either directly or through a Facilitation Centre notified by the commissioner, within a period of ninety days from the date on which the option for composition levy is exercised or within such further period as may be extended by the commissioner in this behalf.
- (5) Any intimation under sub rule (1) or sub rule (3) or sub-rule (3A) in respect of any place of business in any state or Union territory shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

Rule 4- Effective date for Composition levy:

- (1) The option to pay tax under section 10 shall be effective from the beginning of the Financial year, where the intimation is filed under sub rule (3) of rule 3 and the appointed day where the intimation is filed under sub rule (1) of the said rule.
- (2) The intimation under sub rule (2) of rule 3, shall be considered only after the grant of registration to the applicant and his option to pay tax under section 10 shall be effective from the date fixed under sub-rule (2) or (3) of rule 10.

Rule 5- Conditions and restrictions for composition levy:

- (1) *The person exercising the option to pay tax under section 10 shall comply with the following conditions, namely*
- (a) *He is neither a casual taxable person nor a non-resident taxable person;*
 - (b) *The goods held in stock by him on 1st July 2017 have not been purchased in the courses of inter-state trade or commerce or imported from a place outside India or received from his branch situated the State or from his agent or principal outside the State, where the option is exercised under sub-rule (1) of rule 3;*
 - (c) *The goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under sub-section (4) of section 9;*
 - (d) *He shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both;*
 - (e) *He was not engaged in the manufacture of goods as notified under clause (E) of sub-section (2) of section 10, during the preceding financial year;*
 - (f) *He shall mention the words ‘Composition taxable person, not eligible to collect tax on supplies’ at the top of the bill of supply issued by him; and*
 - (g) *He shall mention the words “Composition taxable person” on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.*
- (2) *The registered person paying tax under section 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the Act and these rules.*

Rule 6- Validity of Composition levy:

- (1) *The option exercised by a registered person to pay tax under section 10 shall remain valid so long as he satisfies all the conditions mentioned in the said section and under these rules.*
- (2) *The person referred to in sub-rule (1) shall be liable to pay tax under sub-section (1) of section 9 from the day he ceases to satisfy any of the conditions mentioned in section 10 or the provisions of this chapter and shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in FORM **GST CMP-04** within seven days of the occurrence of the event.*
- (3) *The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in FORM **GTS CMP-04**, duly signed or verified through electronic verification code, electronically on the common portal.*
- (4) *Where the proper officer has reasons to believe that the registered person was not*

eligible to pay tax under section 10 or has contravened the provisions of the Act or provisions of this chapter, he may issue a notice to such person in **FORM GST CMP-05** to show cause within fifteen days of the receipt of such notice as to why the option to pay tax under section 10 shall not be denied.

- (5) Upon receipt of the reply to the show cause notice issued under sub-rule (4) from the registered person in **FORM GST CMP-06**, the proper office shall issue an order in **FORM GST CMP-07** within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.
- (6) Every person who has furnished an intimation under sub-rule (2) or filed an application for withdrawal under sub rule (3) or a person in respect of whom an order of withdrawal of option has been passed in **FORM GST CMP-07** under sub-rule (5), may electronically furnish at the common portal, either directly or through a Facilitation Centre notified by the Commissioner, a statement in **FORM GST ITC-01** containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, within a period of thirty days from the date from which the option is withdrawn or from the date of the order passed in **FORM GST CMP-07**, as the case may be
- (7) Any intimation or application for withdrawal under sub-rule (2) or (3) or denial of the option to pay tax under section 10 in accordance with sub-rule (5) in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.

Rule 7: Rate of tax of the composition levy

The category of registered persons, eligible for composition levy under section 10 and the provision of this Chapter, specified in column (2) of the Table below shall pay tax under section 10 at the rate specified in column (3) of the said Table:

Sl. No.	Category of registered persons	Rate of tax
1	Manufacturers, other than manufacturers of such goods as may be notified by the Government	half per cent.
2	Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II	two and a half per cent.
3	Any other supplier eligible for composition levy under section 10 and the provisions of this Chapter	half per cent. of the turnover of taxable supplies of goods

10.1 Introduction

This provision deals with the composition scheme for payment of tax by eligible taxable persons, subject to certain conditions. The conditions, restrictions, procedures and the documentation are contained in the Chapter II of the Central Goods and Service Tax Rules, 2017 from Rule 3 to Rule 7 (Composition Rules).

10.2 Analysis

Composition scheme is an option:

Tax payment under this scheme is an option available to the taxable person. This scheme would be available only to certain eligible taxable persons (conditions / criteria discussed). The taxable person should make an application exercising his option to pay tax under this scheme. There are three possibilities in which such option can be exercised:

- (a) Taxable Person migrating from old registration to GST registration: As per rule 3(1) of the CGST Rules, in cases involving migration, there is need to exercise Option of composition in Form GST CMP 01 prior to appointed date or within 30 days after the appointed date. In this case, the option to pay tax under composition scheme shall be effective from the appointed date. This date has further been extended to 16th August 2017. Such person would be required to file stock statement under rule 3(4) in Form GST-CMP03 within a period of 90 days (extended from 60 days to 90 days by Notification No.22/2017 – Central Tax w.e.f.17-08-2017) from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf.
- (b) Taxable Person obtaining new registration under GST laws: Such option can be exercised at the time of obtaining registration under section 22 in Part B of Form GST-REG-1. In this case, the option to pay tax under composition scheme shall be effective from the effective date of registration. [Refer rule 3(2) of CGST Rules]
- (c) Taxable Person paying tax under normal levy in one financial year and wants to opt for composition scheme in next financial year, under the GST regime – Such option can be exercised by filing intimation in Form GST CMP 02 prior to commencement of the year for which the option to pay tax under composition scheme is exercised. In this case, the option to pay tax under composition scheme shall be effective from the beginning of the financial year. In such case, provisions of section 18(4) shall become applicable and person shall be required to file statement containing details of stock and inward supply of goods received from un-registered persons, held in stock, on the date immediately preceding the date from which he opts for composition levy, in Form GST ITC 03 within 60 days from the commencement of the relevant financial year. [Refer rule 3(3) of CGST Rules].

Once granted, the eligibility would be valid unless the permission is cancelled or is withdrawn or the person becomes ineligible for the scheme.

- (d) A new sub-rule (3A) was inserted by Notification No.34/2017 – Central Tax

dtd.15.09.2017 which had an overriding effect on provisions of sub-rule (1), (2) and (3). As per the said rule, it was provided that, in all cases involving (a), (b) and (c) above, the option of composition scheme can be obtained only from 01-10-2017 by filing application in Form CMP-02 and furnishing stock statements in Form ITC-03, within 90 days from 01-10-2017. Since, this was not the intended interpretation of the said amendment, sub-rule 3A was once again amended by Notification No.45/2017 – Central Tax dtd.13.10.2017. By making the said amendment, the government clarified that, sub-rule 3A was intended to cover those cases, where either at the time of migration or by taking registration under GST if any person who has availed normal scheme wishes to opt for composition scheme, then such person may opt for composition scheme u/s 10 with effect from the first day of the month immediately succeeding the month in which he files an intimation in Form CMP-02 on or before 31st March 2018. In this case, such person would be required to furnish stock statements in ITC-03 within 90 days from the day on which such person commences to pay tax under section 10.

It may be noted that, the purpose of rule (3A) is only to enable the persons to opt for composition scheme in the first year of GST implementation, without making them to wait up to the next financial year. This is on account of the fact that, the threshold limit for the purposes of Composition scheme u/s 10 was enhanced twice i.e. once on 27-06-2017 and then again on 13-10-2017. Hence, sub-rule (3A) would only cover cases, where the application is made prior to 31-03-2018. For all applications made after 31-03-2018, the matter would be governed by rule 3(3) above.

Scheme will be applicable for all goods:

Composition scheme may be opted for by taxable persons, in respect of supply of any goods (without any reference to classification or type of goods). The option of the scheme will be qua-taxable person and not qua-class of goods – once opted it will be applicable for all supplies by the taxable person; it must be noted that a taxable person **cannot** opt for payment of taxes under composition scheme, say for supply of one class of goods and opt for regular scheme of payment of taxes for supply of other classes of goods or services.

Suppliers who are engaged in making any supply of goods which are not leviable to tax under CGST/SGST (UTGST) Act are not entitled to avail composition scheme. Hence, suppliers supplying alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel, or making inter-state outward supply of goods on which tax is levied under IGST Act are apparently not eligible for composition scheme. Besides, supplier engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52 is also not eligible for this scheme. The scheme is also not applicable to the manufacturers of notified goods (i.e. goods which are notified by the Government on recommendations of the Council).

As per *Notification No. 08/2017 - Central Tax dated 27.06.2017*, registered person who are engaged in manufacture of ice cream and other edible ice, whether or not containing cocoa (Chapter heading 21050000), pan masala (Chapter heading 21069020), all goods of Chapter

24 i.e. Tobacco and manufactured tobacco substitutes are not eligible to opt for Composition Scheme.

Composition scheme is not available for services:

Suppliers of services are excluded from opting to pay tax under composition scheme, except composite supply, by way of or as a part of any service, in any other manner whatsoever of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption) which is deemed to be a service under Schedule II, Para 6 (b) (i.e. food/restaurant services).

One School of thought is that if any interest income (particularly in a proprietorship firm) will be deemed to be a supply against service under GST and therefore, any registered person receiving interest income in course of furtherance of business shall be deemed to be supplying services. Thus, such registered person shall not be eligible for opting composition scheme. It is recommended that proper caution should be taken in the business entities and interest on FDRs or interest income from banks should not be there if one wants to avail composition scheme.

Rate of tax:

The rate of tax would be as under:

- (a) 1% (CGST+SGST) of the turnover in the State/UT in case of manufacturers.
- (b) 5% (CGST+SGST) of the turnover in the State/UT in case of food/restaurant services.
- (c) 1% of the turnover in the State/UT in case of other suppliers (like traders / agents)

The above rates have been amended vide Notification No. 1/2018- Central Tax dated 1st January, 2018

Eligibility to pay tax under composition scheme:

Only taxable persons whose 'aggregate turnover' (aggregate of turnover in all States) does not exceed ₹ 75 lacs or ₹ 1 crore, as the case may be in the preceding financial year will be eligible to opt for payment of tax under the composition scheme.

Since the composition scheme is applicable only in respect of persons making intra-state supply, in terms of Section 2(6) of the CGST Act, 2017 'aggregate turnover in a State' means 'Value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-state supplies of all persons having the same PAN, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess. The permission granted for paying tax under this scheme would stand withdrawn from the day on which this threshold limit is exceeded.

The Government, by notification and with recommendation of Council, is empowered to increase this threshold limit up to ₹1 crore.

Notification No. 08/2017 - Central Tax dated 27.06.2017 has been issued so as to increase the threshold limit for opting composition scheme from ₹ 50 lacs to ₹ 75 lacs except when the eligible registered person is in the following States (Specified States): -

- | | | |
|---|---|---|
| <ul style="list-style-type: none"> a) Arunachal Pradesh, b) Assam, c) Manipur, d) Meghalaya, e) Mizoram, f) Nagaland, g) Sikkim, h) Tripura, i) Himachal Pradesh | } | <p><i>Threshold limit of Rs. 75 lakhs
would be applicable for these
states under Composition</i></p> |
|---|---|---|

Further, the threshold has been increased to 75 lacs notified vide Notification No. 46/2017-Central Tax dated 13th October, 2017 for Specified States and 1 crore in case of others and this threshold of 1 crore & 75 lacs would be applicable to a person having the same PAN and should be understood as follows:

- All taxable persons covered by the same PAN shall be under composition across India. Any intimation of option to avail composition scheme in respect of any place of business in any State or UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN;
- Goods supplied by the person which are chargeable to tax on reverse charge basis will not be includable in computing the aggregate turnover; such inward supplies will be liable to tax in the hands of the composition dealer, as it will be liable to tax when received by non-composition taxable persons.
- Will include value of supply of goods in all forms (supply of goods simplicitor and mixed and composite supplies which are taxed as supply of goods);
- Will include value of supplies of all business verticals of the same taxable person.

By Notification No.46/2017-Central Tax dtd.13.10.2017, the said limit has been enhanced from **75 lakhs to 1 crore** in case of other States and from **50 Lakhs to 75 Lakhs** in case of Specified States

Removal of Difficulty Order

- It may be noted that vide CGST (Removal of Difficulties Order), 2017 Order No.1/2017 – dtd.13.10.2017 Central Tax the following two clarifications have been issued.
 - (i) if a person supplies goods and/or services referred to in clause (b) of paragraph 6 of Schedule II of the said Act 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 under section 10 subject to the fulfilment of all other conditions specified therein.

- (ii) 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.

State	Old limit	Increased limit	Notification
Other states	75 lakhs	1 crore	46/2017 Central Tax dated. 13.10.2017
Specified states	50 lakhs	75 lakhs	46/2017 Central Tax dated. 13.10.2017

Conditions for opting to pay tax under composition scheme:

- (i) **Restricted from making supply of goods which are not liable to GST:** Certain goods are not liable to GST, e.g. petroleum, alcohol for human consumption, etc. - a person opting for composition scheme shall not be entitled to make any supply of non-GST goods. A plain reading of the proviso to Section 9(1) would imply that the restriction on supplies would be applicable only to sales / dispatches (outwards supplies).
- (ii) **Restricted from effecting inter-State outward supplies:** The taxable person should not affect any inter-State outward supplies. This means that even stock transfers to branches outside the State would not be permitted. However, in so far as it relates to inter-State inward procurements / receipts, there is no restriction.
- To explain further, where a taxable person effects inter-State barter transaction (supply) or inter-State warranty contract (supply), he will not be eligible to opt for composition scheme.
- (iii) **Restricted from making supplies through an e-commerce operator:** A person opting for composition scheme is not allowed to affect any supply of goods through an e-commerce portal, unless such portal is owned by the same person.
- (iv) **Restriction on manufacture of notified goods:** The person opting for the scheme should not be a manufacturer of certain goods as are notified in this regard as follows. However, there is no restriction in case the person is engaged in trading of such goods.
- Ice cream and other edible ice, whether containing cocoa
 - Pan masala
 - All goods, i.e. Tobacco and manufactured tobacco substitutes
- Similar provision has also been issued under UTGST vide Notification No. 2/2017-Union Territory Tax dated 27-06-2017.
- (v) **Would be applicable for all transactions under the same PAN:** Composition scheme would become applicable for all the business verticals having separate registrations

within the State and all other registrations outside the State which are held by the person with same PAN.

To clarify further, if a taxable person has multiple business verticals and if he has opted for separate registrations for each such vertical, composition scheme would become applicable for all the business verticals and it cannot be applied for select verticals only.

e.g.: If a taxable person has the following businesses separately registered:

- Sale of footwear (Registered in Karnataka)
- Sale of mobiles (Registered in Karnataka)
- Franchisee of McDonalds (Registered in Kerala)

In the above scenario, the composition scheme would be applicable for all the 3 units. Taxable person will not be eligible to opt for composition scheme say for sale of footwear and sale of mobiles and opt to pay taxes under the regular scheme for franchisee of McDonalds.

- (vi) **Shall not collect tax:** Taxable person opting to pay tax under the composition scheme is prohibited from collecting tax on the outward supplies.
- (vii) **Not entitled to input tax credit:** Taxable person opting to pay tax under the composition scheme will not be eligible to claim any input tax credits.

However, if the taxable person becomes ineligible to remain under composition scheme, the taxable person will become entitled to take input tax in respect of inputs held in stock (as inputs, contained in semi-finished or finished goods) on the day immediately preceding the date from which he becomes liable to pay tax under Section 9. (Refer Section 18(1)(c) for the provision. A statement of stock shall be filed in Form GST ITC-1 within 30 days from the date from which the option is withdrawn or the order cancelling the composition option is passed).

- (viii) **Additional conditions under the Rules:** The following additional conditions are prescribed in the CGST Rules related to composition, in order to be eligible for the composition scheme
 - Not applicable to persons who are casual taxable persons or non-resident taxable persons.
 - In case of migration of old registration into registration under GST, option to avail composition scheme under GST can be exercised only if the goods held in stock by such taxable person, on the appointed day have not been purchased in the course of inter-state trade or commerce or imported from a place outside India or received from his branch situated outside the State, or from his agent or principal outside the State.

Composition scheme not applicable for tax payable under RCM: It is important to note that for any tax payable under reverse charge mechanism, the option of payment under this scheme will not be available. In other words, a taxable person opting for composition scheme

will be required to pay tax on supplies taxable under RCM at regular rates and not the composition rate. Further, such person shall not be eligible to claim Input tax credit of tax so paid under reverse charge mechanism.

Withdrawal of application under composition scheme:

The registered taxable person who intends to withdraw from the composition scheme shall before the date of such withdrawal, file an application in Form GST CMP 04. Where the option of composition scheme is lapsed due to non-compliance of any of the eligibility conditions under Section 10 or rules made thereunder, then taxable person shall file an intimation of withdrawal in the same Form GST CMP 04 within 7 days of the occurrence of event leading to disability under the scheme. An intimation for withdrawal or cancellation of permission in respect of any place of business in a State or UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

Cancellation of permission:

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

- Differential tax and interest – viz., tax payable under the other provisions of the Act after deducting the tax paid under composition scheme
- Penalty determined based on the demand provisions under Section 73 or 74.

However, it is essential that a show cause notice is issued and the taxable person is afforded an opportunity of being heard before proceeding with the demand. Such show cause notice shall be issued in Form GST CMP 05. The reply to such notice shall be filed in Form GST CMP 06. On receipt of such reply, the proper officer shall within 30 days of receipt of such reply, either accept the reply or deny the option to pay tax under section 10 from the date of option or from the date of event occurring the contravention of section 10 or rules thereunder, by passing an order in Form GST CMP 07.

Please note:

Exemption under CGST Act	Deemed to exempt under SGST Act
	Deemed to exempt under UTGST Act
Exemption under IGST Act	No auto-application of exemption

10.3 Comparative review

Under the erstwhile tax laws, the scheme of composition is provided for in most State level VAT laws. The conditions prescribed under the GST law for composition scheme is broadly comparable to the conditions / restrictions under the State level VAT laws.

10.4 Related provisions

Section	Description	Remarks
Section 9(3) & (4)	Levy of CGST	This is the other charging Section for levy of tax payable on reverse charge by person receiving

Section	Description	Remarks
		goods and/ or services and is not withstanding the regular tax payable under Section 9
Section 2(6)	Meaning of 'aggregate turnover'	Only if the value of aggregate turnover is less than 75 lacs/ 1 crore, composition scheme can be opted for
Section 2(112)	Meaning of 'turnover in a State'	The composition rate of tax will be payable on the 'turnover in a State'
Sections 73, 74	Demand provisions	These provisions would determine the quantum of penalty, if any

10.5 FAQ

Q1. Can the composition tax be lower than 1%?

Ans. No. Composition tax cannot be lower than 1%.

Q2. Will a taxable person be eligible to opt for composition scheme only for one out of 3 business verticals?

Ans. No. Composition scheme would become applicable for all the business verticals / registrations which are separately held by the person with same PAN.

Q3. Can composition scheme be availed if the taxable person effects inter-State supplies?

Ans. No. Composition scheme is applicable subject to the condition that the taxable person does not affect inter-state outward supplies.

Q4. Can the taxable person under composition scheme claim input tax credit?

Ans. No. Taxable person under composition scheme is not eligible to claim input tax credit.

Q5. Can the customer who buys from a taxable person who is under the composition scheme claim composition tax as input tax credit?

Ans. No. customer who buys goods from taxable person who is under composition scheme is not eligible for composition input tax credit.

Q6. Can composition tax be collected from customers?

Ans. No. The taxable person under composition scheme is restricted from collecting tax.

Q7. What is the threshold for opting to pay tax under the composition scheme?

Ans. The threshold for composition scheme is up to 1 crore of aggregate turnover in the preceding financial year and ₹ 75 lakhs for special category states except for Uttarakhand.

Q8. How to compute 'aggregate turnover' to determine eligibility for composition scheme?

Ans. The methodology to compute aggregate turnover is given in Section 2(6). However, since composition scheme is applicable only to suppliers making intra-state supplies, 'aggregate turnover' means 'Value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt

supplies, exports of goods or services or both or inter-state supplies of a person having the same PAN (i.e., across India) excluding CGST, IGST, SGST, UGST and cess.

Q9. What does a person having the same PAN mean?

Ans. "Person having the same PAN" means all the units across India having the same PAN as is issued under the Income Tax Law.

Q10. What are the penal consequences if a taxable person is not eligible for payment of tax under the Composition scheme?

Ans. Taxable person who is not eligible for the said scheme, could be imposed penalty as determined under Section 73 or 74.

Q11. What happens if a taxable person who has opted to pay taxes under the composition scheme crosses the threshold limit of ₹75 lakhs/1 crore during the year?

Ans. In such case, from the day the taxable person crosses the threshold, the permission granted earlier is deemed to stand withdrawn, and he shall be liable to pay taxes under the regular scheme i.e. section 9 from such day.

Chapter-III A

Classification & Exemption

Introduction

GST law does not contain a commodity classification tariff but a look at the notifications issued reveals the classification of goods and services are contained within the notification which prescribes the rate of tax. Classification therefore, is an exercise that is inevitable because identifying the specific entry in any of the 6 schedules is necessary to arrive at the rate of tax applicable.

Analysis

Reference to Classification

A screenshot of the website containing the list of notifications is provided below:

Central Tax (Rate) Notifications			
Notification No. & Date of Issue	English	हिन्दी	Subject
07/2017-Central Tax (Rate), dt. 28-06-2017	View (254 KB)	देखें (512 KB)	Exemption from CGST supplies by CSD to Unit Run Canteens and supplies by CSD / Unit Run Canteens to authorised customers notified under section 11 (1) and section 55 CSD
06/2017-Central Tax (Rate), dt. 28-06-2017	View (1142 KB)	देखें (498 KB)	Refund of 50% of CGST on supplies to CSD under section 55
05/2017-Central Tax (Rate), dt. 28-06-2017	View (269 KB)	देखें (565 KB)	Supplies of goods in respect of which no refund of unutilised input tax credit shall be allowed under section 54 (3)
04/2017-Central Tax (Rate), dt. 28-06-2017	View (263 KB)	देखें (739 KB)	Reverse charge on certain specified supplies of goods under section 9 (3)
03/2017-Central Tax (Rate), dt. 28-06-2017	View (299 KB)	देखें (559 KB)	2.5% concessional CGST rate for supplies to Exploration and Production notified under section 11 (1)
02/2017-Central Tax (Rate), dt. 28-06-2017	View (375 KB) Corrigendum (100 KB) Corrigendum (249 KB), dated 27-07-2017	देखें (556 KB) Corrigendum (100 KB) Corrigendum (234 KB), dated 27-07-2017	CGST exempt goods notified under section 11 (1)
01/2017-Central Tax (Rate), dt. 28-06-2017	View (1506 KB) Corrigendum (252 KB), dated 30-06-2017 Corrigendum (100 KB), dated 12-07-2017 Corrigendum (257 KB), dated 27-07-2017	देखें (3398 KB) Corrigendum (488 KB), dated 30-06-2017 Corrigendum (85 KB), dated 12-07-2017 Corrigendum (333 KB), dated 27-07-2017	CGST Rate Schedule notified under section 9 (1)

Source: <http://www.cbec.gov.in/htdocs-cbec/gst/central-tax-rate-notfns-2017>

Central Tax (Rate) Notifications			
Notification No. & Date of Issue	English	हिन्दी	Subject
18/2017-Central Tax (Rate), dt. 30-06-2017	View (136 KB)	देखें (137 KB)	Seek to reduce the rate of Central Tax, Union Territory Tax, on fertilisers from 6% to 2.5% and Integrated Tax rate on fertilisers from 12% to 5%
17/2017-Central Tax (Rate), dt. 28-06-2017	View (136 KB)	देखें (585 KB)	To notify the categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator
16/2017-Central Tax (Rate), dt. 28-06-2017	View (344 KB)	देखें (385 KB)	To notify specialised agencies entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them under CGST Act
15/2017-Central Tax (Rate), dt. 28-06-2017	View (142 KB)	देखें (431 KB)	To notify the supplies not eligible for refund of unutilized ITC under CGST Act
14/2017-Central Tax (Rate), dt. 28-06-2017	View (246 KB)	देखें (318 KB)	To notify the supplies which shall be treated neither as a supply of goods nor a supply of service under the CGST Act
13/2017-Central Tax (Rate), dt. 28-06-2017	View (274 KB)	देखें (722 KB)	To notify the categories of services on which tax will be payable under reverse charge mechanism under CGST Act
12/2017-Central Tax (Rate), dt. 28-06-2017	View (440 KB)	देखें (990 KB)	To notify the exemptions on supply of services under CGST Act
11/2017-Central Tax (Rate), dt. 28-06-2017	View (399 KB)	देखें (1.11 MB)	To notify the rates for supply of services under CGST Act
	Annexure (252 KB)	Annexure (252 KB)	
10/2017-Central Tax (Rate), dt. 28-06-2017	View (143 KB)	देखें (503 KB)	CGST exemption for dealers operating under Margin Scheme notified under section 11 (1)
09/2017-Central Tax (Rate), dt. 28-06-2017	View (143 KB)	देखें (500 KB)	Exempting supplies to a TDS deductor by a supplier, who is not registered, under section 11 (1)

Source: <http://www.cbec.gov.in/htdocs-cbec/gst/central-tax-rate-notfns-2017>

Purpose of Notification	Supply of Goods	Supply of Services
Prescribing the rate of tax	1/2017-Central Tax (Rate)	11/2017-Central Tax (Rate)
Granting the exemption	2/1017-Central Tax (Rate)	12/2017-Central Tax (Rate)

Requirement of Classification

while it may seem like classification may not be so cumbersome and experience, logic and common sense are sufficient tools and to arrive at the interpretation of the tariff notifications, a quick look at some examples and drive home the requirement of classification. Let us consider the following examples::

- a 'watch made of gold' is an article of gold or a watches albeit an expensive one
- a confectionary product 'hajmola' an ayurvedic medicaments or remains confectionary sweets
- would a serving of 'brandy with warm water' be classified based on its curative effect on common cold or dismissed as alcoholic liquor for human consumption
- whether 'surgical gloves' are latex products or accessories to Healthcare Services
- is a 'mirror cut to size' articles of glass or as accessories to motor vehicles fitted as rear-view mirror

as can be seen from the few instances mentioned above, classification is not one that is free from doubt. When coupled with differential rates of tax when one nor the other classification is resorted to, the scope for misclassification will be reinforced with motivation to reduce the tax incidence. This motivation can work on both sides – industry as well as tax administration – so as to unit the greatest advantage to the one who is attempting the classification. Classification cannot therefore be left to the whims and fancies of each person but reference must be had to the guidance provided in the law itself.

Approach to Classification

The notifications prescribing the rate of tax both in respect of goods as well as services contains explanations as to how the classification must be undertaken. Extracts of those explanations are provided below for ease of reference:

(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

Notification 1/2017-Central Tax (Rate) dated 28 June, 2017

4. *Explanation.*- For the purposes of this notification,-

- (i) Goods includes capital goods.
- (ii) Reference to "Chapter", "Section" or "Heading", wherever they occur, unless the context otherwise requires, shall mean respectively as "Chapter", "Section" and "Heading" in the annexed scheme of classification of services (Annexure).
- (iii) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of heading 9988.
- (iv) Wherever a rate has been prescribed in this notification subject to the condition that

Notification 11/2017-Central Tax (Rate) dated 28 June, 2017

As can be seen from the above, the notification prescribing the rate of tax itself specifies the approach that is to be followed for purposes of classification, namely:

- in respect of goods, the notification requires reference to be had to the first Schedule to Customs Tariff Act 1975; and
- in respect of services, the notification requires reference to be had to the Annexure which contains the Scheme of Classification

A quick look at these helps is to recognize the approach that needs to be followed for classification.

1. THE CUSTOMS TARIFF ACT, 1975 (51 Of 1975)¹

(1)

An act to consolidate and amend the law relating to customs duties.

Be it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:-

1. (1) This Act may be called the Customs Tariff Act, 1975.




















(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint. ^{2,3}

2. The rates at which duties of customs shall be levied under the Customs Act, 1962, are specified in the First and Second Schedules,⁴

The above table is an adaptation of the Harmonized System of Nomenclature (HSN) established for aiding in uniformity in Customs classification in international trade between member countries of World Customs Organization. It was drafted under the aegis of Customs Cooperation Council Nomenclature, Brussels. It was adopted for Customs purposes by India in 1975 and readapted (with some changes) for Central Excise in 1985 and now for purposes of GST in 2017. Please bear in mind that reference to the original HSN will be of much help in understanding the scope of any entry to understand the full extent of meaning implied in any entry found while reading Customs Tariff Act. Refer www.wcoomd.org where the HSN is available for purchase or subscription from World Customs Organization.

In respect of services, the Annexure is appended to the notification and starts with chapter 99 although there is no such chapter in the HSN

Central Tax (Rate) Notifications		
Notification No. & Date of Issue	English	हिन्दी
18/2017-Central Tax (Rate) ,dt. 30-06-2017	View  (136 KB)	देखें  (37 KB)
17/2017-Central Tax (Rate) ,dt. 28-06-2017	View  (136 KB)	देखें  (555 KB)
16/2017-Central Tax (Rate) ,dt. 28-06-2017	View  (344 KB)	देखें  (385 KB)
15/2017-Central Tax (Rate) ,dt. 28-06-2017	View  (142 KB)	देखें  (431 KB)
14/2017-Central Tax (Rate) ,dt. 28-06-2017	View  (248 KB)	देखें  (318 KB)
13/2017-Central Tax (Rate) ,dt. 28-06-2017	View  (274 KB)	देखें  (722 KB)
12/2017-Central Tax (Rate) ,dt. 28-06-2017	View  (440 KB)	देखें  (990 KB)
11/2017-Central Tax (Rate) ,dt. 28-06-2017	View  (399 KB)	देखें  (1.11 MB)
10/2017-Central Tax (Rate),dt. 28-06-2017	Annexure  (252 KB)	Annexure  (252 KB)
09/2017-Central Tax (Rate),dt. 28-06-2017	View  (143 KB)	देखें  (503 KB)
09/2017-Central Tax (Rate),dt. 28-06-2017	View  (143 KB)	देखें  (500 KB)
Viewing 1 to 10 of 18		

Customs Tariff Act – Rules of Interpretation:

the rules of interpretation are contained in the customs tariff act provides guidance regarding the approach to be followed for reading and interpreting tariff entries. These rules are summarized and listed below but detailed study of the actual rules is advised. Please refer for full set of rules of interpretation at page 28 and 29 from Customs Tariff Act on <http://www.cbec.gov.in/resources/htdocs-cbec/customs/cst2012-13/cst-act-1213.pdf>

- Rule 1: heading are for reference only and do not have statutory force for classification
- Rule 2(a): reference to an article in an entry includes that article in CKD-SKD condition
- Rule 2(b): reference to articles in an entry includes mixtures or combination
- Rule 3(a): where alternate classification available, specific description to be preferred
- Rule 3(b): rely on the material that gives essential character to the article
- Rule 3(c): apply that which appears later in the tariff as later-is-better
- Rule 4: examine the function performed that is found in other akin goods
- Rule 5: cases-packaging are to be classified with the primary article
- Rule 6: when more than one entries are available, compare only if they are at same level

Role of 'Manufacture' in Classification

Classification would be well understood by applying the above rules of interpretation. Now, the process that goods are passed through can impact their classification. For example, cutting, slicing and packing pineapple in cans in sugar syrup has primary input is pineapple and the output is

canned fruit with extended shelf-life. Now, the input and output are not identical but it has held in the case of Pio Food Packers that this is not a process amounting to manufacture. But, would it be possible to regard the input and the output to retain the same classification. The answer lies in knowing the scope of each entry applicable to classification. Another example, kraft paper used to make packing boxes may be sold as it is or after laminating them. It has been held in the case of Laminated Packaging that this process is manufacture even though the input and output fall within the same classification entry. GST Law has adopted, in section 2(72), the general understanding of manufacture that is very similar to that in Central Excise. The real test from this definition – is the input and output functionally interchangeable or not in the opinion of a knowledgeable end-user – and not based on the classification entry. Change in classification entry from one to the other, that is, classification entry for input is not the same as that of the output, could only arouse suspicion about the possibility of manufacture. Please note that ‘manufacture’ is included in the definition of ‘business’ (in section 2(17)) but it is not included as a ‘form of supply’ (in section 7(1)(a) or any where else). Hence, the nature of the process that inputs are put through may not be manufacture but yet may appear to move the output into a different entry compared to the input. So, will change of classification entry be relevant or degree of change produced in the input due to the process carried out must be considered. With the adoption of HSN based classification from Custom Tariff Act, it is imperative to carefully consider whether one entry has been split and sub-divided into to categories even if they both carry the similar rate of tax. Hence, the key aspects to consider are:

- Identify the scope of an entry for classification of input or output
- Study the nature of process carried out on the inputs
- Examine by the ‘test’ (above) if result of the process is manufacture
- Now identify the classification applicable to the output

For example, is desiccating a coconut a process of manufacture. If yes, the desiccated coconut ought not to be considered as eligible to the same rate of tax as coconut. Drying grains may not appear to be a process of manufacture but frying them could be manufacture as the grains are no longer ‘seed grade’ although it resembles the grain.

Manufacture need not be a very elaborate process. It can be a simple process but one that brings about a distinct new product – in the opinion of a knowledgeable end-use – and not just any person with no particular familiarity with the article. Manufacture need not be an irreversible process. It can be reversible yet until reversed it is recognized as a distinct new product, again, in the opinion of those knowledgeable in it. Processes such as assembly may be manufacture in relation to some articles but not in others. So, caution is advised in generalizing these verbs – assembly, cutting, polishing, etc. – but examining the degree of change produced and the identity secured by the output in the relevant trade as to the functional inter-changeability of the output with the input. If a knowledgeable end-use would accept either input or output albeit with some reservation, then it is unlikely to be manufacture. But, if this knowledgeable end-user would refuse to accept them to be interchangeable, then the process carried out is most likely manufacture. Usage of common description of the input and output does not assure continuity of classification for the two.

Classification for Exemptions

exemptions under section 11 of the whole of the tax payable or a part of it. In granting exemptions, it is not necessary that the exemption be made applicable to the entire entry. In other words, exemption notifications are capable of carving out a portion from an entry so as differentially alter the rate of tax applicable to goods or services within that entry. Exemptions can take any of the following forms:

- supplier may be exempt – here, regardless of the nature of outward supply, exemption apply to the supplier. Conditions specified may make such exemption be applicable to the supplier but when the supplies are made to specified recipients
- supplies may be exempt – here, the supplier is not as relevant and all supplies that are notified will enjoy the exemption. Conditions specified may help to determine the supplies that are to be allowed the exemption.

Table

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
1	Chapter 99	Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities.	Nil	Nil
28	Heading 9971	Services by way of— (a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services); (b) <i>inter se</i> sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.	Nil	Nil

Role of 'Conditions' in Exemptions

it is well understood that conditions in exemption notification tend to convert the exemption into an option, that is, the exempted / concessional rate of tax would apply when the

conditions are fulfilled and by deviating from the conditions the full rate of tax would apply. This principle has been tested in the context of section 5A of the central excise act however a quick look at the explanation to section 11 of the CGST Act appears to indicate that unless an express option is granted in the exemption notification, the concessional or exempted rate of tax along with attendant conditions must be availed without any discretion to opt out of it.

Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

While there may be alternate views that the above explanation applies only when the exemption is 'granted absolutely' and not in all cases, such a view may find the contra-indication where one entry in an exemption notification prescribes a concessional rate of tax that applies it is restriction on input tax credit but another entry in the very same notification prescribes two rates of tax where one of them enjoins restriction on input tax credit. The detailed nature of the various styles of drafting exemption in the same notification.

And the reason for resisting the view that – exemption with the condition is an option – is when the government felt free to specify two alternate tax consequences in respect of a given entry in one case (GTA, in above illustration), there is no justification to make an assumption about the existence of an option even when in the very same notification that government opted to notify only one tax consequence. Accordingly, it would be a reasonable construction that – exemption is a condition is not an option – and all court decisions under earlier laws to the contrary are rendered otiose in view of the explanation to section 11.

Illustration below shows a style where exemption will be an 'option' and where it will 'not be option':

Table				
Sl No.	Chapter, Section or Heading	Description of Service	Rate (per cent.)	Condition
(1)	(2)	(3)	(4)	(5)
8	Heading 9964 (Passenger transport services)	(i) Transport of passengers, with or without accompanied belongings, by rail in first class or air conditioned coach.	2.5	Provided that credit of input tax charged in respect of goods used in supplying the service is not utilised for paying central tax or integrated tax on the supply of the service
		(ii) Transport of passengers with or without accompanied belongings, by motor vehicle.		
		[(vi) Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient.	2.5	Provided that credit of input tax charged on goods and services used in supplying the service, other than the input tax credit of input service in the same line of business (i.e. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle), has not been taken. [Please refer to Explanation no. (iv)]
				or
			6	-] ²⁰ ²¹
		(vii) Passenger transport services other than (i), (ii) (iii), (iv), (v) and (vi) above.	9	-

Other style of drafting exemption entries in the same notification be referred to note the exemption that is 'not optional'.

Conclusion

In the light of the foregoing discussion, the following points of learning can be summarized:

- transactions involving goods are, in certain cases, required to be treated as supply of services. As such, the fundamental classification to be undertaken is the differentiation between goods and services
- classification of goods and services cannot be made based on logic, experience or common sense. But, recourse to rules of interpretation in the first schedule to Customs Tariff Act is mandatory in relation to classification of goods. And reference to the scheme of classification (contained in the annexure) is inevitable in relation to classification of services. There can be no interchange in the use of the relevant classification rules between goods and services
- classification in GST requires a deep appreciation of the technical understanding of words and phrases in each domain and any urge to use the common meaning of such words and phrases must be actively discouraged. In other words, even if the common meaning of certain words and phrases appears reasonable, it must be understood that government has deliberately and mindfully words that each and in the case and specific interpretation in the relevant trade
- classification is not only required to determine the rate of tax applicable but also examine the availability of exemptions. There is no compulsion for an exemption notification to exempt "correctly what is the carveout from an entry a subset of transactions – supplies or suppliers – to attract a different rate of tax
- exemptions are not optional as are the conditions prescribed in respect of such exemption. Violation of the condition contracts consequences and not options. 'Absolutely exempt' does not mean 'wholly exempt' and it does not require to be 'unconditionally exempt' to be 'absolutely exempt'.

11. Power to grant exemption from tax

Statutory Provision

11. Power to grant exemption from tax

- (1) *Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.*
- (2) *Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.*
- (3) *The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or*

order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation. —For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

11.1 Introduction

This provision confers powers on the Central Government to exempt either absolutely or conditionally goods or services or both of any specified description from whole or part of the central tax, on the recommendations of the Council. It also confers power on the Central Government to exempt from payment of tax any goods or services or both, by special order, on recommendation of the Council.

11.2 Analysis

The Central or the State Governments are empowered to grant exemptions from tax, subject to the following conditions:

- (i) Exemption should be in public interest
- (ii) By way of issue of notification
- (iii) On recommendation from the Council
- (iv) Absolute / conditional exemption may be for any goods and / or services
- (v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature.

Central Government vide **Notification No. 09/2017-Central Tax (Rate) dated 28.06.2017** has exempted intra-State supplies of goods or services or both received by a deductor under section 51 of the said Act, from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the said Act, subject to the condition that the deductor is not liable to be registered otherwise than under sub-clause (vi) of section 24 of the said Act.

Further, Central Government vide **Notification No. 10/2017-Central Tax (Rate) dated 28.06.2017** has exempted intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the central tax on the value of outward supply of such second hand goods as determined under sub-rule (5) of rule 32 of the Central Goods and Services tax Rules,

2017, from any supplier, who is not registered, from the whole of the central tax leviable thereon under sub-section (4) of section 9 of the Central Good and Services Tax Act, 2017

- (vi) The registered person supplying the goods or services or both shall not collect the tax more than the effective rate as exempted by the Government.

With specific reference to the forth condition indicated above, it is important to note that the exemption would be in respect of goods or services or both, and not specifically for any classes of persons. E.g.: An absolute exemption could be granted in respect of supply of water. A conditional exemption could be supply of goods to canteen stores department.

From the explanation provided, there is one school of thought wherein it is opined / understood that in case of conditional exemptions, there is an option available to the taxable person to pay the tax (by which way, there would be no requirement for input tax credit reversals). However, an absolute exemption is required to be followed mandatorily. The other view is that neither of the exemptions are optional but are mandatory when the conditions relating to the exemption are satisfied.

Further, it is to be noted that an exemption issued under the CGST Act will 'automatically' exempt the same supply from the levy of tax under the SGST/UTGST Act. This is provided under the SGST/UTGST Act. But the converse is not, that is, exemption under the SGST/UTGST Act will not exempt levy of tax under the CGST Act.

Further, it is to be noted that an exemption issued under the CGST Act will 'automatically' exempt the same supply from the levy of tax under the SGST/UTGST Act. This is provided under the SGST/UTGST Act. But the converse is not, that is, exemption under the SGST/UTGST Act will not exempt levy of tax under the CGST Act.

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

To provide more clarity to explain the exemption notification or the special order, it is provided that the Government may issue an "Explanation" at any time within a period of 1 year from the date of notification or special order. The effect of this "Explanation" would be retrospective, viz., from the effective date of the relevant notification or special order.

Effective date of the notification or special order:

The effective date of the notification or the special order would be date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would be:

- Date of its issue for publication in the official gazette;
- Date on which it is made available on the official website of the Government Department

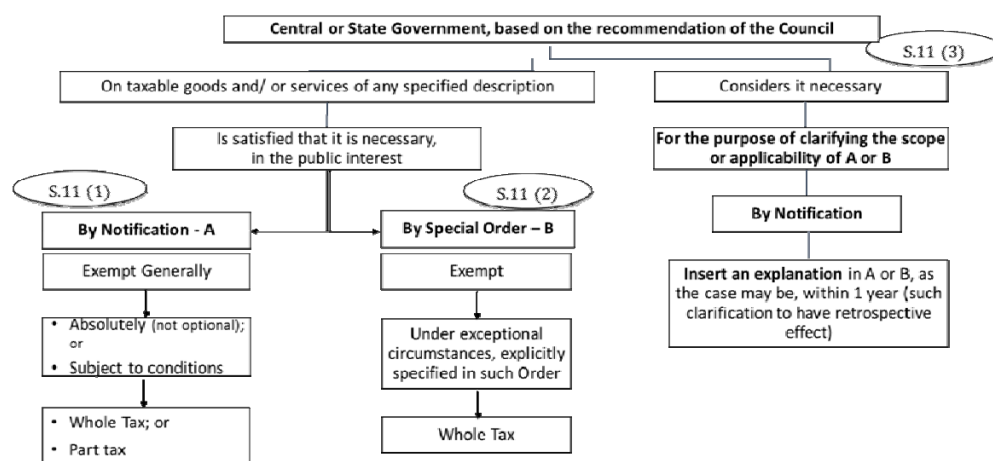
Illustrations for Absolute Exemptions:

1. The Central Government has exempted the tax payable under the CGST / UTGST / IGST Acts by any taxable person on supply of "salt" with effect from 01.07.2017.
2. Transmission or distribution of electricity by an electricity transmission or distribution utility.

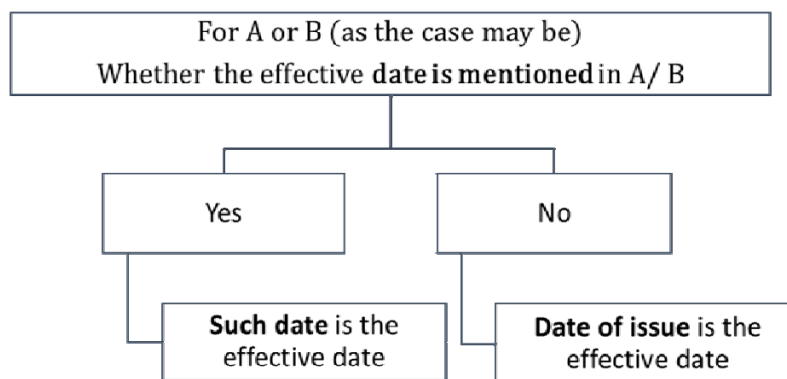
Illustrations for Conditional Exemptions:

1. The Central Government has exempted the tax payable under the CGST/ UTGST/ IGST Acts by any taxable person on supply of "Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation less than ₹ 1000/- per day".

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

Power to grant exemptions: Sec. 11

For the purpose Section 11, the effective date or date of issue of the Notification or Order, is determined as under:



Notification No.	Particulars	Comments
02/2017 - Central Tax (Rate) dated 28.06.2017	Exempted supplies of around 149 items of goods in terms of Section 11(1) of the CGST Act, 2017. Ex. Electricity, Salt, fresh fruits, plastic bangles, passenger baggage etc. Amended vide Notification No. 28/2017, 35/2017 and 42/2017-Central Tax (Rate)	Parallel notification under IGST also. Notification no. is also same Amended vide Notification No. 28/2017, 36/2017 and 44/2017-Integrated Tax (Rate)
Notification No. 03/2017-Central Tax (Rate) dated 28.06.2017	Goods specified in the List annexed required in connection with various kinds of petroleum operations undertaken are given concessional rate i.e. at the rate of 2.5% under CGST i.e. 5% IGST.	Parallel notification under IGST also. Notification no. is also same.
Notification No. 07/2017-Central Tax (Rate) dated 28.06.2017	Exemption to supplies by CSD to Unit Run Canteens and supplies by CSD / Unit Run Canteens to authorised customers	Parallel notification under IGST also. Notification No. is also same.
Notification No. 08/2017-Central Tax (Rate) dated 28.06.2017	Exemption granted from levy of CGST under RCM on supplies received from unregistered persons. (if value of supplies does not exceed ₹ 5000 from any or all the suppliers in a day) Scope of exemption enhanced to	Exemption in respect of all supplies has been granted up to 31.03.2018 by Notification No.32/2017 dtd.13.10.2017

	exclude all supplies without monetary limit up-to 31.03.2018	
Notification No. 09/2017-Central Tax (Rate) dated 28.06.2017	Exemption granted to supplies to a TDS deductor by a unregistered supplier	This exemption notification is not available under IGST (Rate).
Notification No. 10/2017 - Central Tax (Rate) dated 28.06.2017	Exemption to Supplies of second hand goods received by registered person dealing in buying & selling of second hand goods from unregistered person provided the dealer pays central tax on supply of such second-hand goods as per CGST Rules	This exemption notification is not available under IGST (Rate).
Notification No. 12/2017-Central Tax (Rate) dated 28.06.2017	Exemption to supply of 81 services under CGST Act. More or less, all the exemptions were available earlier also in service tax law Amended vide Notification No. 21/2017, 25/2017, 32/2017 and 47/2017- Central Tax (Rate)	This Notification No. 9/2017- IGST (Rate) dated 28.06.2017. Under IGST Exemption to supply 84 services. Amended vide Notification No. 21/2017, 25/2017, 33/2017 and 42/2017, 49/2017- Integrated Tax (Rate)
Notification No.26/2017-Central Tax (Rate) dtd.21.09.2017	Exemption to supply of heavy water and nuclear fuels falling in Chapter 28 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) by the Department of Atomic Energy to the Nuclear Power Corporation of India Ltd	Similar Exemption under IGST Act (Refer Notification No.26/2017 – Integrated Tax (Rate) dtd.21.09.2017

Sec. 11 – Illustration I

Notification issued u/s 11(1): Conditional, partial exemption

- Intra state supplies of goods or services or both received by a registered person from an unregistered person is exempted from payment of tax under reverse charge provided the aggregate value of such supplies received by a registered person from all or any of the suppliers does not exceed ₹ 5000/- in a day.

Notification No. 08/2017-Central Tax (Rate) dated 28.06.2017

Sec. 11 – Illustration II

Notification issued u/s 11(1): Absolute exemption

Exemption to following taxable services from tax leviable thereon:

- Services by way of renting of residential dwelling for use as residence.

- Services by Reserve Bank of India.
- Services by a veterinary clinic in relation to health care of animals or birds.

Notification No. 12/2017 - Central Tax (Rate) dt.28.06.2017

11.3 Exemptions to Goods

Exemption has been given to Intra State Supplies of certain goods vide Notification No. 02/2017-Central Tax (Rate), dt. 28-06-2017 as rectified vide Corrigendum dated July 12, 2017 and July 27, 2017 and Inter State Supplies of Goods vide 02/2017-Integrated Tax (Rate), dt. 28-06-2017 as rectified vide Corrigendum dated July 12, 2017 and July 27, 2017. Exemption under UTGST Act to Intra State Supplies has been given vide Notification No. 02/2017-Union Territory Tax (Rate), dt. 28-06-2017 as rectified vide Corrigendum dated July 12, 2017 and July 27, 2017. Respective States have also issued their exemption Notifications to notify exempted goods. The list of Exempted goods is appended as Annexure I to this Chapter:

The Central Government vide Notification No. 40/2017-Central Tax (Rate) dated 23rd October, 2017 exempts the intra-State supply of taxable goods in excess of the amount calculated @0.05 % by a registered supplier to a registered recipient w.e.f. 23rd October, 2017 for export is subject to fulfilment of the following conditions namely:

- Supplier shall supply the goods to the Recipient on a tax invoice.
- Recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the Supplier.
- Recipient shall indicate the GSTIN of the Supplier and the tax invoice number issued by the Supplier in respect of the said goods in the shipping bill or bill of export.
- Recipient shall be registered with an Export Promotion Council or a Commodity Board recognized by the Department of Commerce.
- Recipient shall place an order on Supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the Supplier.
- Recipient shall move the said goods from place of Supplier –
 - directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or
 - directly to a warehouse from where the said goods shall be move to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;
- If the Recipient intends to aggregate supplies from multiple Suppliers and then export, the goods from each Supplier shall move to a warehouse and after aggregation, the Recipient shall move goods to the Port, Inland Container Depot, Airport or Land Customs Station from where they shall be exported;
- In case of situation referred to in condition (vii), the Recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the

warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the Supplier as well as to the jurisdictional tax officer of such supplier; and

- ix. When goods have been exported, the Recipient shall provide copy of shipping bill or bill of export containing details of Goods and Services Tax Identification Number (GSTIN) and tax invoice of the Supplier along with proof of export general manifest or export report having been filed to the Supplier as well as jurisdictional tax officer of such supplier.

11.4 Exemptions to Services

Exemption has been given to Intra State Supplies of certain Services vide Notification No. 12/2017-Central Tax (Rate), dt. 28-06-2017 and Inter State Supplies of Goods vide 09/2017-Integrated Tax (Rate), dt. 28-06-2017. Exemption under UTGST Act to Intra State Supplies has been given vide Notification No. 12/2017-Union Territory Tax (Rate), dt. 28-06-2017. Respective States have also issued their exemption Notifications to notify exempted services. The list of Exempted Services is appended as Annexure II to this Chapter

11.5 Comparative review

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

11.6 FAQ

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

Ans. No, the taxable person providing goods and/or services shall not pay the tax on such goods and/or services in respect of those supplies which are notified for absolute exemptions.

- Q2. Under what circumstances can a special order be issued?

Ans. The Government may in public interest, issue a special order on recommendation of GST council, to exempt from payment of tax, any goods and/or services on which tax is leviable. The circumstances of exceptional nature would also have to be specified in the special order.

11.7 MCQ

- Q1. Which of the following can be issued by Central Government/ State Government to exempt goods and/or services on which tax is leviable in exceptional cases?

- (a) Exemption Notification
- (b) Special order
- (c) Other notifications
- (d) None of the above

Ans. (b) Special Order

Chapter IV

Time and Value of Supply

- 12. Time of supply of goods
- 13. Time of supply of services
- 14. Change in rate of tax in respect of supply of goods or services
- 15. Value of taxable supply

Statutory Provision

12. Time of supply of goods

- (1) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.
- (2) The time of supply of goods shall be the earlier of the following dates, namely: —
- (a) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (1) of section 31, to issue the invoice with respect to the supply; or
 - (b) the date on which the supplier receives the payment with respect to the supply:
- Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.
- Explanation 1.*—For the purposes of clauses (a) and (b), “supply” shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.
- Explanation 2.*—For the purposes of clause (b), “the date on which the supplier receives the payment” shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.
- (3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely: —
- (a) the date of the receipt of goods; or
 - (b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or

- (c) *the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:*
- Provided that where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.
- (4) In case of supply of vouchers by a supplier, the time of supply shall be—
- (a) the date of issue of voucher, if the supply is identifiable at that point; or
- (b) the date of redemption of voucher, in all other cases.
- (5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—
- (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- (b) in any other case, be the date on which the tax is paid.
- (6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

12.1 Analysis

(a) Introduction

Supply has been understood to hold the key to the incidence of GST, but it is the 'time of supply' that dictates the occasion when this incidence will come to rest. Taxable supply has been defined to mean a supply of goods and/or services which is chargeable to tax under this Act. It is interesting to note the use of the expression 'chargeable to tax' as opposed to 'leviable to tax'. It has been held that 'chargeable to tax' encompasses not only the incidence of tax but also its assessment.

The opening words in section 12(1) are very interesting and forceful as it is here that the liability to pay GST arises. The subject matter of levy – goods or services – becomes encumbered with the tax upon occurrence of the taxable event – supply. But the tax levied in terms of section 9, comes to reside only at the time determined by section 12 and 13. Accordingly, these sections play a stellar role in the imposition of GST.

The provisions state that the time of supply "shall be" and as such is a "must" to be examined closely. It signifies that "time of supply" is not a fact to be inquired by the taxable person but one that is to be admitted as the time of supply appointed by the will of legislature as declared in the section. In order to not allow any opportunity for a suggestion by the taxable person or even the tax administration as to any alternative to what could be the time of supply, the legislature retains for itself the exclusive authority to appoint the time of supply by employing the words "shall be". Therefore, the time of supply is what is stated in the law to be the time of supply and nothing else.

Invoice is commonly understood as 'proof of sale' but this common understanding is far from the truth. Invoice is a document recording the terms of an arrangement already entered - the underlying arrangement. Lease agreement, as an analogy, is a document in present evidencing the agreement reached between two parties is for the lease of property for certain duration in exchange for a certain consideration. A lease arrangement verbally entered into previously when documented by an indenture or deed does not bring into existence the lease when the document is prepared. In fact, the document merely is a record of an arrangement of lease entered previously, *albeit* verbally. Verbal arrangements are no less agreements in the eyes of law. Similarly, an invoice does not bring into existence a sale agreement but merely records the terms of whatever arrangement that may have been entered into by the parties, involving the subject matter. Tax laws require the preparation of an invoice not as if the absence of an invoice defeats the levy but prescribes an unambiguous occasion when the tax may become recoverable with a proper record of the terms of the underlying arrangement. Therefore, an invoice can evidence not only a sale but every other form of supply such as transfer, barter, exchange, license, rental, lease or disposal. If issuance of an invoice is uncommon for barter or a rental arrangement, then it is to do with our own unfamiliarity and nothing to do with its impermissibility.

(b) Time of Supply – Forward Charge

Time of supply is prescribed (legislative will) to be the earlier of (a) date of issue of invoice and (b) date of receipt of payment. Date of issue of invoice requires us to examine section 31 which deals with the requirement to issue a "tax invoice". Here two kinds of situations are contemplated, namely:

- (i) A case where the supply involves movement of goods
- (ii) Any other case

Before proceeding, it is necessary to admit the concept of 'person and taxable person'. Person is defined in the most familiar manner in section 2(84) but taxable person is explained in detail in section 25 (please refer to the relevant Chapter for a detailed discussion). A proper reading of section 25 helps us understand – a State is the smallest registrable unit in GST – except where multiple business verticals are registered separately under section 25. A taxable person is, therefore, the presence of the person in a State where taxable supplies are made from in the name of such person. When a person becomes liable to be registered in a State at any place from where taxable supplies are made therein, every place in that State such person shall be a taxable person.

Now, we may return to our discussion regarding the two kinds of cases that are discussed on time of supply. It is noticeable that section 31 uses two expressions – 'removal of goods' and 'movement of goods' – which are not merely expressions of distinction without a difference. There is deliberate purpose for legislating in this manner. 'Removal of goods' is defined in section 2(96) and identifies the steps that may follow once the decision to supply is made. But, 'movement of goods' is not defined and is, therefore, an attribute of the goods at the time of supply. For example, machine tools on display at an exhibition in Mumbai agreed to be

purchased by executives of an engineering company from Indore attending the exhibition, is a case of 'supply involving movement' even though the transportation is undertaken by representatives of the purchaser on their own. In the same example if the executives from Indore were to place an order at the same exhibition with instructions for delivery to be ensured by the exhibitor (supplier) assured within six weeks, this would also be a case of 'supply involving movement' and the transportation being organised by the supplier through an independent transport agency from the factory or exhibitor site to the customer location.

It is for this reason that the language employed of seemingly similar or synonymous expressions – 'removal of goods' and 'movement of goods' – but demands to be supplied their separate and individual meanings and not be misled by their apparent similarity. To reiterate, 'removal of goods' is a question of fact to be examined from the steps that would ensue once the supply is decided whereas 'involves movement' is a question of the state-of-affairs of the goods being supplied.

Therefore, it is important even before the arrival of time of supply, that the goods to be supplied be classified into one of these two cases, that is, whether it is a case of supply that involves movement or one that does not involve movement of the goods. Only when this classification of the goods has been clearly made does section 31 comes into operation. Where the supply involves movement of goods then an invoice must be issued at the exact time when the goods are about to be removed. And where the supply does not involve movement of goods then an invoice must be issued at whatever is the time when the goods are delivered or made available to the recipient. It is in this case – where supply does not involve movement – that the complexity remains even after making a proper classification. That is, determining the time when the goods are delivered or made available to the recipient. Delivery – the mode and the time – is the unilateral choice of the recipient and the supplier has no authority to decide 'how' and 'when' he will deliver the goods to the recipient. It only becomes easy in a contract for supply if it clearly records this 'choice' of the recipient regarding the mode and time of delivery. The supplier is always duty-bound to deliver in exactly the same way – manner and timing – which the recipient dictates. In fact, the supplier continues to be obligated until delivery is completed in the way it is stated by the recipient. In other words, delivery is not complete if there is any deviation in either the manner or the timing compared to that dictated by the recipient. When the delivery is to the satisfaction of the recipient, then the supplier is released from his obligation. Therefore, in all those cases (where supply does not involve movement) the additional question of fact to be determined is the mode and time of delivery dictated by the recipient and whether the same has been complied with, to the satisfaction of the recipient. It is now that section 31 comes into operation.

Unlike the case of VAT law where an invoice is required to be issued when 'transfer of property' takes place and invoice does not have to be kept pending until they are physically removed, GST requires issuance of an invoice at the time of their 'removal' or 'delivery', as the case may be, notwithstanding any delay in transfer of property. As explained earlier, an invoice does not by itself prove anything except that it is a record of the terms of understanding of the underlying transaction. Accordingly, referring back to our brief mention

about 'person and taxable person', the tests requiring examination under section 31 must be administered not only in a transaction between two persons but even on all the transactions between two taxable persons even if they belong to the same person.

It is only upon undertaking a detailed enquiry into the questions of fact determined under section 31 in the respective cases, will we be able to determine one of the two elements prescribed to be the 'time of supply' under section 12. Time of supply therefore is earlier of date of invoice as per section 31 or date of receipt of payment with respect to the supply.

Exceptions:

- (i) When an amount is received in excess of tax invoice up to ₹ 1,000/-, the time of supply in respect of such excess at the option of the supplier shall be the date of such invoice.
- (ii) Supply shall be deemed to have been made to the extent the value of supply indicated in the invoice or the value of payment received by the supplier.
- (iii) Date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier.
- (iv) The registered person who did not opt for the composition levy under section 10 shall pay the central tax on the outward supply of goods at the time of supply as specified in section 12(2)(a) i.e. the date of issue of invoice by the supplier or the last date on which he is required, under section 31(1), to issue the invoice with respect to the supply. Therefore, no GST is payable on advances received against supply of goods. (NN-66/2017-Central Tax dated 15-Nov-17)). Earlier by Notification No.40/2017- Central Tax dtd.13-Oct-17, the benefit was granted to only small assesses whose turnover in the preceding financial year or in the year in which he obtained registration does not exceed or is not likely to exceed ₹150 Lakhs. However subsequently the scope was enhanced to include all registered persons making supply of goods except the persons who have opted for composition under section 10.

(c) Time of Supply – Reverse Charge.

Where tax is payable on reverse charge basis, the time of supply is appointed to be the earliest of (a) date of receipt of goods, (b) date of payment or (c) 30 days from the date of issue of invoice by the supplier. If for any reason, one of these three dates cannot be determined then the time of supply will be the date of recording the supply in the books of the recipient.

Keeping in mind the definition of reverse charge in section 2(98), the above provision does not apply to payment of tax by an electronic commerce operator but only to those cases of supply which fall under sub-section 5 of section 9 of the Act.

Exception:

Date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier.

(d) Time of Supply – Vouchers

The Act introduces time of supply in respect of 'vouchers' as a separate category such that the provisions relating to time of supply of goods is made inapplicable when the supply is of such vouchers. Referring to Chapter III where in the context of supply, definition of goods has been discussed at length, we find specific inclusion of 'actionable claims'.

In relation to actionable claims, Courts have held as follows:

- (i) Actionable claims come within the definition of goods as generally understood.
- (ii) VAT laws have deliberately excluded actionable claims from the definition of goods.
- (iii) Actionable claims represent debt and accordingly carry a demand that can lawfully be made by one person against another.
- (iv) Actionable claims represent property in non-physical (incorporeal) form.

But in GST, unlike VAT laws, we find that by including actionable claims within the definition of goods, they are made liable to tax. In relation to actionable claims under GST, please note the following key aspects:

- (i) Actionable claims are included specifically in the definition of goods, but this inclusion is by creating an exception from an exclusion. In other words, while excluding money and securities from the definition of goods, actionable claims have been singled out. This means such forms of actionable claims that represent property in the form of money or securities are also excluded from the definition of goods. Therefore, from a large population of actionable claims, tax is applicable only on the subset of actionable claims which do not represent property in the form of money or securities and all other forms of actionable claims representing any other property is includable in the definition of goods. A receipt for having made payment is not actionable claim because that receipt represents money and not the result of a transaction resulting in debt or demand. Similarly, promissory notes, IOU slips and all other derivatives of such instruments are also not actionable claims for the purposes of GST because of the exclusion of money from the definition.
- (ii) Actionable claims which are included within the definition of goods do not become includable in the definition of services due to the accommodative and expansive language used to define services. For this reason, the property that actionable claims represent even if they are in non-physical form will continue to remain goods and not become services. Actionable claims so understood may or may not be itself in any physical form. In other words, actionable claim is not the piece of paper carrying the detailed description of the actionable claim in question but the real property, though in non-physical form, that is referred to in that piece of paper. In this digital age, piece of paper carrying the description of the actionable claim can even be present in electronic form and still retain the character of actionable claim within the definition of goods. So, actionable claims can be in physical or electronic form as long as they represent real property.

About 'actionable claims' discussion in Chapter III would have highlighted that the incidence is limited to 'lottery, betting and gambling'. Further, it is important to note that vouchers are not always referring only to actionable claims. Vouchers being treated as a separate category for the purposes of determining time of supply will need to be first identified in relation to supply before applying the relevant provision regarding its time of supply. Vouchers are defined in the Act as "an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument" and examples of voucher are coupon, token, ticket, license, permit, pass.

Now, the time of supply in the case of vouchers is stated to be:

- (i) the date of issue of voucher if the supply is identifiable at that point; or
- (ii) in all other instances, the date of redemption of the voucher.

Please refer to the section 13 regarding time of supply of services for detailed discussion on the overall aspect of vouchers.

but here, only the key aspects of the definition are discussed which may be referred back while examining the scope of section 13(4).

Money 2(75) may be represented as follows:

Object		Purpose
Indian legal tender *	Foreign currency **	Used as consideration to:
Cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognized by RBI #		<ul style="list-style-type: none"> ➤ settle an obligation or ➤ exchange with Indian legal tender of different denomination (not held for numismatic value)
* currency recognized by law – RBI Act, 1934 and includes currency notes and coins. Legal tender issued records liability of the Central Government and a guarantee to its holder to secure value-in-exchange		
** legal tender of other countries recognized by India. Does not include securities denominated in foreign currency		
# stored value instrument known as Pre-Paid Instrument (PPI) issued by a licensee under Payment and Settlement Systems Act, 2007		

Money is therefore that which is 'used as' consideration between parties to a transaction. Money does not represent a liability of the parties to the transaction. Money represents liability of the Central Government. A person who has money has an asset which represents a certain amount of value. There is requirement to specially prescribe 'terms of use' of money. It is

known and is declared by the law that recognizes money to be legal tender. Money includes all 'stored value' instruments approved by RBI or PPIs. Value is stored in PPIs by transfer of Indian legal tender in cash or from bank account and any balance of stored value in PPIs can be withdrawn in ATM or retransferred back into bank account. PPIs are of three types – closed, semi-closed and open PPIs. There are two other kinds of hybrids where existing banking license-holders along with a technology partner can issue PPI-like stored-value products which operate as a specie of savings bank account of the PPI-holder or beneficiary. PPIs can be physical bearer instruments as paper certificate or plastic card. PPIs can also be non-physical in the form of a digital wallet. Both represent stored value which is linked to a bank account of the beneficiary. PPIs are not to be misunderstood with Payments Bank. PPIs have more restrictions than a Payments Bank which is a scaled-down version of a regular savings bank account.

Voucher 2(119) may be represented as follows:

Object	
Instrument with obligation	Created by contract between private Parties
Value represented	As per terms of use
Stored value	Nil; only value of obligation admitted
Obligor (person liable to discharge admitted obligation)	Issuer or other name obligor
Parties involved	3 or more parties – supplier, receiver and obligor

Voucher is therefore 'instrument with obligation' that is accepted as consideration. Voucher does not contain any 'stored value' but 'value-to-use'. This 'value-to-use' is credited into a voucher by a contractual arrangement between the issuer-redeemer of the voucher. A customer who redeems the voucher is not a party to the arrangement for creation of the voucher. A voucher that is created changes hands through steps with a sliding-scale of discounts until it is redeemed at the face value. This 'value-to-use' at the time of its creating necessarily involves flow of payment from the issuer to the redeemer as such voucher represent cash/cash equivalent received in advance entailing an obligation. But this value-to-use, cannot be converted to cash but only expended or redeemed as per terms of use of voucher. There is no regulation governing issue, transfer and redemption of vouchers except terms of a lawful contract. Vouchers are not PPIs and hence not governed by Payments and Settlement Systems Act, 2007. It is not uncommon for the available balance of 'value-to-use' to be credited into the digital wallet of a PPIs issued by the same issuer. But the difference is that the part of the wallet balance representing stored value can be withdrawn but not the part of the wallet balance representing value-to-use or voucher. Gift voucher issued by a merchant that is a bearer certificate with a unique identification number or code is not a voucher that agrees with this definition because this gift voucher is a close-ended PPI.

Another similar product is 'loyalty points' which also contains 'value-to-use' but the difference is that in loyalty points, issuer-redeemer is the same person. Loyalty points issued represents liability of the issuer towards the beneficiary without any underlying flow of payment and is best described as 'future discount'. That is, these points accrue in one transaction and based on some conversion ratio, that can be redeemed as a discount in a subsequent transaction. As the loyalty points are non-transferable where the issuer-redeemer is the same person, it is not an instrument with obligation. Discount allowed in the subsequent transaction is towards cancellation of points accrued from the earlier transaction. Similar to vouchers, loyalty points also do not have any regulation governing its allotment and redemption except the terms of a lawful contract. Nowadays, it is seen that the liability that accumulated loyalty points represents are being converted into voucher by transfer of liability by issuer to an intermediary at a discounted value. From here onwards, due to intermediary's involvement, an instrument comes into existence with an obligation which is voucher,

Yet another product coupon or token in the form of a 'code', where a customer becomes entitled to discount at the very first purchase also by citing this 'code'. It is interesting to note that entitlement to this could though not flowing from a transaction in the past, it is an entitlement by accepting to enter into a transaction in the future. This acceptance is recorded by registering on a website, downloading an app or any other positive act on the part of the customer. Such codes also do not satisfy the requirements of a voucher for the same reasons as applicable to loyalty points.

Among all these lies another transaction that may appear to overlap with definition of voucher, due to the words of common understanding being used interchangeably with words having specific statutory meaning and that is 'Pass'. Pass is one which could be an entry pass or customer's pass or a free ticket. For example, a ticket to a cricket match is available for ₹1,000/- but a company buys these tickets and distributes it to key customers as 'free pass'. It allows the customer to enjoy the cricket match without paying anything for the same. But the company has already paid the ticket price to the organizers of the cricket match. Another example could be free pass to view screening of a film and so on. There is a normal taxable supply between the supplier of goods or services and the person who pays and buys the 'pass'. There is another supply to be examined, between the person who pays and the person who actually enjoys the goods or services. Whatever may the conclusions reached regarding the two transactions here, there is no voucher that comes into existence even if such entry tickets are even designated as 'free pass – not for sale' and so on. However, if such 'passes' are printed and distributed out of the ordinary course of ticket sales without reference to a specific event but permitting access to a basket of events and valid for a duration of time, then it partakes the character of voucher – instrument with obligation. When the 'Pass' loses its character as an 'advance paid' for a supply in future – whether to the Payer or any other bearer – and becomes an 'instrument with obligation', then the 'Pass' becomes a voucher.

Criteria	Money	Voucher	Loyalty Points
Instrument type	Indian legal tender, foreign currency or stored value PPI of cash paid	Physical card / non-physical account of cash received	Points-statement of accrued discount from past transactions
Beneficiary	Bearer of cash or account-holder of PPI	Bearer or account-holder	Account-holder
Represents cash deposited	Yes, paid by Beneficiary *	Yes, paid by third party Issuer *	No, notional credit of loyalty points
Paid value = Face value on redemption	Yes, no discount and no premium	No, discounted value is paid by redemption of face value	NA
Paid value refundable	Yes, stored-value	No, only value-to-use	NA, discount-to-claim
Transferrable	No	Yes	Yes **
Issuer is redeemer	Yes	No	Yes
Redemption by	Bearer	Bearer	Account-holder
Unredeemed value	Continues	Loss to issuer	Lapse
Governing law	PSS Act	Contract Act	Contract Act

* includes nominee of bearer-instruments

** becomes voucher on transfer of accumulated points before redemption

Illustrations:

Illustration	Voucher or Not	Nature of Instrument
Shopping gift card purchased for ₹5,000/-	Not voucher	It's money, by way of 'stored value' even if not encashable
Coupons or token given to customer by pizza outlet on making purchase of ₹1,000/- which allows 10% discount on next purchase	Not voucher	It is future discount by way of 'value-to-use' not encashable
Money deposited into digital wallet	Not voucher	It's money, by way of 'stored value' though encashable
Points credited into digital wallet	Not voucher	It is future discount by way of 'value-to-use' not encashable
Transfer of liability towards	Voucher	Now it's become an

accumulated loyalty points credited to customers		'instrument with obligation'
Pre-paid instruments: ➤ Telephone calling card / recharge card ➤ Multi-currency traveller's card ➤ DTH recharge card	Not voucher	It's money received in advance to be settled by making supplies in future
Non-instrument based advances: ➤ Receipt issued to customer for acknowledging advance payment received towards PO issued ➤ Advance booking of film ticket ➤ Train ticket purchased in advance ➤ Contribution of instalments into 'gold savings scheme' ➤ Time-share in resort	Not voucher	It's money received in advance to be settled by making supplies in future

The reason why it is important to differentiate whether it is a voucher or not, is that if the instrument is money that tax is payable on the actual 'paid-in value' and not the 'value-to-use' (or redeemable face value). For example, customer pays advance of ₹1,00,000 to distributor and the distributor transfers ₹80,000 to manufacture. GST payable by the distributor will be on ₹1,00,000 and the GST payable by the manufacturer it be on ₹80,000. Ignoring the fact that credit is not allowable, this would be the treatment in respect of any instrument that fits the definition of money. However, if a voucher was supplied by the manufacturer to the distributor of face value (or value-to-use) ₹1,00,000 but paid-in value ₹80,000, GST would be payable by the manufacturer on ₹1,00,000 and not ₹80,000. Further, anomalies arise on account of distributors liability to pay GST on ₹1,00,000 but with serious concerns on availability of credit of tax charged by manufacturer. Without satisfying conditions under section 16(2) read with rule 28, credit would not be available and tax would be collected on face value or value-to-use and not the actual paid-in value. Payment of tax in the case of vouchers on face value or value-to-use is found in rule 32(6).

It is important to understand that a similar provision as specified in relation to time of supply of goods also exists in time of supply of services. It is reasonable to, therefore, infer that the Government in its wisdom, in all probability, will treat 'vouchers relating to goods' and 'vouchers relating to services' as distinct and separate class of transactions. What does one understand by 'vouchers relatable to goods' and 'vouchers relatable to services'? A layman would comprehend that vouchers relatable to goods would be those class of transactions which can be exchanged for goods whereas vouchers relating to services being distinct and separate can be exchanged only for services. There can be a third class of transactions

relating to vouchers, namely, a gift voucher issued by a bank which can be exchanged only for cash. But a plain reading of definition of goods and services indicates that they both exclude money. Therefore, such vouchers relatable to cash / money can be safely assumed to be outside the ambit of GST laws.

It is possible for one to construe that a voucher relating to goods can be embedded for the provision of services also. Such class of transactions must be read with Schedule II to understand whether they are to be treated as goods or as services and thereafter apply the principles laid down to the transaction as if they were goods or services. And in such situations, await until time of redemption to determine the rate of tax and class of supply.

Interesting situations arise in respect of such transactions. For instance, the points accumulated in a credit card could be used to exchange for goods or issue of an air ticket. Difficulty arises in taxing such transactions in the hands of the person issuing such points. However, the taxability or otherwise of such accumulated points would need detailed deliberations based on facts and surrounding circumstances of each case.

(e) Time of Supply – Residuary

Where none of the above provisions are able to satisfactorily answer the time of supply, it is to be determined based on the residuary provision which states that the time of supply is:

- (i) where a periodical return has to be filed, the due date prescribed for such return; or
- (ii) in any other case, the date of payment of the tax.

Time of supply under this residuary provision is applicable only when the other provisions are found to be inapplicable and not merely when there is some difficulty in determining the facts that are sought for by the relevant provision.

(f) Time of Supply – Special Charges

Special charges imposed for delay in payment of consideration will enjoy the facility of time of supply being date of receipt of the charges imposed, that is, cash-basis of payment of GST. The various issues involved in these special charges are discussed in detail under time of supply of services which may kindly be referred.

Some illustrations for better understanding of the provisions of time of supply of goods

	Concept illustrations Section 12(2)	Invoice date	Invoice due date	Payment entry in supplier's books	Credit in bank account	Time of supply
1	Invoice raised before removal	10-Oct-17	20-Oct-17	26-Oct-17	30-Oct-17	10-Oct-17
2	Advance received	30-Oct-17	20-Oct-17	10-Oct-17	30-Oct-17	10-Oct-17

	Supply involves movement of goods Section 12(2) r/w Section 31(1)(a)	Invoice/ document date	Removal of goods	Delivery of goods	Receipt of payment	Time of supply
3	Delayed issue of invoice	26-Oct-17	20-Oct-17	26-Oct-17	26-Oct-17	20-Oct-17
4	Inter-State stock transfer	10-Oct-17	20-Oct-17	26-Oct-17	10-Nov-17	10-Oct-17
5	Advance received, invoice for full amount issued on same day (40% advance, 60% post supply payment)	30-Oct-17	10-Nov-17	14-Nov-17	30-Oct-17 20-Nov-17	30-Oct-17 30-Oct-17

	Supply otherwise than by involving movement of goods Section 12(2) r/w Section 31(1)(b)	Invoice date	Receipt of invoice by recipient	Delivery of goods	Receipt of payment	Time of supply
6	Delayed issue of invoice	30-Oct-17	05-Nov-17	26-Oct-17	10-Nov-17	26-Oct-17
7	Invoice issued prior to delivery	20-Oct-17	10-Nov-17	26-Oct-17	10-Nov-17	20-Oct-17

	Continuous supply of goods Section 12(2) r/w Section 31(4)	Invoice date	Removal of goods	Due date of payment as per agreement	Receipt of payment	Time of supply
8	Contract provides for successive statements of account/successive payments	01-Nov-17	15-Oct-17 25-Oct-17	05-Nov-17	01-Nov-17	01-Nov-17
9		11-Dec-17	08-Nov-17 30-Nov-17	05-Dec-17	11-Dec-17	05-Dec-17
10		08-Jan-18	14-Dec-17 23-Dec-17	05-Jan-18	01-Jan-18	01-Jan-18

	Reverse charge Section 12(3)	Date of invoice issued by supplier	Removal of goods	Receipt of goods	Payment by recipient	Time of supply
11	General	31-Oct-17	31-Oct-17	20-Nov-17	30-Nov-17	20-Nov-17
12	Advance paid	31-Oct-17	31-Oct-17	20-Nov-17	05-Nov-17	05-Nov-17
13	No payment made for the supply	31-Oct-17	30-Dec-17	05-Jan-18	-	30-Nov-17

	Sale on approval basis Section 12(2) r/w Section 31(7)	Removal of goods	Issue of invoice	Accepted by recipient	Receipt of payment	Time of supply
14	Acceptance communicated within 6 months of removal	01-Nov-17	25-Nov-17	15-Nov-17	25-Nov-17	15-Nov-17
15	Amount paid to supplier before informing acceptance	01-Nov-17	25-Nov-17	15-Nov-17	12-Nov-17	12-Nov-17
16	Acceptance not communicated within 6 months of removal	01-Oct-17	15-May- 18	15-May- 18	02-May- 18	01-Apr-18

Statutory Provision**13. Time of supply of services**

- (1) The liability to pay tax on services shall arise at the time of supply, as determined in accordance with the provisions of this section.
- (2) The time of supply of services shall be the earliest of the following dates, namely:—
- the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
 - the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or

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

Provided that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

Explanation. —For the purposes of clauses (a) and (b)—

- (i) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;
- (ii) “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

- (3) In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:—

- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

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

Provided further that in case of supply by associated enterprises, where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

- (4) In case of supply of vouchers by a supplier, the time of supply shall be—

- (a) the date of issue of voucher, if the supply is identifiable at that point; or
- (b) the date of redemption of voucher, in all other cases.

- (5) Where it is not possible to determine the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (4), the time of supply shall—

- (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- (b) in any other case, be the date on which the tax is paid.

- (6) The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

13.1 Analysis

(a) Time of Supply – Forward Charge

Similar to goods, time of supply of services is prescribed to be the earlier of date of issue of invoice and date of receipt of payment. Date of issue of invoice requires us to examine section 31 which deals with the requirement to issue a “tax invoice”. In relation to services, section 31 requires that a tax invoice be issued whether before or after provision of service. Further, there is a time limit beyond which tax invoice to be issued in arrears cannot be delayed after completion of the provision of service.

Please recollect the discussion in Chapter III where it has been explained that in accordance with Schedule II, supplies involving goods may be treated as supply of services. In all such cases, as in the case of services ordinarily understood, this provision alone applies for determination of time of supply. One may also refer to Chapter VII regarding issuance of tax invoice in all other circumstances and determine from there the fact of issuance of tax invoice.

Therefore, where the tax invoice has been issued accordingly, the time of supply can be determined to be earlier of date of issuance of such tax invoice or date of receipt of payment.

Exceptions:

- (i) When an amount in excess of tax invoice is received up to ₹ 1,000/-, the time of supply in respect of such excess at the option of the supplier shall be the date of such invoice.
- (ii) Supply shall be deemed to have been made to the extent the value of supply indicated in the invoice or the value of payment received by the supplier.
- (iii) Date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier.

(b) Time of Supply – Reverse Charge

Where tax is payable on reverse charge basis, the time of supply is appointed to be the earlier of date of payment or 60 days from the date of issue of invoice by the supplier. If for any reason, one or all of these two dates cannot be determined then the time of supply will be the date of recording the supply in the books of the recipient.

In case of transactions between ‘associated enterprises’ where the supplier of service is located outside India, the date of recording the supply in the books of the recipient or the date of payment whichever is earlier, will be the time of supply.

Again, please note that in view of the definition of reverse charge in section 2(98), the above provision does not apply to payment of tax by an electronic commerce operator but only to those cases of supply which fall under sub-section 5 of section 9 of the Act.

Exceptions:

Date of receipt of payment shall be the date on which the payment is accounted in the books of the supplier or the date reflected in the bank account of the supplier, whichever is earlier.

(c) Time of Supply – Vouchers

Please refer to discussion regarding time of supply of goods for some background discussion about actionable claims. For purposes of this discussion on time of supply of services, please note the following comments:

- (i) the discussion on actionable claims being includible as vouchers is relevant vis-à-vis services for the only reason that certain transactions involving goods are deliberately treated as supply of services by Schedule II and to this extent actionable claims which are a sub-set of goods need to be referred in this Chapter;
- (ii) vouchers are not entirely comprised only of actionable claims and services can also be included but the exact scope of vouchers is eagerly awaited when the rules will be published.

Now, the time of supply in the case of vouchers is stated to be:

- (i) the date of issue of voucher if the supply is identifiable at that point; or
- (ii) in all other instances, the date of redemption of the voucher.

From the above provision, it can be seen that at the time of issue of voucher, it is possible that the supply is not identifiable. So, the following key statements can be considered in this regard:

- (i) Vouchers may be issued with specific or non-specific end-use;
- (ii) Vouchers are issued on payment of money;
- (iii) Vouchers themselves are not legal tender;
- (iv) Vouchers represent some carried value in money terms;
- (v) Vouchers are accepted as substitute for payment for a supply due to their carried value;
- (vi) Vouchers are not merely receipts for pre-payment received;
- (vii) Vouchers must be non-cancellable such that they cannot be reconverted back into money;
- (viii) Vouchers may be in physical or digital form but comprise the above characteristics.

When vouchers are issued for specific end-use, then they are taxable as supply provided they otherwise satisfy the requirements of section 7 of the Act. Since, a specific provision exists in respect of time of supply of vouchers, they are not goods or services in themselves, but are singled out for the limited purposes of prescribing the time of their supply. And the rate of tax will be that applicable to goods or services they are issued in respect of or that applicable at the time of redemption. Vouchers are not merely receipts for pre-payment received because prescribing a specific time of supply would be redundant when time of supply already considers advance payments.

Please also note that the Government has issued the Payment and Settlement Systems Act, 2007 ('PSS Act') and accordingly, not everyone is permitted to issue instruments that may be

used as a Payment System. RBI is expected to make major changes to the circulars issued in terms of the PSS Act by June 2017 but the framework or principles borrowed from the current circulars for the purposes of GST is expected to remain unaltered although changes may come in areas of governance, ease of doing business and inclusive growth in e-payment offerings through these Pre-Paid Instruments or PPIs. (refer RBI Circular No.RBI/DPSS/2017-18/58 dated 11 Oct, 2017)

Description	Prepaid Payment Instruments (PSS Act, 2007)			Co-branded hybrid PPIs (7.4)	
	Closed	Semi-closed	Open	Semi-closed	Limited Open
Parties involved					
Issuer	Merchant	NBFC/Company	Bank	NBFC/Company	Bank
Brand	Issuer	Issuer	Issuer	Co-branded	Co-branded
Holder of PPI	Consumer	Consumer	Consumer	Consumer	Consumer
PPI usage	Issuer outlet only	Pre-defined outlets	Any or ATM	Any (or ATM)	Any (or ATM)
Description of PPI					
Card type	Physical only	e-Card only	Any	e-Card only	Any
Payment type (2.1)	Acceptance	Settlement	Settlement	Settlement	Settlement
Reload allowed	No	Yes	Yes	Yes	Yes
Is as 'payment system'	No (2.4)	Yes	Yes	Yes	Yes
Regulatory prescriptions					
RBI approval	Required	Required	Authorization	Required	Gen. permission
Stored value < Rs.100,000/-	Not allowed (7.1)	Full KYC (7.2-iii)	Full KYC (7.2-iii)	Full KYC (7.2-iii)	Full KYC (7.2-iii)
Stored value < Rs.50,000/-	OVD (7.2-ii) *	OVD (7.2-ii) *	Full KYC (7.2-iii)	OVD (7.2-ii) *	Full KYC (7.2-iii)
Stored value < Rs.10,000/-	ID only (7.2-i)	ID only (7.2-i)	Full KYC (7.2-iii)	ID only (7.2-i)	Full KYC (7.2-iii)
* Officially valid document as per rule 2(d) of PML Rules, 2005					
Cashflow / custody-flow steps					
Stored value paid by	Consumer	Consumer	Consumer	Consumer	Consumer
Stored value paid to	Issuer-merchant	Issuer	Issuer-bank	Issuer	Issuer-bank
Held as	Trade advance	Trade advance	Deposit	Trade advance	Deposit
Held with (8.2 & 8.3)	Any bank (escrow)	Any bank (escrow)	Issuer-bank	Any bank (escrow)	Issuer-bank
Held for (8.3-vii)	Issuer-merchant	Issuer	Consumer	Issuer	Consumer
Interest bearing account	No (8.3-xii)	No (8.3-xii)	Yes	No (8.3-xii)	Yes
'Lien or charge' of unspent value	Consumer	Consumer	No (8.2)	Consumer	No (8.2)
'Lien or charge' of spent value	Merchant	Merchant	Merchant	Merchant	Merchant
Unspent value stored (10.2 & .3)	Lapse & forfeit	Exhausts	Withdraw	Exhausts	Withdraw
Additional restrictions					
Resident of India	Yes	Yes	Any	Yes	Any
Non-commercial user	Yes	Yes	Any	Any	Any
Currency	INR only (6.3)	INR only (6.3)	Any (4.1)	INR only (6.3)	Any (4.1)
User verification	Nil (bearer use)	PIN-based	PIN-OTP	PIN-OTP-Others	PIN-OTP-Others

Source: Circular RBI/2014-2015/105 DPSS.CO.PD.PPI.No.3/02.14.006/2014-15 dated July 1, 2014 (updated as on Dec 3, 2014); relevant para references in brackets.

(d) Time of Supply – Residuary

Where none of the above provisions are able to satisfactorily answer the time of supply, it is to be determined based on the residuary provision which states that the time of supply is:

- where a periodical return has to be filed, the due date prescribed for such return; or
- in any other case, the date of payment of the tax.

(e) Time of Supply – Special Charges

Sometimes there may be charges imposed by the supplier on account of some deviation or special circumstance from the expected terms of contract on the part of the recipient. These special charges may be enabled by the contract though not necessarily attracted at the time of

supply of the underlying goods or service (other than these special charges) or may be agreed later – when the special circumstance occurs. These special charges are listed as interest, late fee or penalty on account of delay in payment of consideration. In these cases, the time of supply is appointed to be the date of receipt by the supplier.

Please note that even though a debit note may be issued after reaching agreement with the recipient about the special charges imposed, the time of supply continues to remain 'date of receipt' of payment towards such special charges. This is a departure from the provisions on accrual principle in section 31. As this is a special provision, the same will prevail over all other general provisions.

It is important to understand that due to time of supply being prescribed, whether the imposition of these special charges is itself a supply or not? Please see the following comparative discussion:

Special Charges 'are' Supply	Special Charges 'are not' Supply
Special charges are also supply being agreeing to an act or forbear an act or to tolerate an act (Entry 5(e) of Schedule II) read with section 2(31)	There is no 'supply' in the case of interest, late fee or penalty as these special charges are a consequence of a departure from the agreed terms of contract and not in fulfilment thereof
Interest, late fee or penalty are illustrations only and such special charges by any other name would also be liable to GST but on receipt-basis	By accepting such an expansive interpretation, damages awarded by a Court, LD imposed in a contract, forfeiture of a EMD, etc. can become liable to GST as these are all in some way 'in the course or furtherance of business'
Special charges paid is liable to GST whether agreed before or agreed subsequently as satisfaction of the limited non-performance	Other than the three special charges listed, any other charges arising from a transaction is not liable to GST as it is not contemplated in the arrangement of supply although not imposed in all cases
Delay in payment is a primary deviation that gives rise to special charges but even deviation in time or quantity of supply can entail some other form of special charges, GST on those cannot be avoided as the these listed are only illustrative	Only 'delay in payment' gives rise to GST incidence on the special charges. Any other deviation would be a variation of contract to be independently examined if it satisfies definition of 'supply'
Special charges are 'linked' to an underlying supply (original supply) and therefore all forms of special charges would also be liable to GST	Special charges are 'linked' to an original supply as such GST cannot be imposed on special charges without an original supply

From the above discussion, several necessary conclusions need to be reached, namely:

- (i) whether the three listed charges are exhaustive or only illustrative?
- (ii) whether delay in payment is the only occasion when this provision is attracted or special charges imposed for any other default linked to the original supply will also attract this provision?
- (iii) whether special charges imposed for any other default (not delay in payment) is liable to GST but not on receipt basis but accrual basis or are special charges for these cases not at all liable to GST?

It appears that the three listed cases are exhaustive not by the three cases listed but the circumstance for their imposition – delay in payment of consideration. So, any form of special charges imposed is liable to GST on receipt basis but only if it is due to delay in payment of consideration. Special charges imposed due to any other default by the recipient is then to be examined if it is linked to an 'original supply' or is it by itself a supply? If linked to an original supply, it is also liable to tax but not during enjoying flexibility to pay tax on receipt basis and tax being payable based on the date of debit note. If not linked to an original supply, GST would not be applicable if it does not satisfy the requirements of levy.

The issues raised in respect of special charges may be considered as matter of discussion and does not carry a procurement of an opinion on view. Readers are free to connect on these discussions and evaluate each such situation after giving it adequate consideration or thought.

Some illustrations for better understanding of the provisions of time of supply of services

S. No.	Concept illustrations Section 13(2)	Invoice date	Invoice due date	Payment entry in supplier's books	Credit in bank account	Time of supply
1	Invoice raised before completion of service	10-Oct-17	20-Oct-17	26-Oct-17	30-Oct-17	10-Oct-17
2	Advance received	30-Oct-17	20-Oct-17	10-Oct-17	30-Oct-17	10-Oct-17

	Based on due date for invoicing Section 13(2) r/w Section 31(2) r/w Rule – 47 related to invoice	Invoice date	Commencement of service	Completion of service	Receipt of payment	Time of supply
3	Delayed issue of invoice	26-Dec-17	20-Oct-17	16-Nov-17	28-Jan-18	16-Nov-17

4	Advance received, invoice for full amount issued on same day (40% advance, 60% post supply payment)	30-Oct-17	30-Oct-17	30-Dec-17	30-Oct-17	30-Oct-17
					04-Dec-17	30-Oct-17

	Continuous supply of services Section 13(2) r/w Section 31(5)	Invoice date	Date as per contract	Receipt of payment	Entry of provision of services in books	Time of supply
5	Section 31(5)(a) Contract provides for payments monthly on the 10 th of succeeding month	02-Nov-17	10-Nov-17	15-Nov-17	31-Oct-17	02-Nov-17
		17-Dec-17	10-Dec-17	15-Dec-17	30-Nov-17	10-Dec-17
		10-Jan-18	10-Jan-18	06-Jan-18	31-Dec-17	06-Jan-18
6	Section 31(5)(c) Contract provides for payments on completion of event. Recipient to pay within 1 month from date of completion	12-Nov-17	10-Nov-17	25-Nov-17	12-Nov-17	10-Nov-17
		24-Apr-18	24-Apr-18	20-Apr-18	24-Apr-18	20-Apr-18

	Reverse charge Section 13(3)	Date of invoice issued by supplier	Date of completion of service	Payment by recipient	Entry of receipt of services in recipient's books	Time of supply
7	General	31-Oct-17	31-Oct-17	20-Nov-17	30-Nov-17	20-Nov-17
8	Advance paid	31-Oct-17	31-Oct-17	05-Nov-17	31-Oct-17	05-Nov-17
9	Delay in payment (Max. 60 days from date of invoice)	31-Oct-17	31-Oct-17	10-Jan-18	31-Oct-17	31-Dec-17
10	Service received from associated enterprise located	31-Oct-17	30-Nov-17	05-Apr-18	31-Mar-18	31-Mar-18

	outside India (No time extension allowed)					
11	Service by unregistered person, no payment made	-	30-Nov-17	-	05-Dec-17	05-Dec-17

	Issue of vouchers Section 13(4) [or Section 12(4)]	First service/ delivery of goods	Issue of voucher	Redempti on of voucher	Last date for acceptan ce of voucher	Time of supply
12	Voucher issued to a recipient after supply of a service [or specific goods], for the same service - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	01-Nov-17
13	Voucher issued to a recipient of machinery along at the time of delivery, for availing repair services [or specific goods] worth ₹ 5,000 - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	01-Nov-17
14	Voucher issued to a recipient after supply of a service, for any other services or goods across India, - valid for 1 year	01-Nov-17	01-Nov-17	14-Dec-17	30-Oct-18	14-Dec-17
15	Gift voucher for ₹ 1,500 for services [or goods]- valid for 6 months	-	01-Nov-17	25-Dec-17	31-Mar-18	01-Nov-17

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

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

- (a) in case the goods or services or both have been supplied before the change in rate of tax, —
 - (i) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
 - (ii) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
 - (iii) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;
- (b) in case the goods or services or both have been supplied after the change in rate of tax, —
 - (i) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or
 - (ii) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
 - (iii) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice;

Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.

Explanation. —For the purposes of this section, “the date of receipt of payment” shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

14.1 Analysis

Payment of tax requires the presence of all the following events:

- (i) supply of goods or services

(ii) issue of invoice

(iii) payment for the supply

When there is a change in the rate of tax during the occurrence of these three events, there may be some concern about the applicability of the correct rate of tax. Section 14 addresses this aspect clearly.

Where the supply takes place after the change in the rate of tax, the time of supply may be as follows:

(a) Supply before the cut-off date-say 01-Sep- 18

Supply	Invoice	Payment	Point of taxation
25.08.2018	01.09.2018	05.09.2018	01.09.2018 (Invoice or payment, whichever is earlier)
25.08.2018	26.08.2018	05.09.2018	26.08.2018(Date of Invoice)
25.08.2018	01.09.2018	27.08.2018	27.08.2018(Date of payment)

(b) Supply after the cut-off date-say 01-Sep-17

Supply	Invoice	Payment	Point of taxation
01.09.2017	25.08.2017	05.09.2017	05.09.2017(Date of payment)
01.09.2017	25.08.2017	26.08.2017	25.08.2017 (Date of invoice or date of payment, whichever is earlier)
01.09.2017	02.09.2017	26.08.2017	02.09.2017(Date of Invoice)

Although supply has not yet taken place, the time of supply determined as above is valid and not in violation of the levy of GST for the following reasons:

(i) Supply is defined in section 7(1)(a) as '.....made or agreed to be made.....'

(ii) Levy of GST in section 9 is on such supply, that is, 'made or agreed to be made'

Prescribing the time of supply anterior to the time of actual supply is well accommodated in the language of the Act.

Statutory Provision**15. Value of taxable supply**

- (1) *The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.*
- (2) *The value of supply shall include—*
 - (a) *any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier;*
 - (b) *any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both;*
 - (c) *incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;*
 - (d) *interest or late fee or penalty for delayed payment of any consideration for any supply; and*
 - (e) *subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments.*

Explanation.—For the purposes of this sub-section, the amount of subsidy shall be included in the value of supply of the supplier who receives the subsidy.
- (3) *The value of the supply shall not include any discount which is given—*
 - (a) *before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and*
 - (b) *after the supply has been effected, if—*
 - (i) *such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and*
 - (ii) *input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.*
- (4) *Where the value of the supply of goods or services or both cannot be determined under sub-section (1), the same shall be determined in such manner as may be prescribed.*
- (5) *Notwithstanding anything contained in sub-section (1) or sub-section (4), the value of*

such supplies as may be notified by the Government on the recommendations of the Council shall be determined in such manner as may be prescribed.

Explanation.—For the purposes of this Act,—

- (a) *persons shall be deemed to be “related persons” if—*
 - (i) *such persons are officers or directors of one another’s businesses;*
 - (ii) *such persons are legally recognised partners in business;*
 - (iii) *such persons are employer and employee;*
 - (iv) *any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;*
 - (v) *one of them directly or indirectly controls the other;*
 - (vi) *both of them are directly or indirectly controlled by a third person;*
 - (vii) *together they directly or indirectly control a third person; or*
 - (viii) *they are members of the same family;*
- (b) *the term “person” also includes legal persons;*
- (c) *persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.*

Valuation Rules under CGST Act, 2017 are as under:

**CHAPTER-IV
DETERMINATION OF VALUE OF SUPPLY**

27. Value of supply of goods or services where the consideration is not wholly in money

Where the supply of goods or services is for a consideration not wholly in money, the value of the supply shall,-

- (a) *be the open market value of such supply;*
- (b) *if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;*
- (c) *if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;*
- (d) *if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum*

total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

Illustration:

- (1) *Where a new phone is supplied for twenty thousand rupees along with the exchange of an old phone and if the price of the new phone without exchange is twenty four thousand, the open market value of the new phone is Rs 24000.*
- (2) *Where a laptop is supplied for forty thousand rupees along with a barter of printer that is manufactured by the recipient and the value of the printer known at the time of supply is four thousand rupees but the open market value of the laptop is not known, the value of the supply of laptop is forty four thousand rupees.*

28. Value of supply of goods or services or both between distinct or related persons, other than through an agent

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

- (a) *be the open market value of such supply;*
- (b) *if the open market value is not available, be the value of supply of goods or services of like kind and quality;*
- (c) *if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order:*

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of the goods or services.

29. Value of supply of goods made or received through an agent

The value of supply of goods between the principal and his agent shall:

- (a) *be the open market value of the goods being supplied, or at the option of the supplier, be ninety per cent. of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person, where the goods are intended for further supply by the said recipient.*

Illustration:

A principal supplies groundnut to his agent and the agent is supplying groundnuts of like kind and quality in subsequent supplies at a price of five thousand rupees per quintal on the day of the supply. Another independent supplier is supplying groundnuts of like kind and quality to the said agent at the price of four thousand five hundred and fifty rupees per quintal. The value of the supply made by the principal shall be four thousand five hundred and fifty rupees per quintal or where he exercises the option, the value shall be 90 per cent. of five thousand rupees i.e., four thousand five hundred rupees per quintal.

- (b) *where the value of a supply is not determinable under clause (a), the same shall be determined by the application of rule 30 or rule 31 in that order.*

30. Value of supply of goods or services or both based on cost

Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten percent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

31. Residual method for determination of value of supply of goods or services or both

Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of this Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

32. Determination of value in respect of certain supplies

- (1) *Notwithstanding anything contained in the provisions of this Chapter, the value in respect of supplies specified below shall, at the option of the supplier, be determined in the manner provided hereinafter.*
- (2) *The value of supply of services in relation to the purchase or sale of foreign currency, including money changing, shall be determined by the supplier of services in the following manner, namely:-*
 - (a) *For a currency, when exchanged from, or to, Indian Rupees, the value shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India reference rate for that currency at that time, multiplied by the total units of currency:*

Provided that in case where the Reserve Bank of India reference rate for a currency is not available, the value shall be one per cent. of the gross amount of Indian Rupees provided or received by the person changing the money:

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

Provided also that a person supplying the services may exercise the option to ascertain the value in terms of clause (b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

- (b) *At the option of the supplier of services, the value in relation to the supply of foreign currency, including money changing, shall be deemed to be-*
- (i) *one per cent. of the gross amount of currency exchanged for an amount up to one lakh rupees, subject to a minimum amount of two hundred and fifty rupees;*
 - (ii) *one thousand rupees and half of a per cent. of the gross amount of currency exchanged for an amount exceeding one lakh rupees and up to ten lakh rupees; and*
 - (iii) *Five thousand and five hundred rupees and one tenth of a per cent. of the gross amount of currency exchanged for an amount exceeding ten lakh rupees, subject to a maximum amount of sixty thousand rupees.*
- (3) *The value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent shall be deemed to be an amount calculated at the rate of five per cent. of the basic fare in the case of domestic bookings, and at the rate of ten per cent. of the basic fare in the case of international bookings of passage for travel by air.*
- Explanation.- For the purposes of this sub-rule, the expression "basic fare" means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.*
- (4) *The value of supply of services in relation to life insurance business shall be,-*
- (a) *the gross premium charged from a policy holder reduced by the amount allocated for investment, or savings on behalf of the policy holder, if such an amount is intimated to the policy holder at the time of supply of service;*
 - (b) *in case of single premium annuity policies other than (a), ten per cent. of single premium charged from the policy holder; or*
 - (c) *in all other cases, twenty five per cent. of the premium charged from the policy holder in the first year and twelve and a half per cent. of the premium charged from the policy holder in subsequent years:*

Provided that nothing contained in this sub-rule shall apply where the entire premium paid by the policy holder is only towards the risk cover in life insurance.

- (5) *Where a taxable supply is provided by a person dealing in buying and selling of second hand goods i.e., used goods as such or after such minor processing which does not change the nature of the goods and where no input tax credit has been availed on the purchase of such goods, the value of supply shall be the difference between the selling price and the purchase price and where the value of such supply is negative, it shall be ignored:*

Provided that the purchase value of goods repossessed from a defaulting borrower, who is not registered, for the purpose of recovery of a loan or debt shall be deemed to be the purchase price of such goods by the defaulting borrower reduced by five percentage points for every quarter or part thereof, between the date of purchase and the date of disposal by the person making such repossession.

- (6) *The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.*
- (7) *The value of taxable services provided by such class of service providers as may be notified by the Government, on the recommendations of the Council, as referred to in paragraph 2 of Schedule I of the said Act between distinct persons as referred to in section 25, where input tax credit is available, shall be deemed to be NIL.*

33. Value of supply of services in case of pure agent

Notwithstanding anything contained in the provisions of this Chapter, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely,-

- (i) *the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;*
- (ii) *the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and*
- (iii) *the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.*

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

- (a) *enters into a contractual agreement with the recipient of supply to act as his pure*

agent to incur expenditure or costs in the course of supply of goods or services or both;

- (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- (c) does not use for his own interest such goods or services so procured; and
- (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration

Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

34. Rate of exchange of currency, other than Indian rupees, for determination of value

- (1) [The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 for the date of time of supply of such goods in terms of section 12 of the Act.
- (2) The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply of such services in terms of section 13 of the Act.]

35. Value of supply inclusive of integrated tax, central tax, State tax, Union territory tax

Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined in the following manner, namely,-

$\text{Tax amount} = (\text{Value inclusive of taxes} \times \text{tax rate in \% of IGST or, as the case may be, CGST, SGST or UTGST}) \div (100 + \text{sum of tax rates, as applicable, in \%})$.

Explanation.- For the purposes of the provisions of this Chapter, the expressions-

- (a) "open market value" of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made;

(b) “supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both.

15.1. Introduction

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

15.2. Analysis

This section applies to both goods and services supplied for purposes of valuation of the taxable supply.

Although contained in the CGST Act, the valuation method provided in this section applies to UTGST, SGST, CGST and IGST. Valuation must be as provided exclusively in this section.

‘Transaction value’ has not been defined but is provided in the section itself as the ‘price’. Price is consideration in money terms. Value, as stated earlier, is price that would be prevalent under controlled conditions. These conditions being:

- Transaction having a price
- Between persons not related
- And that price being the sole consideration

In other words, the exercise of valuation is aimed to recreate the above conditions and take any given transaction through to see the result – price – that would emerge. In addition to this price, certain express checks to be carried out that can disqualify a price that is otherwise perfectly admissible are provided:

- Taxes levied under any other law(s)- this clause provides for exclusion of GST from the value and therefore all other taxes charged must be included in the value before quantifying GST. Taxes other than GST will cause cascading and this is deliberate.
- Any amounts paid by recipient that are obligation of supplier to pay- this clause removes any doubt about the need to include costs paid by the recipient to a third party in the value of supply by the supplier. The prescription in this clause is to identify any

“transaction value” which is the price actually paid or payable for the said supply of goods and/or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

occasion where costs – in respect of which the supplier is the principal creditor / obligor – are diverted away from the principal such that the recipient directly makes the payment resulting in lowering the rightful value of supply. At the same time, this clause does not authorize every payment where the recipient is the principal creditor / obligor and require these also to be included in the value of supply. This point may be illustrated by an example of – payment of commission to agent for facilitating the supply. If the payment is 'buying commission' which is paid by the recipient, then the obligation to pay the agent is always of the recipient and does not require to be included in the value of supply. But if the payment is 'selling commission' which happens to be paid by the recipient, then the obligation to pay the agent being that of the supplier is required to be included in the value of supply. In this case (of selling commission), the underlying obligation is that of the supplier because it is the supplier who engages the agent to identify customers to make a supply. And if, somehow, the supplier manages to pass this obligation to pay the agent (the amount towards selling commission) to the recipient, then the price paid to supplier is not the true value of supply. Had the recipient refused to pay this selling commission to the agent, then the supplier would have paid the agent and made a corresponding increase in the price of the supply. It is this objective that is being achieved by this clause. There are several other examples that can be considered, please also refer to the discussion on value of supply for further illustration on this point.

- Incidental expenses charged by the supplier- this clause addresses a completely different aspect compared to the previous clause. Here, costs that the supplier incurs 'at' or 'before' supply is liable to be included in the value of supply. For example, cost of packing and transportation has been debated under the VAT laws whether they are incurred before or after the 'transfer of property'. In GST, the point when title passes is irrelevant. To address the issues that had been so vigorously debated under VAT laws, this clause lays down that any cost that the supplier incurs including commission and packing which is charged to the recipient will be included in the value of supply. With this clause there is no opportunity to claim that certain charges recovered by the supplier 'after supply' are not to be included in the value of supply. If it is a charge recovered from the recipient, then the same is includible in the value of supply provided it is not incurred 'after' the completion of supply. An example of cost incurred after date of supply yet not liable to be included in the value of supply could be amount of input tax credit, considered as eligible in pricing of supply, but denied to the supplier by (say) section 16(4). And an example of a cost incurred by the supplier after the date of supply but still includible could be cost of in-warranty parts (actual or scientifically estimated provision) supplied after the date of supply.
- Interest, late fee or penalty for delayed payment- this would also have been a charge recovered by the supplier 'after' the supply that would not be includible in the value of supply but due to the express words of this clause will be included. Please refer detailed discussion regarding this clause under time of supply as 'special charges'

under section 12(6) / 13(6) where characterization of these charges as well as their rate of tax (supply-dependent or independent) are addressed.

- Subsidy realized by supplier on the supply- this clause expressly provides for the limited exclusion of subsidy from value of supply, that is, subsidy given by the Government alone is excluded from value of supply. This clause makes an interesting requirement that any transaction where there is any form of price-intervention that behaves like a 'subsidy' is liable to be included in the value of supply. In today's economy, there are many transactions that 'behave like subsidy'. For example, contribution of consideration by third party to contract, incentive to supplier given by brand holder linked to each supply, etc. Please note, extended credit terms to one customer and upfront payment terms to another customer cannot be interfered with by relying on this clause. There appears to be no room to include 'notional additions' by this clause because unlike Central Excise which relies upon 'assessable value' for quantifying the duty, GST relies upon 'transaction value' for quantification. Also, please note 'no cost EMI' and 'cash back' are a form of price-intervention by third party but not included in this clause because these forms of price-intervention is reaching the recipient of supply and not the supplier.

Discount is another area that needs special mention in view of the emphasis to tax treatment of discounts is visible in the repeated mention of discounts in section 15(3) where the value of supply will not include discount provided:

- It is allowed before supply.
- It is allowed after supply provided that it is established in agreement linked to specific supplies and corresponding credit is reversed by recipient.

It would be helpful to discuss the various kinds of discounts and the GST act implication of each, namely:

- 'In-bill' discounts – are those that are allowed exactly at the point of supply so as to reduce the published product price as a result of negotiations. Generally, 'in-bill' discounts are admissible as the reduction in arriving at the transaction value. However, abnormal discounts cast a shadow of doubt as regards price being the 'sole consideration'. To reiterate some of the points mentioned earlier, firstly, no one gives anything in exchange for nothing, secondly, one cannot give more than what they would get, thirdly, sale under distress circumstances does not mean sale is under duress and lastly, discount one that must always be related to the present supply and no others. When discount on an invoice is abnormal, inquiry is necessary regarding the circumstances for such an abnormal discount. Abnormality of discount refers to discount greater than available margins. A supplier may be willing to give away all of his margin perhaps to clear away stocks and make room for new inventory. But, when the discount exceeds the margins and there are no distress circumstances, it appears highly suspect that the supplier is receiving something in non-monetary form from the customer. Although it seems strange that the 'in-bill' discount needs to be dissected and

evaluated to such an extent but the need for that arises by the remarkable words used in the definition of consideration in section 2(31), particularly clause (b). On a quick perusal, it will now become palatable that the dissection and evaluation discussed about is very much warranted. It is so because hardly anything can escape this sweeping language 'in relation to, in response to or for the inducement of'. The supplier may be induced to offer more than his margins to conclude a supply and choose to designate as 'discount'. The direction of the flow of supply is in the opposite direction of the flow of consideration, more on this a little later.

- 'Off-bill' discounts – are those that are allowed after supply through a credit note. Credit notes in the context of GST have been discussed in detail under section 34 which may be referred to identify whether in all cases of 'off-bill' discount, is credit note allowed to be issued. For such 'off-bill' discounts to qualify as the reduction from the transaction value adherence to the conditions specified in section 15(3) are sufficient. These conditions are very explicit and simple in their application. This simplicity is not to be equated with ease because these conditions specified are such that can cause great unease and result in many transactions where 'off-bill' discounts fail to satisfy these conditions. But when the conditions are satisfied, 'off bill' discounts can be reduce from the transaction value.
- Cash discounts – are those that are allowed to incentivize the customer for prompt payment. Merely because the policy of allowing cash discount is in existence before supply does not always make cash discounts eligible under section 15(3). In other words, the price at which a transaction of supply was negotiated and concluded is what is liable to GST and not the contingency linked to payment of the dues in respect of such supply. GST is not a tax on recovery of dues to word supplies but a tax on supply itself. Cash discounts therefore, are unlikely to satisfy the requirements of section 15(3) in most cases. As remarkable as this implication appears to be, cash discounts, when looked at very dispassionately, are more akin to bad debts than a proper reduction in the value of supply. Any resistance to accept this view needs to be supported with nothing less than the high standards laid down in section 15(3). Bad debts is not always failure to recover the value of supply. Bad debts can also be abstinence from enforcing recovery of the full value of supply. Bad debts is not the state of helplessness but the decision of prudence in the interest of continued relationship with customers, cost of pursuing recovery measures and the quantum of dues lying unrecovered. It is not suggested that all cases of cash discounts are not available to be reduced from the transaction value. But the circumstances under which cash discounts have been allowed big an inquiry into the circumstances leading to this cash discount.
- Quantity discounts – are those that are aimed at reducing the price of each supply on the condition that a certain quantity of stocks need to be exhausted within a specified duration of time. Here again, inquiry is required into the terms and conditions applicable to this quantity discount. Where the stalks supplied by a manufacturer to a dealer are at a specified 'dealer price', which is applied in respect of supplies to all dealers along with additional discount linked to conditions – quantity and time – that is contingent at the

time of supply by the manufacturer, this would be an eligible discount under section 15(3). But discounts allowed in an invoice in respect of supplies made earlier are not discounts because transaction value can be reduced by discount allowed in respect of the present supply and not in respect of any other supplies.

- Special discounts – are those that are allowed by a supplier to incentivize aggressive on inward supplies on special occasions or in special market conditions. In most cases, such incentives designated as special discounts are really acknowledgment of services of aggressive marketing and product promotion. The direction of flow of consideration is any indicator of the direction of receipt of supplies. In other words, then incentives rules from the manufacturer to the dealer, that is not related to the present supplies, it indicates an acknowledgment by the manufacturers of the services received from the dealer. The services so identified are from the dealer back to the manufacturers and this is a supply on its own. In fact the rate of tax of the services supplied by the dealer to the manufacturer needs to be classified independently of the classification applicable to the supplies by the manufacturer to the dealer. Although it is true that between a manufacturer and a dealer all transactions are closely related by the common thread of the dealership agreement, GST travels deeper into this relationship and picks out individual transactions of supply to apply the right rate of tax on each of them. Special discounts by their very nature appeared to be outside the scope of section 15(3).
- Discounts ‘in-kind’ – are those that are allowed in the form of holiday packages, gold coin, motor vehicle and other objects of high perceived incentive value. To begin with, these articles are rarely stocks in which the parties are dealing with. Further, these articles are incentives to the proprietor, director, marketing executive and other individuals and not the recipient of supplies in the normal course. Accordingly discounts in kind are not discounts satisfying the requirements of section 15(3). When a manufacturer money to a travel agency for a holiday package and issues the same to the individual-dealer identified, it is important to examine whether the payment by the manufacturer to the travel agent is a payment to discharge the obligation of the dealer (eligible for this incentive) or is it a direct inward supply from the travel agent to the manufacturer. If the travel agent issues the invoice in the name of the manufacturer they need any inward supply by the manufacturers and issuing this travel package to the dealer is an outward supply under the paragraph 4(a), schedule II liable to tax (at the respective rate of tax the along with restrictions on input tax credit, if any). If however, the invoice is issued by the travel agency in the name of the dealer but the payment alone throws from the manufacturer to the travel agency then, there is a supply of some services received by the manufacturer which is being paid by settling the bills of the travel agency. It is sufficient for the present is the issues involved in special discounts are appreciated. Reference may be had to a detailed discussion on supply to come back and identify existence of such invisibles supplies lying embedded in seemingly ordinary transactions that are called discounts.
- Free stocks – are those that are similar to discounts ‘in-kind’ except that the articles

given away are the items of inventory date with by the parties. In such a case, the stocks given away are taxable outward supply in exchange of non-monetary consideration flowing to the manufacturers from the dealer entitled to such free stocks. When the manufacturers gives away stocks for free to a dealer, it is clear that this is not the case of charity by the manufacturer towards the dealer but a prudent business decision by the manufacturer to allow the dealer to realize the following proceeds from sale of such free stocks and retain them as his incentive without having to make any payment to the manufacturer towards the cost of such free stocks. It is important to note that cost of such free stocks in the hands of the manufacturer would be far lower than the value of the incentive realized and retained by the dealer which is the selling price of these stocks. Here is a case where a manufacturer incurs a small cost and delivers a far greater perceived value to the dealer. A further implication of giving away free stocks is that in the hands of the manufacturer it is a taxable outward supply without the benefit of input tax credit to the dealer as no payment is made in respect of the supply. Having paid tax once on the outward supply by the manufacturer, there is a further taxable outward supply in the hands of the dealer then the free stocks are sold to customers. The tax inefficiency in transactions of issue of free stocks is evidently clear so that appropriate decisions may be made to revisit this entire policy.

- 'Buy one-take two' – are transactions where two units of stocks are supplied against payment of the price designated against only one of them. Under the method of transaction value-based assessment of tax under the GST law, each unit of stock is liable to determination of transaction value on its own merit. 'buy one-take two' is not the case where the two units of stocks are bundled together with a single price assigned to them but are individually priced with no differentiation in the quality of each of the units except that the present offer allows the customer to pay the published price of one get collect two units of the stock. The stock collected without making any payment could very well have been the one that was paid for and purchased or vice versa. It merits to mention here that multiple units of a product may be bundled together with a single price published for them such as 4-bars of soap or pack-of-5 socks. Therefore, unless bundled together with preselected units of stock and a single price affixed, all other transactions of 'buy one-take two' are individually taxable – the paid unit at the price paid and the free unit at the price determined by the valuation rules.
- nominal value supplies – is another form of discount or incentive where items of inventory are admitted to be a taxable outward supply but a nominal value is charged for such supply. Relying on the second proviso to rule 28, there appears to be a lot of confidence in continuing such nominal value supplies as a form of discount or incentive. The discussion under rule 28 may be referred to the implications of charging nominal value but for the present, it helps to recollect the discussions about regarding the requirement for every transaction to part of the test of 'sole consideration'. Charging a

nominal value is an admission that the price is not the sole consideration and went price is not the sole consideration the transaction is dispatched into rule 27 for determination of the appropriate transaction value. As such, nominal value supplies are admittedly liable to tax but not that the nominal value.

If and only if the transaction value cannot be determined as above, reference to CGST Rules related to valuation is permitted. Hence, recourse to the Valuation Rules is permitted only in the following circumstances:

- Supplies not covered by section 7(1)(a);
- Supplies covered by section 7(1)(a) but between related persons;
- Supplies covered by section 7(1)(a) and not adjusted for aspects provided by sub-section 2.

Government is free to notify tariff values in specific cases to determine the tax payable in such cases. This would prevail over the valuation provided for in sub-section 1. Valuation Rules are prescribed under Chapter IV of the Central Goods & Services Tax Rules, 2017 from Rule 27 to Rule 35.

(a) Consideration not wholly in money - Rule 27

It is important to consider the difference between 'free' and 'no consideration'. It is probably common to consider that these two are synonymous. At the outset, there can be no contract without consideration. Experts in Contract Law will see the gross illegality if one were to say that there is a contract that has no consideration in it. If the contract is valid, then there must exist a consideration though in non-monetary

terms which is erroneously stated to be a contract having 'no consideration'. It is impermissible that a contract exists but lacks consideration. It is just impossible. Now, if there is a contract with non-monetary consideration, Rule 27 of the Central Goods and Services Tax Rules comes into operation. Although this rule states that it applies when 'consideration is not wholly in money', it applies even when the consideration is partly in money or wholly in non-monetary form. This rule provides that the value of supply "shall be" and not be "based on" or "guided by", so that mandatory nature of the prescription of this rule can be appreciated. Further, this rule comes into operation not only when the consideration paid is partly in money and partly in non-monetary form but also when the whole of the consideration is found to be in non-monetary form. Some of the transactions discussed earlier and found to be taxable supplies such as discounts, will rely on this rule to arrive at their value.

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

The following transactions of supply under section 7 straightaway arrive at this rule for the determination of the transaction value as they failed to qualify for application of section 15(1),

namely:

- barter and exchange transactions
- transactions listed in schedule I
- transactions it listed in schedule II but without consideration

The order of application of the methods prescribed under this rule cannot be deviated from merely because a later in the third is a more acceptable answer or is more easy to apply. The value of supply shall therefore be:

- (i) Open market value (OMV)– which is the ‘full value in money payable by an unrelated person as its sole consideration at the same time as the supply under inquiry. OMV is a new phrase but not too far from its scope and covered from its explanation. Transaction value is price of the supply under inquiry and open market value is the price of the same supply but without the circumstances that impairs the use of transaction value for quantification of tax. OMV is not comparable price to unrelated customer. The definition of OMV does not allow comparison of supplies in comparable circumstances. It only requires supply ‘at the same time’. So, OMV is not price in another ‘comparable’ supply at a close proximity in time. This provision does not provide the manner of adjustments to be made to overcome the effect of those disqualifying circumstances present but simply states that OMV ‘shall be’ the value of the supply. As such, this clause is not of much avail in addressing the deficiency which was the reason for arriving at the Rules as no resolution was possible in the section itself.
- (ii) Sum total of monetary consideration and ‘money-equivalent’ to consideration not in money – here two aspects are involved – one, to establish that OMV is not available (a task that will be discussed shortly) and two, to arrive at the money value of the non-monetary consideration. Having identified that OMV is not very specific to be able to clearly be determined, it becomes more acute to establish that OMV is not available before proceeding to clause (ii). Onus lies on the one who asserts – the taxable person would have admitted that the circumstances of section 15(1) are not fulfilled and warrants recourse to the Rules but having arrived at the rules, the onus remains with the taxable person to establish that OMV is not available. OMV is not comparable alternate price. Supplies to unrelated persons are always taking place although in different ‘commercial circumstances’ which is not provided in the definition of OMV. As such, overcoming the first aspect – OMV not available – is a challenge which tax administration can be stubborn about. Then, arriving at money value of non-monetary consideration is not guided by requirement to use standards of Cost Accounting, etc. Rule of reasonableness is the only guide for arriving at the value which can be shot down by tactic of arbitrariness of the tax administration. Suitable guidance is much needed in this entire exercise.
- (iii) Value of supply of ‘like kind and quality’ – here again two aspects are involved – one, to establish that clause (a) and (b) are not determinable and two, to identify ‘likeness’ of

kind and quality. This is a salutary method where there is much experience in Customs Valuation in successfully arriving at the comparable value. Subjectivity must be overcome which is possible by applying data that is reliably substantiated rather than arbitrary factors. The definition provides guidance on the manner of finding this 'likeness' for identifying whether the comparable are really comparable without being subject to any arbitrariness in tax compliance or tax administration.

- (iv) Sum total of monetary consideration and value determined by rule 30 or rule 31 in respect of consideration not in money – similar to the previous clause, the first of the two aspects – value is not determinable as above – is the one that presents the greatest difficulty. Expect that it is crude to import values from rule 30 or 31, the rest of this clause is simple in its application. Please note that rule 30 must be applied first and then rule 31, more on that in the discussion of those rules. Some illustrations are provided in rule 27 that may be referred for understanding its application.

Now, going back to the discussion on– valid contract having non-monetary consideration — it is important to understand some of the common instances when the supply is claimed to be of this nature, namely:

- Warranty supply of parts to end customer through a dealership – the parts are supplied 'free' to the end customer. At first, it is important to determine whether the parts replaced are actually covered by warranty in the supply contract or whether there is any replacement request entertained for out-of-warranty equipment for brand building exercise. Then, the warranty obligation lies only with the original equipment manufacturer (OEM) but the actual replacement is carried out at the dealership. When a warranty claim is made with the dealership by the end customer, the dealer seeks approval from OEM. Only after 'in-warranty approval' is received from OEM does the dealer replace the part. Now, the warranty replacement between OEM to end customer is not liable to GST not because it is free but because the price for the replacement is built into the price of the equipment originally supplied and therefore tax has already been paid by OEM. However, the dealer who replaces the part does not carry any role in the warranty fulfilment. In fact, the dealer 'delivers' the part to customer but 'supplies' it to OEM. Hence, there is another supply embedded here between dealer to OEM because dealer uses a tax-paid part from his inventory to replace it for the end customer. Alternatively, the OEM issues credit note to dealer for the part used in the warranty replacement. Reference may be had to Mohd. Ekram Khan's decision of SC in 144 STC 542. As such, warranty involves two supplies and neither of which are free from tax. One is tax pre-paid and another is currently taxed though not involving end customer.
- Physician's sample of drugs provided through sales representatives – these drugs are distributed by the physician during clinical consultation with patients. As such, the fee paid by patient to physician is one supply (whether taxable or exempt in GST) but the supply by pharmaceutical company to physician is another supply. To hold that cost of

such samples is included in the price of units sold and therefore there is no requirement to again impose GST based on OMV on the samples, would go against the valuation methodology adopted in GST. In other words, GST law does not follow valuation based on 'assessable value' but follows valuation based on 'transaction value'. Is the worst or the value of the goods sold were to be the basis of computation of tax payable then the argument of inclusion of cost of samples may have been tenable. But that is not the case in GST and each supply must stand on its own merit to be subjected to tax – is a price exists than tax would be computed on that price and if the price does not exist than tax would be computed on its OMV. If it is established that there is a non-monetary consideration flowing to the supplier then, samples will be liable to GST as determined by rule 27. This would be true not only of drugs but samples of any kind that are permanently given away. As regards physician's samples, there is raging debate that Courts are currently engaged in addressing due to the far reaching implications and no final outcome has yet been reached in this regard. This principle may be challenged if the facts considered to exist in the course of the about discussion were not to be in alignment in the facts of any other case so as to possibly receive a very different treatment in its valuation.

- Defaced samples of garments given to supplier by brand-holder – in comparison with physician's samples, defaced samples are those which are 'unfit for resale or end-use. Such kinds of samples are given in B2B transactions for helping suppliers to study the expected final product to prepare quotation for further orders. As these samples have been deliberately defaced and rendered unsuited for resale or end-use, there can be no argument that consideration flows from recipient of defaced samples back to brand-holder. Taking recourse to section 17(5)(h) does not satisfy the requirements of section 15 in the case of 'saleable' samples given away for non-monetary consideration. Reference may be had to the previous discussion on the concept of non-monetary consideration existing in a commercial transaction. Applies of credit by a mistaken application of section 17(5)(h) will result in credit being given up along with the liability under section 15 continuing to exist where the samples given away are 'saleable' though not sold. Reference may be had to the detailed discussion on the circumstances requiring credit reversal in case of 'disposal' of samples that are 'unfit for sale'.
- Stocks issued to discharge CSR obligations – without repeating the concept of non-monetary consideration, it is sufficient to mention that consideration is recognized in India even if it flows from a third-party to a contract. Stocks issued without any flow of consideration from a recognized and qualifying charitable institution would continue to be a supply 'for consideration' *albeit* in non-monetary form where the obligation under Companies Act stands satisfied/fulfilled. This in itself is the consideration for the supply and GST becomes payable based on the OMV. Continuing further, stocks issued in excess of the CSR obligation limit would also be a taxable supply. A legal entity is incapable of feeling the emotion necessary to make voluntary contributions towards needy causes. What in fact takes place is that the management of the legal entity will

feel the necessary emotion draw the stocks from inventory and then issue it for such voluntary/charitable purposes. As such, the drawal of stocks from inventory by the management itself is a supply under paragraph 4(a), Schedule II and its subsequent issuance by the management does not alter the tax incidence. In fact, such charitable contributions by legal entity is it disallowance as normal business expenditure for Income-tax purposes and enjoys deduction under a different provision of tax laws, that is, Chapter VI-A.

- Impairment of assets accounted in books – as per AS 28 (Ind AS 36) where impairment provision is to be made or reversed every time the assessment is done, the implication in GST needs to be kept in mind as to whether there is a supply and whether there is any corresponding impact of credit denial under section 17(5)(h) in respect of these assets. The usage of the words 'written off' can trigger extreme consequences and therefore caution must be exercised in the accounting treatment, disclosure of such treatment and implications of such treatment or disclosure under GST on a case to case basis. Generally, GST should not be applicable on 'write down' in the value of an asset that is neither permanent nor irreversible but the nature of the accounting treatment extended to the inquiry undertaken in relation to impairment may yield a different result if it is regarded to be a 'write-off'. No definitive view is being expressed here on the GST liability of impairment
- Leased car provided by employer disclosed in Form 12BA as perquisite – the reporting of perquisites admits a personal element involved in the enjoyment of the company car and the supply that is excluded in Schedule III is the service 'by' employee 'to' employer. But the present case is of supply of leased car 'by' employer 'to' employee which is not covered by Schedule III. By this admission in Form 12BA, GST becomes applicable but the valuation will not be as adopted in Rule 3 of Income-tax Rules but by GST Valuation Rules. It is important to examine the purpose of leasing a car by the employer and the purpose of permitting the employee to use the car. If it is for the advancement of the ends of the employer then it would not be a supply but if the ends of the employee are advanced, the conclusion would be very different. Care should be taken to examine all attendant facts, contracted obligations, established practices and other information that indicate the primary purpose of such leasing arrangements.
- Free-issue-material provided by client to contractor – is admittedly not a supply in itself, but the question that arises is whether there is any consideration flowing from the client to the contractor vis-à-vis the free-issue-material (FIM). Care should be taken in the drafting of the contract whether the work was awarded for a full rate and then deductions are made towards FIM by reducing the running-account-bill of the contractor or whether the contract itself was awarded for the reduced rate. Reference may be had to NM Goel's decision 1989 AIR 285 (SC) in relation to sales tax and Bhayana Builders decision 2013 (9) TMI 294 (CESTAT) in the context of service tax. The development of collective thought of experts with regard to taxability of FIM depends on whether there

is any consideration flowing from the contractor to the client for having issued the said material or the material so issued is the object upon which the contractor is to carry out his supplies and fulfil his contracted obligations. If the contractor were merely required to account for the entire quantity of FIM received by him with complete liberty to apply the FIM for the client's project or on any other project, without any restrictions or embargo only then would it be a case of supply of the FIM itself. For the issuance of FIM to be regarded as a 'transfer', it must be absolute and unhindered to constitute a supply in and of itself. Reference may be had to the characteristics of each of the 8 forms of supply under section 7(1)(a) and examine if issuance of FIM comes within the grasp of any of the said forms of supply. Fabric given by a customer to a tailor is not a case of supply of fabric by the customer to the tailor and a supply back by the tailor of the finished garment. An air conditioner given by a customer to an electrician called upon for its installation, is not a case of supply of the air conditioner itself to the electrician. If the air conditioner were not given by the customer there would be nothing for the electrician to install. The electrician is not at liberty to install the air conditioner in any other premises but the premises of the customer. As such, experience and understanding of the fiction in the valuation provisions under the earlier laws – where composition rate of tax was applicable or abatement valuation method was followed – must not be allowed to percolate into GST. It goes without saying that legal fiction in any law does not travel beyond the purpose for which that fiction was coined. The law of GST entertains no such fiction when it comes to valuation of each taxable supply.

These illustrations do not cover all possible scenarios but lay down some pointers that need to be considered while determining the valuation and GST impact of various transactions.

(b) Supply between related persons (Rule 28)

A supply between related persons or between distinct persons (with same PAN) is *prima facie* not fulfilling the requirements of section 15 to admit the transaction value for quantification of GST. In such cases, the value of supply will be:

- (i) Open market value – please refer to previous discussion;
- (ii) Value of supply of 'like kind and quality' – please refer to previous discussion;
- (iii) Value determined by rule 30 or rule 31 – please refer to subsequent discussion.

The proviso to this rule is of significance where it is the recipient, who are entitled to credit, the value declared in the invoice is deemed to be OMV. In other words, in a case of supply eligible by this rule – related parties or distinct persons – the supplier is entitled to unquestioned admittance of 'any price' that may be charged. This provision appears to accommodate internal preferences of the parties where the tax paid is revenue neutral. However, caution is advised in taking recourse of this proviso and charging a price lower than cost.

In the case of inter-branch supply of services, valuation of these supplies will involve additional tax due to costs such as salary, amortization, etc. which do not involve any input tax credit. For example, if a Head Office incurs certain entity-level expenses that are common to all registered taxable persons in other States, it is not permissible for the HO to retain the whole of these common credits due to the limitation in the language of section 16(1) – used by him in his business – although a portion of this credit may still be available. Previously, such HOs were registered as ISD under service tax but this may not be the case in GST. Please refer to discussion in section 20 for some analysis of these issues. Now, surely the HO is not 'merely an office receiving invoice for services' but is actually the 'seat of management and control' performing very significant services that are supplied to all branches. HOs ought not to continue as ISD but recognize the nature of the supply of services to all branches. And on this basis, apply these Rules for quantifying tax to be discharged. The proviso in this rule does not authorize payment of tax on cost because the value to be determined under this rule is OMV or else like-kind-and-quality or else rule 30 / 31 value. Hence, HO may be required to invoice for its services appropriately and not distribute credit as ISD. Valuation at nominal amount, appears to be permissible by second proviso to this rule. The eagerness to value stock transfers at nominal value misleads one to rely on the condition – recipient eligible for full input tax credit – appears to play culprit. It must be recalled that a transaction of stock transfers from one branch to another being defined to be a taxable supply under section 7(1)(c) read with schedule I deserves to be subjected to the rightful amount of tax based on the rightful value of this supply. This rule cannot undo what was set out to be achieved by the section. In order to read this second proviso harmoniously with the definition of supply, it appears to be appropriate to construe 'the value declared in the invoice' under the second proviso to be nothing short of the OMV of the stocks transferred between the branches *inter se*. This OMV could very well be the cost incurred by the supplier branch. But if the urge apply nominal value to such supplies continues, by the words 'value declared in the invoice', the one declaring the value on the invoice cannot do so by affixing a nominal value which would be completely in disharmony between the rule and the section. A quick reference to rule 32 makes it clear that section 15 provides the boundaries within which every exercise of valuation must operate.

(c) Supply through agent (Rule 29)

Every supply involving an agent is not a taxable supply. As discussed in Chapter III, supply by Principal and Agent *inter se* all though merely a channel to supply to the end customer is treated as a supply in Schedule I where the goods are handled by the Agent or principal. Please note that this rule is applicable only in case of 'supply of goods' and not 'supply of services' or 'supply involving goods treated as supply of services'. When this rule is applicable, the value of supply will be:

- (i) open market value or 'at the option' of supplier 90% of the price charged for goods of 'like kind and quality' by the Agent– this rule provides for an ad hoc reduction of 10% from the price otherwise charged to accommodate the incentive or margin left for the

Agent in pricing. Where margins are lower than 10%, this rule can cause great anguish. But, discarding the use of this clause is not permitted freely.

- (ii) value determined by rule 30 or rule 31 – please refer to subsequent discussion.

Transactions treated as supply by Schedule I of the CGST Act, which need to be subjected to tax requires a valuation mechanism. Principal and Agent do not *ipso facto* become related persons for rule 28 to be applicable to them.

Please note that agency cannot be inferred but must be express or implied. Agency may be understood as 'delegated authority' and 'detached consequences'. Within the scope of agency, the Principal will be obligated to third parties without any limit by actions of the Agent. As such, the authority to the Agent to act is delegated by the Principal and the Agent is not obliged to the consequences arising from his actions, provided they are within the scope of the agency. Undisclosed Principal still obligates the Principal because the lack of disclosure is to the third party and not that the Principal is unaware of the possible obligations accruing.

It is important to note that not all transactions between a Principal and Agent attract paragraph 3, schedule I. but it is only those transactions where the Agent 'handles' the goods of the Principal. Only when it is identified that it is a transaction of such nature, will the valuation under this rule become applicable. Further, it is to be considered that recourse to this rule is not an option because every transaction between related persons are disqualified under section 15(1) and required to be examined with reference to these rules. Once having arrived at rule 29, there is only one method – price of supply of goods of like kind and quality – and no others. This rule applies only in respect of goods and not services.

There is a very interesting clue in a press release that permits advertisement agency to opt for either agency-model or resale-model as regards publishing of advertisements in media. Here, the press release appears to require an alternation in the contractual arrangement with the media (which may not be agreeable or not advisable), but it would be advantageous if, for limited purposes of GST, the agency were to apply agency-model or the resale-model.

(d) Cost based value (Rule 30)

Where cost is used as a base for determining the value of supply and when any of the more specific methods prescribed are unavailable for specific reasons, this rule may be applied. It provides that the value will be 'cost plus 10%'. Please note that this rule applies to both goods and services supplied.

Every supply claimed to be free but involving non-monetary consideration faces the threat of tax being determined on this method. Cost Accounting Standards may be relied upon to determine cost for purposes of this rule. Please refer to the few illustrations discussed in previous sections such as warranty replacement, physician's samples, etc., tax administration may be kept at bay if valuation is not lower than 'cost plus 10%'. Although this method appears simple, it is important to note that only when it is established that the other more

specific rule and the specific methods under those rules are unable to yield an acceptable value for the supply under inquiry. Only where the other methods of valuation cannot be applied, will this rule be available to apply. Where margins are not as high as 10%, suppliers may justifiably move to Rule 31 but by satisfying that this rule does not provide a reasonable value.

In respect of supply of services (also transactions involving goods treated as supply of services), the supplier is permitted to apply rule 31 instead of rule 30, if that were more favourable.

(e) Residual valuation (Rule 31)

Where value cannot be determined by any other method, this rule authorizes the use of 'reasonable means to arrive at the value. It is important to consider that these reasonable means must be commensurate with the principles of section 15. This rule provides some crucial guidance on the manner of application of all other rules – any valuation method applied that is contrary to 'principle of section 15' – may not be accepted.

(f) Specific supplies (Rule 32)

Supplies which were previously under some form of abatement of value are found in this rule, namely:

- (i) supply of services involving sale/purchase of foreign currency, the value of supply will be:
 - (a) option (a) – difference between buying-selling rate and the reference rate published by RBI. Where reference rate is not available, 1% of gross Indian Rupee value of the transaction. And where the conversion is not into Indian Rupees, then 1% of the lesser of the Indian Rupee equivalent of each currency exchanged;
 - (b) option (b) – 1% of gross amount upto ₹1 lac, 1/2% after ₹1 lac upto ₹10 lacs and 1/10% after ₹10 lacs. This option (b) once exercised cannot be withdrawn during the financial year.
- (ii) supply of services by travel agent of booking of tickets for air-travel, the value of supply will be 5% of basic domestic fare or 10% of basic international fare. Please note that commission to the travel agent may flow from passenger or airline or any other person and the value determined here will be the tax for all the sources of commission. In case travel agents opt to pay tax on this abated value, a customer who is registered under GST law may have to forego input tax credit. Credit referred here is not merely the GST charged by the travel agent on the abated value. Travel agent will have eclipsed the GST charged by the airline on the ticket – 5% on economy ticket and 12% on any higher class ticket. For example, on a ticket value of ₹1 lac, GST paid by airline could be as high as ₹12,000 but the travel agent would issue an invoice for ₹1 lac + GST of ₹500. Registered customer would not be willing to forego this credit of ₹12,000. As

mentioned by someone, a credit-hungry registered customer would drive the travel agent to reverse his supply model – airline to invoice the (registered) customer directly to pass on credit and agent to invoice service fee to airline.

- (iii) supply of services in relation to life insurance, the value of supply will be gross premium reduced by investment allocation, in the case of single premium policy will be 10% of premium and in all other cases will be 25% of first year's premium and 12.5% for other year's premia. This rule will not apply to premium related to coverage for risk-of-life.
- (iv) supply of services of person dealing in second-hand goods, the value of supply will be difference between purchase price and selling price. Please note 'second-hand goods' refers to goods used or otherwise employed in some process without causing any change in their nature. Used goods and not the same as pre-owned goods which need not have been put to use. For example, a motor car where mark of registration has been assigned by RTO, even if left unused for long time will not be able to satisfy that it has not been used. And similarly, the odometer reading showing '0 kms' but duly registered by RTO will not override the conclusion that it is used. Please note that most appropriate tests for identifying whether the goods have been used or not may be examined. Also, this rule does not apply only to 'supply of second-hand goods' but to supply of services of person dealing in second-hand goods. In other words, disposal of leased car will also come within the operation of this rule

Intra-State supplies of second hand goods, by an unregistered supplier to a registered person, dealing in buying and selling of second hand goods and who pays the central tax and compensation cess on the value of outward supply of such second hand goods as determined under Rule 32(5) of Central goods and Services tax Rules, 2017, is exempted. This has been done to avoid double taxation on the outward supplies made by such registered person, since such person operating under the margin scheme cannot avail input tax credit on the purchase of second hand goods. (NN 10/ 2017-Central Tax (Rate) dated 28-Jun-17 and NN 04/ 2017-Compensation cess (Rate) dated 20-Jul-17)

It is important to note that the registered taxable person disposing off used-goods would not be able to avoid payment of tax on this outward supply. Facility under this 'margin method' is available only when the outward supply involving sale of used-goods is by a unregistered person to a registered taxable person dealing in used-goods. In the case of used-cars, the levy of tax on outward supply has completely taken the sheen off used-car business because registered sellers cannot avail this margin-method coupled with the visibly high rates of GST plus Cess applicable.

- (v) supply of voucher, the value will be the redemption value of the voucher. Please note voucher includes coupon, stamp, token, etc. Please refer to the discussion on vouchers under section 13 for the various forms that voucher can take including digital vouchers to which this rule will apply. Also, please note the those instruments that are approved by RBI and included in the definition of 'money' under the expression ".....or any other

instrument approved by RBI when used as a consideration to settle an obligation....." should not be treated as vouchers merely because they are popularly referred as 'vouchers'. All vouchers are not vouchers attracting this rule. Reference may be had to the discussion under section 12(4)/13(4) to identify instruments that 'are' or 'are not' vouchers.

- (vi) supply of services between distinct persons, that are notified by Government and where input tax credit is availed will be Nil. Please note that the implications of denial of credit u/s 17(2) in case of supply being exempt will be attracted in these cases. Care should be taken to identify that the notification to be issued in this regard are 'distinct persons' and supplies *inter se* when notified will have a deemed value of Nil. No notification has been issued as yet, in this regard. But it is expected that branches of banks may be notified to avail this facility where credit is fully available to the recipient-branch and even if 50% credit facility is availed by the bank, it is applicable only at the supplier-branch under section 17(4). And this expectation is borrowed from benefit to suppliers by second proviso to rule 46.

(g) Service of pure agent (Rule 33)

Agency supplies are different from 'pure agent' in relation to valuation. This rule applies only to supply of services. It provides for the exclusion from valuation of any supply of certain costs and expenses if and only if the following tests are satisfied:

- (i) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient; the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (ii) the supplies procured by the pure agent from the third party as a pure agent of recipient of supply are in addition to the services he supplies on his own account. *Explanation.-* For the purposes of this rule, the expression "pure agent" means a person who-
 - (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
 - (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
 - (c) does not use for his own interest such goods or services so procured; and
 - (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Illustration.- Corporate services firm A is engaged to handle the legal work pertaining to the incorporation of Company B. Other than its service fees, A also recovers from B, registration

fee and approval fee for the name of the company paid to the Registrar of Companies. The fees charged by the Registrar of Companies for the registration and approval of the name are compulsorily levied on B. A is merely acting as a pure agent in the payment of those fees. Therefore, A's recovery of such expenses is a disbursement and not part of the value of supply made by A to B.

(h) Exchange rate to be used (Rule 34)

Transactions undertaken in foreign currency must be translated into Indian Rupees. The rate of exchange for the determination of the value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962 and for the determination of the value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles for the date of time of supply in respect of such supply in terms of section 12 or, as the case may be, section 13 of the Act.

15.3. Comparative Review

Valuation Rules in Customs, Central Excise and Service Tax have been tested for applicability in various circumstances. All that experience and judicial interpretation may be brought to provide a good understanding of the words used in these Rules and the purpose for such usage. They are:

- Customs Valuation (Determination of Price of Imported Goods) Rules, 2007
- Customs Valuation (Determination of Price of Export Goods) Rules, 2007
- Central Excise Valuation (Determination of Price of Excisable Goods) Rules, 2000
- Central Excise (Determination of Retail Sale Price of Excisable Goods) Rules, 2008
- Service Tax (Determination of Value) Rules, 2006

Illustrations on Section 15 read with Central Goods and Service Tax Rules:

Q1. Mrs. Jaya purchases a Samsung television set costing ₹ 85,000 from Giriya's, in exchange of her existing TV set. After an hour of bargaining, the shop manager agrees to accept ₹78,000 instead of his quote of ₹81,000, as he would still be in a profitable position (the old TV can be sold for ₹8,000).

Ans. Where the price is not the sole consideration for the supply, the 'open market value' would be the value of the supply. Therefore, ₹ 85,000 would be the value of the supply.

[Section 15(4) r/w Rule 27(a) of Central Goods and Service Tax Rules]

Q2. Mr. Mohan located in Manipal purchases 10,000 Hero ink pens worth ₹4,00,000 from Lekhana Wholesalers located in Bhopal. Mr. Mohan's wife is an employee in Lekhana Wholesalers. The price of each Hero pen in the open market is ₹52. The supplier additionally charges ₹5,000 for delivering the goods to the recipient's place of business.

Ans. Mr. Mohan and Lekhana Wholesalers would not be treated as related persons merely because the spouse of the recipient is an employee of the supplier, although such

spouse and the supplier would be treated as related persons. Therefore, the transaction value will be accepted as the value of the supply. The transaction value includes incidental expenses incurred by the supplier in respect of the supply up to the time of delivery of goods to the recipient. This means, the transaction value will be: ₹4,05,000 (i.e., 4,000,000 + 5,000).

[Section 15(1) r/w Section 15(2)]

- Q3. Sriram Textiles is a registered person in Hyderabad. A particular variety of clothing has been categorised as non-moving stock, costing ₹5,00,000. None of the customers were willing to buy these clothes in spite of giving big discounts on them, for the reason that the design was too experimental. After months, Sriram Textiles was able to sell this stock on an online website to another retailer located in Meghalaya for ₹2,50,000, on the condition that the retailer would put up a poster of Sriram Textiles in all their retail outlets in the State.

Ans. The supplier and recipient are not related persons. Although a condition is imposed on the recipient on effecting the sale, such a condition has no bearing on the contract price. This is a case of distress sale, and in such a case, it cannot be said that the supply is lacking 'sole consideration'. Therefore, the price of ₹2,50,000 will be accepted as value of supply.

[Section 15(4) r/w Rule 27(d) r/w Rule 31 of Central Goods and Service Tax Rules]

- Q4. Rajguru Industries stock transfers 1,00,000 units (costing ₹10,00,000) requiring further processing before sale, from Bijapur in Karnataka to its Nagpur branch in Maharashtra. The Nagpur branch, apart from processing units of its own, engages in processing of similar units by other persons who supply the same variety of goods, and thereafter sells these processed goods to wholesalers. There are no other factories in the neighbouring area which are engaged in the same business as that of its Nagpur unit. Goods of the same kind and quality are supplied in lots of 1,00,000 units each time, by another manufacturer located in Nagpur. The price of such goods is ₹9,70,000.

Ans. In case of transfer of goods between two registered units of the same person (having the same PAN), the transaction will be treated as a supply even if the transfer is made without consideration, as such persons will be treated as 'distinct persons' under the GST law. The value of the supply would be the open market value of such supply. If this value cannot be determined, the value shall be the value of supply of goods of like kind and quality. In this case, although goods of like kind and quality are available, the same may not be accepted as the 'like goods' in this case would be less expensive given that the transportation costs would be lower. Therefore, the value of the supply would be taken at 110% of the cost, i.e., ₹ 11,00,000 (i.e., 110% * 10,00,000).

However, if the Nagpur branch is eligible for full input tax credit, the value declared in the invoice will be deemed to be the open market value of the goods in terms of 2nd proviso of Rule 28.

[Section 15(4) r/w Rule 28(b) & (c) r/w Rule 30 of Central Goods and Service Tax Rules]

- Q5. M/s. Monalisa Painters owned by Vasudev is popularly known for painting the interiors of banquet halls. M/s. Starry Night Painters (also owned by Vasudev) is engaged in painting machinery equipment. A factory contracts M/s. Monalisa Painters for painting its machinery to keep it free from corrosion, for a fee of ₹1,50,000. M/s. Monalisa Painters sub-contracts the work to M/s. Starry Night Painters for ₹1,00,000, and ensures supervision of the work performed by them. Generally, M/s. Starry Night Painters charges a fixed sum of ₹1,000 per hour to its clients; it spends 120 hours on this project.

Ans.: Since M/s. Monalisa Painters and M/s. Starry Night Painters are controlled by Mr. Vasudev, the two businesses will be treated as related persons. Therefore, ₹1,00,000 being the sub-contract price will not be accepted as transaction value. The value of the service would be the open market value being ₹ 1,20,000 (i.e., ₹ 1,000 per hour * 120 hours) *.

Note: This view is based on the grounds that there are no comparables to this supply.

However, if M/s. Starry Nights is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of services i.e. ₹ 1,00,000/-

[Section 15(4) r/w Rule 28(a) of Central Goods and Service Tax Rules]

- Q6. Prestige Appliances Ltd. (Bangalore) has 10 agents located across the State of Karnataka (except Bangalore). The stock of chimneys is dispatched on Just-In-Time basis from Prestige Appliances Ltd. to the locations of the agents, based on receipt of orders from various dealers, on a weekly basis. Prestige Appliances Ltd. is also engaged in the wholesale supply of chimneys in Bangalore. An agent places an order for dispatch of 30 chimneys on 22-Sep-2017. Prestige had sold 30 chimneys to a retailer in Bangalore on 18-Sep-2017 for ₹ 2,80,000. The agent effects the sale of the 30 units to a dealer who would effect the sales on MRP basis (i.e., @ ₹10,000/unit).

Ans.: The law deems these supplies between the principal and agent to be supplies for the purpose of GST. Therefore, the transfer of goods by the principal (Prestige) to its agent for him to effect sales on behalf of the principal would be deemed to be a supply although made without consideration. The value would be either the open market value, or 90% of the price charged by the recipient of the intended supply to its customers, at the option of the supplier. Thus, the value of the supply by Prestige to its agent would be either ₹ 2,80,000, or 2,70,000 (i.e., 90%*10,000 * 30), based on the option chosen by Prestige.

[Section 15(5) r/w Rule 29(a) of Central Goods and Service Tax Rules]

- Q7. Mr. & Mrs. Mehta purchase 10 gift vouchers for ₹ 500 each from Crossword, and 5 vouchers from Four Fountains Spa costing ₹ 1,000 each, and gives them as return gifts to children and their parents for their son's birthday party. The vouchers from Four

Fountains Spa had a special offer for couples – services for both persons at the price chargeable to one.

Ans. The value of the supply would be the money value of the goods redeemable against the voucher. Thus, in case of vouchers from Crossword, the value would be ₹ 5,000 (i.e., ₹500 * 10) and the value of vouchers in case of Four Fountains Spa would be ₹ 10,000 (i.e., ₹ 1,000 * 2 * 5).

[Section 15(5) r/w Rule 32(6) of Central Goods and Service Tax Rules]

Chapter-V

Input Tax Credit

- 16. Eligibility and conditions for taking input tax credit
- 17. Apportionment of credit and blocked credits
- 18. Availability of credit in special circumstances
- 19. Taking input tax credit in respect of inputs and capital goods sent for job-work
- 20. Manner of distribution of credit by Input Service Distributor
- 21. Manner of recovery of credit distributed in excess

Statutory Provision

16. Eligibility and conditions for taking input tax credit

- (1) *Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*
- (2) *Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless, -*
 - (a) *he is in possession of a tax invoice or debit note issued by a supplier registered under this Act, or such other tax paying documents as may be prescribed;*
 - (b) *he has received the goods or services or both*

Explanation- For the purposes of this clause, it shall be deemed that the registered person has received the goods where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;
 - (c) *subject to the provisions of section 41, the tax charged in respect of such supply has been actually paid to the Government, either in cash or through utilization of input tax credit admissible in respect of the said supply; and*
 - (d) *he has furnished the return under section 39:*

Provided that where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment:

Provided further that where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of one hundred and eighty days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed:

Provided also that the recipient shall be entitled to avail of the credit of input tax on payment made by him of the amount towards the value of supply of goods or services or both along with tax payable thereon.

- (3) *Where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the provisions of the Income Tax Act, 1961, the input tax credit on the said tax component shall not be allowed.*
- (4) *A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.*

Rule -36 Documentary requirements and conditions for claiming input tax credit.

- (1) *The input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents, namely, -*
 - (a) *An invoice issued by the supplier of goods or services or both in accordance with the provisions of section 31;*
 - (b) *An invoice issued in accordance with the provisions of clause (f) of sub-section (3) of section 31, subject to the payment of tax;*
 - (c) *A debit note issued by the supplier in accordance with the provisions of section 34;*
 - (d) *A bill of entry or any similar document as prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;*
 - (e) *An Input Service Distributor invoice and Input Service Distributor credit note or any documents issued by an Input Service Distributor in accordance with the provisions of sub-rule (1) of rule 54.*
- (2) *Input tax credit shall be availed by a registered person only if all the applicable particulars as specified in the provisions of Chapter VI are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2* by such person.*
- (3) *No input tax credit shall be availed by a registered person in respect of any tax that has been paid in pursuance of any order where any demand has been confirmed on accounts of any fraud, willful misstatement or suppression of facts.*

Rule -37 Reversal of input tax credit in case of non-payment of consideration.

- (1) *A registered person, who has availed of input tax credit on any inward supply of goods or services or both, but fails to pay to the supplier thereof, the value of such supply along with the tax payable thereon, within the time limit specified in the second proviso to subsection(2) of section 16, shall furnish the details of such supply, the amount of value not paid and the amount of input tax credit availed of proportionate to such amount not paid to the supplier in **FORM GSTR-2*** for the month immediately following the period of one hundred and eighty days from the date of the issue of the invoice.*

Provided that the value of supplies made without consideration as specified in Schedule I of the said Act shall be deemed to have been paid for the purposes of the second proviso to sub-section (2) of section 16.

- (2) *The amount of input tax credit referred to in sub-rule (1) shall be added to the output tax liability of the registered person for the month in which the details are furnished.*
- (3) *The registered person shall be liable to pay interest at the rate notified under sub-section (1) of section 50 for the period starting from the date of availing credit on such supplies till the date when the amount added to the output tax liability, as mentioned in sub-rule (2), is paid.*
- (4) *The time limit specified in sub-section (4) of section 16 shall not apply to a claim for re-availing of any credit, in accordance with the provisions of the Act or the provisions of this Chapter, that had been reversed earlier.*

16.1 Introduction

Chapter V of CGST Act deals with input tax credit.

Input Tax Credit is the backbone of the GST regime. GST is nothing but a value-added tax on goods and services combined. It is these provisions of Input Tax Credit that make GST a value-added tax i.e., collection of tax at all points in the supply chain after allowing credit of taxes paid on inputs/input services and capital goods. The invoice method of value added taxation will be followed in the GST too, viz., the tax paid at the time of receipt of goods or services or both will be eligible for set-off against the tax payable on supply of goods or services or both, based on the invoices with a special emphasis on actual payment of tax by the supplier. The procedures and restrictions laid down in these provisions are important to make sure that there is seamless flow of credit in the whole scheme of taxation without any misuse.

16.2 Analysis**(i) Relevant definitions:**

- (a) **Taxable person:** Means a person who is registered or liable to be registered under section 22 or section 24. As such, the liability to pay tax devolves on every 'taxable person' whether or not registration has been sought. But consider that input tax credit will be available only to a 'registered' taxable person and to a limited extent pre-registration credits are available under section 18(1).

- (b) **Input tax credit:** means the credit of “input tax” in terms of section 2(63).
- (c) **Input tax:** “Input tax” in terms of section 2(62) in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes
- integrated goods and service tax charged on import of goods
 - tax payable on reverse charge basis under IGST Act/SGST Act/CGST Act/UTGST Act.
 - but excludes tax paid under composition levy.
- Section 9(3) and 9(4) of CGST Act levies tax on goods or services or both on reverse charge. Therefore, ‘input tax credit’ is the tax paid by a registered person under the Act whether on forward charge or reverse charge for the use of such goods or services or both in the course or furtherance of his business.
- (d) **Electronic credit ledger:** The input tax credit as self-assessed in return of registered person shall be credited to electronic credit ledger in accordance with section 41, to be maintained in the manner as may be prescribed. [Section 2(46) read with Section 49(2)].
- (e) **“Capital goods”** means. -
goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business [Section 2(19)].
- (f) **Input:** “Input” in terms of section 2(59) means
- any goods,
 - other than capital goods,
 - used or intended to be used by a supplier
 - in the course or furtherance of business
- (g) **Input service:** “Input service” in terms of section 2(60) means
- any service
 - used or intended to be used by a supplier
 - in the course or furtherance of business.
- (h) **“Works Contract”** in terms of Section 2(119) means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;

(ii) **Section 16**

(a) **Registered person to take credit:** Every registered person subject to Section 49 (payment of tax), shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business. The input tax credit is credited to the electronic credit ledger. Rule 36 of the Central Goods and Service Tax Rules, 2017 provides that input tax credit can be taken on the basis of any of the following documents:

- (i) Invoice issued under section 31 by supplier of goods or services.
- (ii) Debit note issued under section 34 by supplier of goods or services.
- (iii) Bill of entry or any similar documents under Custom Act, 1962.
- (iv) Invoice prepared in respect of supplies made under reverse charge basis issued u/s 31(3)(f).
- (v) Invoice/ Credit Note issued by ISD for distribution of credit in accordance with Rule 54(1) of CGST Rules, 2017.

It is important to observe the words 'used by him' and 'in his business' are appearing in section 16(1). These words refer to the registered taxable person in question and not the legal entity. So, input tax paid in a State must not be in relation to the business of a taxable person in another State albeit belonging to the same person. For example, A Company has Branch-A which is a registered taxable person in Andhra Pradesh conducts conference in a hotel in Lonavla (Maharashtra) where CGST-SGST is charged by the hotel. This Company also has Branch-M which is a registered taxable person in Mumbai, Now the provisions of section 16(1) operate as follows:

- CGST-SGST charged by the hotel in Lonavla (Maharashtra) is 'used in the business of Branch-A' in Andhra Pradesh and not in the business of Branch-M in Mumbai.
- Hotel would not be aware about the above fact and would not resist to issue the bill in the name of Branch-M because both are branches of the same Company
- Since, CGST-SGST has been charged by the hotel, input tax credit would not be available to Branch-A as tax paid in Maharashtra is not a creditable tax in Andhra Pradesh
- Branch-M may be compelled to forego the tax paid to the hotel. However, there may be an urge to save this loss by informing the hotel the GSTIN of Branch-M. In fact, the Company is rightly required to obtain ISD registration in Maharashtra and distribute this credit entirely to Andhra Pradesh.
- But, Branch-M in Mumbai cannot justify this input tax credit as it is not '**used by him**' in '**his business**' but it is 'used by another' in 'that others business'
- Care should be taken to verify 'whose' business each input tax credit relates to;

- If nexus is established between the services of the hotel and the 'business' of Branch-M, input tax credit may be availed by Branch-M. Nexus emerges if inter-branch supply of services occurs between Branch-M and Branch-A
- (b) **Wastage of inputs in the course of production:** Credit in respect of inputs that may have been wasted during the course of production of finished products does not cease to be 'used or intended to be used' in the course or furtherance of business. As such, there is no restriction to be read into the language of section 16 (1). In fact, the full extent of credit will be available whether the extent of wastage of inputs in the course of production of finished goods is within normal wastage norms or even exceeds that to be called abnormal wastage of inputs. Unless there is a diversion of inputs (in respect of which credit has been availed), there is no embargo on availment and retention of input tax credit.
- (c) **Input-Output nexus:** The degree of nexus expected for allowable deal of credit is a tightly knit inextricable nexus, that is, everything that is 'used' in effecting the outward supply will qualify (subject to blocked credits) without going an explanation as to the rationale for using one or other material or services that may be argued to be unnecessary excessive or even imprudent in making the outward supply. In other words, by working backwards from what the outward supply is, every one of those material or services that have aided in the cause of successfully concluding the outward supply will qualify for credit. There is no room for raising questions as to the necessity but sufficient only to examine the fact of its usage in the outward supply. Accordingly, eligibility of credit will be in respect of capital goods, raw materials, consumables, packing materials, accessories, spares, taxable marketing and publicity material and taxable material distributed in the form of incentives and non-returnable trial units.
- (d) **Costing:pricing inter-relationship:** Credit may be availed in respect of inputs will cost may not be included in the pricing of the product and hence in its transaction value – this may create a concern as to whether this credit is admissible or not. As explained by the Hon'ble Supreme Court in CCE, Pune v. Dai Ichi Karkaria 1999 (112) ELT 353, the nature of Modvat scheme is such that to cost of purchase of inputs will be lowered due to a availment of credit, this does not immediately, directly and proportionately impact the assessable value of the finished product manufactured using the inputs. This ratio continues to be applicable in the context of GST law. As such, neither availment of credit nor its discontinuation can be alleged to have an immediate, direct and proportionate effect on the transaction value under section 15.
- (e) **Conditions for availment of credit by registered person:** Input tax credit is available only if –
- (i) The said goods or services or both are used or intended to be used in the course or in the furtherance of his business;
 - (ii) He is in possession of tax invoice/ debit note / tax-paying document issued by a supplier registered under this Act (listed above);

- (iii) He has received the said goods or services or both subject to job-work facilities and restrictions relating to input tax credit in Section 19;
 - (iv) The supplier has uploaded the relevant invoice on the GSTN;
 - (v) Subject to section 41 (claim of ITC and provisional acceptance thereof), the supplier has paid the said amount of tax (as charged in the invoice) to appropriate Government in cash or by way of utilization of input tax credit, as admissible;
 - (vi) "He" – claimant of input tax credit – has furnished return under section 39 in FORM-GSTR 2;
- (a) **Goods received in instalments:** If goods are received in instalments against a single invoice, credit can be taken upon receipt of last instalment of goods.
- (b) **Failure to pay to supplier of goods or service or both, the value of supply and tax thereon:** If recipient of goods or service or both has not paid the supplier within 180 days from date of invoice, the amount of input tax credit availed of proportionate to such amount not paid to supplier along with the interest will be added to output liability of the recipient. Such non-payment of the value of invoice must be admitted in the return filed in FORM-GSTR 2 (Rule 37 of CGST Rules, 2017) for the month immediately following the period of 180 days from the date of issue of invoice. The said input tax credit can be re-availed on payment of value of supply and tax payable thereon.
- (c) Please note that this condition does not apply for supplies which are payable under reverse charge basis. This exception has been expressly created in second proviso to section 16(2) of the Act. However, it is important to note that the second proviso to rule 37 that creates this *carve out*, excludes supplies between distinct persons under schedule I. Conspicuous by its absence is the inclusion of import of goods and services within this *carve out* provision. While reverse charge is excluded from the condition of having to make payment within 180 days (or lose credit), GST paid on import of goods and services does not come within reverse charge under section 9(3) or 9(4) even though the nature of GST paid is by the recipient of the import. The question that now arises is – whether there can be reverse charge liability other than under section 9(3) and 9(4). The definition in section 2(98) does not permit such extended application. The privilege to prescribe pre-conditions for vesting of right to input tax credit belongs to section 16, there is other provision from where any overriding right to claim credit on imports appears to flow. As such, the condition the non-payment will result in denial of credit already claimed and the only exceptions are reverse charge and supplies under schedule I and no others.
- (d) **Capital goods on which depreciation is claimed:** Where the registered person has claimed **depreciation on the tax component of the cost of capital goods** and plant and machinery under the provisions of the Income Tax Act, 1961, the input tax credit shall not be allowed on the said tax component.

There may however be some cases where assessee has not been able to take Input Tax Credit on capital goods for the reason that Department has objective to the same. In such cases assessee may decide to capitalize the tax component and may avail depreciation on tax component also. Whenever, the dispute relating to eligibility of Input Tax Credit on capital goods is resolved, assessee may avail Input Tax Credit and correspondingly reverse the depreciation claimed under Income Tax Act, 1961 on tax component. Similar provisions were there under Cenvat Credit Rules and the Hon'ble Gujrat High Court in the case Genus Electrotech Limited reported in 2013 (296) ELT 175 (Guj.) held that after reversal of entry for deprecation, assessee could have taken credit. This decision under the Cenvat Credit Rules, 2004 shall equally apply under Goods and Services Tax Act also.

- (e) **Time limit to avail the input tax credit:** A registered person is not entitled to take input tax credit on invoice/ debit notes after due date of furnishing of the return under section 39 for the month of September of the subsequent financial year or furnishing of the relevant annual return, whichever is earlier. This is a very important provision where, unlike claims under earlier laws that – registration is not a vesting condition – has been altered in GST. In fact, not only is registration a pre-requisite (see, 'registered taxable person' shall be entitled to claim credit) but filing of return under section 39 is also a requirement. Input tax credit is a right that does not 'vest' until the last of conditions in section 16(2) are completed and until that this right – input tax credit – is *inchoate* (or incomplete or in-formation) but not a vested-right. Rights that are not yet vested can lapse by limitation unless effective steps to actualize those rights are taken by the person. And once the right is vested, it becomes indefeasible except by operation of inherent conditions-subsequent. In other words, input tax credit which is a right in law of the taxable person is not fully mature and available to the taxable person until all pre-conditions (steps to actualize available rights) have been taken. Section 16(2) lays down these steps that can be taken immediately or in course of time. And once all these steps are taken then the right 'available' becomes 'availed'. After credit availed, it is available without any time limit. Section 18(4) provides a condition (known at the time of availing credit) that this credit will reverse if the outward supplies become exempted. Other than this situation, the credit availed is permanently available to the taxable person. Now, credit that is 'available' is somehow delayed and 'not availed', even then it is still available but not beyond the limitation prescribed of October 20, 20X1 – due date for filing return for September of subsequent year. Since the credit is 'not availed' the limitation prescribed is proper in view of the principle of reaching finality in respect of all 'available' credits that may 'not' be intended to be availed.

Therefore, input tax credit shall be available to a registered person only if invoice/challan is in his possession for the goods or services or both are received and the payment of such tax has been made by the supplier and a return u/s 39 has been filed. Receipt of goods shall include delivery to any other person as directed by the registered person.

Note: Goods are deemed to be received by a registered person when the supplier delivers the goods to the recipient/ any other person, on the direction provided by the registered person to the supplier. Credit would be available in case goods are directly sent to the job worker subject to provisions under section 19

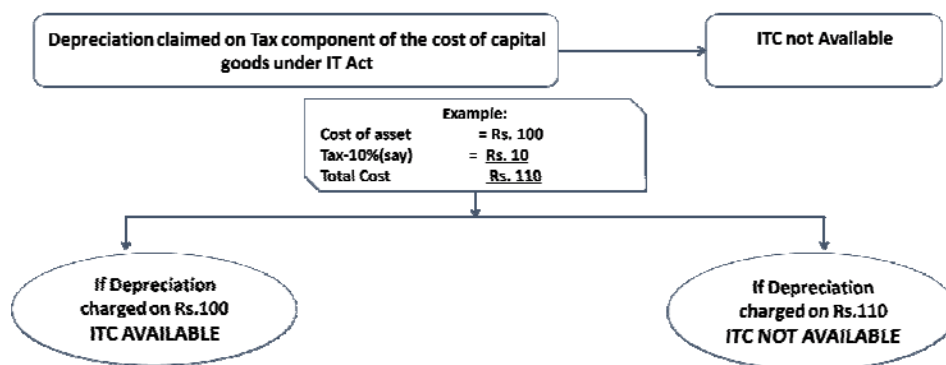
In summary, among others the following facts are crucial for availment of Input tax credit:

- (a) The goods and/ or services must be used “by him” in the course or furtherance “of his” business.
- (b) Possession of Output Invoice/Supplementary Invoice/ Debit note/ ISD invoice/ Bill of Entry and other related documents is a must.
- (c) The said document must contain all the prescribed specified in Rule 46 of Central Goods and Service Tax Rules, 2017 relating to Invoice. It may be noted that Invoice or such other document can contain additional details other than those prescribed but NO LESS. For details of invoice, see Chapter VI of the CGST Rules.
- (d) Supplier of goods and/ or services must upload the details of such documents in the common portal i.e. GSTN.
- (e) Vesting condition for claiming input tax credit is the return u/s 39 and not the supply *per se*.
- (f) Input tax credit in case of supplies in installment, would be receipt of last installment of goods.
- (g) The law casts an obligation on the recipient of goods and/or services who avails the credit to effect payment to the supplier within a period of 180 days from the date of invoice. If such payment is not effected by the recipient to the supplier, Rule 37 obligates reversal of input tax credit so availed leading to consequential levy of tax, interest. In case recipient of goods has made part payment, he would be liable for reversal on proportionate basis.

Proviso to section 16(2) provides that the taxable person shall be entitled to avail Input Tax Credit after making payment of the amount towards value of supply of goods or services or both along with tax payable thereon. Further, Rule 37(4) provides that the time limit specified under section 16(4) shall not be applicable for such recredit.

- (h) Claim of depreciation on tax component disqualifies a recipient of Capital goods from availment of input tax credit.
- (i) ITC cannot be availed after the due date of filing the return for September month of the next Financial year or on furnishing the Annual Return whichever is earlier.
- (j) No registered person is permitted to avail any input tax credit pursuant to an order of demand on account of fraud, willful misstatement, or suppression of fact.

ITC in case of Capital Goods



16.3 Comparative review:

Aspect	Credit under erstwhile system	Input tax credit under GST
Definition of "capital goods"	Defined in Cenvat Credit Rules	Comparatively wider definition.
Definition of "input"	Defined in Cenvat credit Rules which has inclusion and exclusion limb.	Exhaustive definition and does not contain inclusion or exclusion limb.
Definition of "input services"	Defined in Cenvat credit Rules which has inclusion and exclusion limb.	Exhaustive definition and does not contain inclusion or exclusion limb.
Electronic credit ledger	No such concept	Electronic credit ledger required to be maintained for crediting and utilising input tax credit

Statutory Provision

Section 17: Apportionment of credit and blocked credit

- (1) Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.
- (2) Where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies under this Act or under the Integrated Goods and Services Tax Act, and partly for effecting exempt supplies under the said Acts, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.
- (3) The value of exempt supply under sub-section (2) shall be such as may be prescribed, and shall include supplies on which the recipient is liable to pay tax on reverse charge

basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

- (4) A banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances shall have the option to either comply with the provisions of sub-section (2), or avail of, every month, an amount equal to fifty per cent of the eligible input tax credit on inputs, capital goods and input services in that month and the rest shall lapse.

Provided that the option once exercised shall not be withdrawn during the remaining part of the financial year.

Provided further that the restriction of fifty per cent. shall not apply to the tax paid on supplies made by one registered person to another registered person having the same Permanent Account Number

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

- (a) motor vehicles and other conveyances except when they are used-
 - (i) for making the following taxable supplies, namely: -
 - (A) further supply of such vehicles or conveyances; or
 - (B) transportation of passengers; or
 - (C) imparting training on driving, flying, navigating such vehicles or conveyances;
 - (ii) for transportation of goods.
- (b) the following supply of goods or services or both, -
 - (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where an inward supply of goods or services or both of a category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply;
 - (ii) membership of a club, health and fitness centre,
 - (iii) rent-a-cab, life insurance, health insurance except where
 - (A) the Government notifies the services which are obligatory for an employer to provide to its employees under any law for the time being in force; or
 - (B) such inward supply of goods or services or both of a category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and
 - (iv) travel benefits extended to employees on vacation such as leave or home travel concession.

- (c) works contract services when supplied for construction of immovable property, (other than plant and machinery), except where it is an input service for further supply of works contract service;
 - (d) goods or services or both received by a taxable person for construction of an immovable property (other than plant and machinery) on his own account, including when such goods or services or both are used in the course or furtherance of business;
Explanation. - For the purpose of clause (c) and (d), the expression "construction" includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property.
 - (e) goods or services or both on which tax has been paid under section 10;
 - (f) goods or services or both received by a non-resident taxable person except on goods imported by him;
 - (g) goods or services or both used for personal consumption;
 - (h) goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples; and
 - (i) any tax paid in accordance with the provisions of sections 74, 129 and 130.
- (6) The Government may prescribe the manner in which the credit referred to in sub-sections (1) and (2) may be attributed.
Explanation. For the purposes of this Chapter and Chapter VI, the expression 'plant and machinery' means apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and structural supports but excludes
- (i) land, building or any other civil structures,
 - (ii) telecommunication towers; and
 - (iii) pipelines laid outside the factory premises

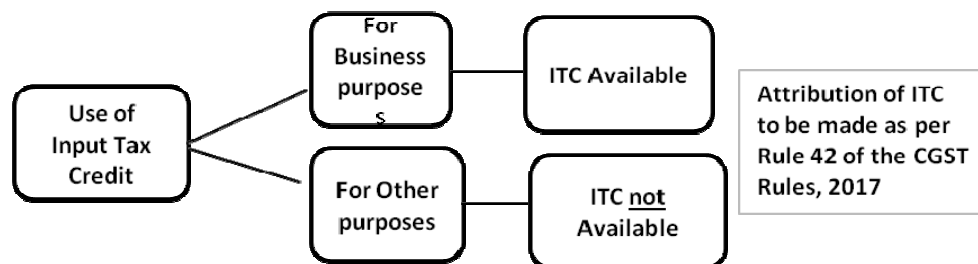
17.1 Introduction

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

17.2 Analysis

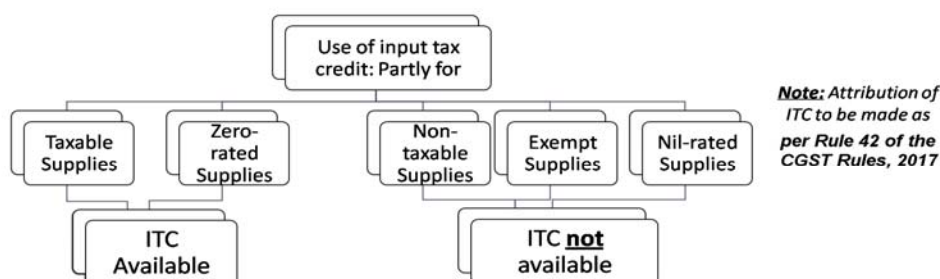
(a) Proportionate credit:

ITC based ON usage in business



ITC based ON use of Inputs

ITC on the Basis of use of Inputs



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

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

(b) **Special definition of 'exempt supply'**: Although exempt supply is defined in section 2(47), for purposes of credit reversal, there is a special definition provided in section 17(3) read with explanation (2) in rule 45. The value of exempt supplies shall include supply on which tax is paid under Reverse Charge, transaction in securities, sale of land and sale of building subject to clause (b) of Paragraph 5 of Schedule II. Please note that supplies in respect of which the outward supplier is not liable to pay tax but the recipient is made liable to pay the tax, then due to section 17(3), for the limited purpose of restricting input tax credit to the supplier (who is not responsible to pay tax due to RCM provisions) the value of these supplies will be regarded as 'exempt supplies' while arriving at the net available input tax credit. Doubts have been raised whether such supplies should be included as exempt supplies by the recipient who pays the tax (on RCM basis). This is not the case, as the recipient has not made such supply and the recipient is merely discharging tax 'as if' he is the person liable to pay the tax.. The explanation (2) in rule 45 provides a notional value of 'securities' and applies 'stamp duty' valuation in respect of immovable property.

In case, goods or services or both are partly used in taxable supplies and partly in non-taxable supplies, then amount of credit shall be restricted to the taxable supplies. Taxable supplies include zero rated supplies and exempt supplies shall include non-taxable supplies.

Provisions in respect of SEZ developers/units in GST contrasts with the erstwhile laws where either ab initio exemption was allowed or refund of taxes paid but in respect of qualifying procurements were allowed. While the requirement of examining 'entry for authorized operations' continues, ab initio exemption has been restored and the domestic supplier (to SEZ) is allowed to follow either of the two methods of neutralizing the impact of taxes paid upto the point of making supplies to SEZ. The domestic suppliers can enjoy the benefit only if the SEZs are able to support with confirmation (from the concerned zone authorities) of 'entry for authorized operations'. And where such confirmation is not available, the domestic suppliers are obliged to charges GST and all supplies 'to' SEZ are required to be treated as inter-State supplies.

(c) Banking Company or financial institution including NBFC engaged in accepting deposits, extending loans or advances: There is an option allowed as detailed in Rule 38 of Central Goods and Service Tax Rules, 2017 as follows:

- (i) Refrain from availing input tax credit relatable to 'non-business purposes' and not avail any credit restricted u/s 17(5) (discussed in detail below) and make this election known in FORM-GSTR 2 or
 - (ii) Avail full extent of credit on inter-branch supply of services of the banking or NBFC company having same PAN and also avail 50% of 'all other' input tax credits. 'All other' credits refer to input tax credit that would have been available u/s 16 before administering the restriction in this section.
- 6. Ineligible input tax credit:** input tax credit shall not be available in respect of the following:
- (i) Motor vehicle and other conveyance except when they are used for making the following taxable supplies, namely-
 - (a) Further supply of such vehicles or conveyances or
 - (b) Transportation of passenger or
 - (c) Imparting training on driving, flying, navigating such vehicles or conveyances;
 - (ii) Motor vehicle and other conveyance except used for transportation of goods
 - (ii) Supply of goods and/or services such as –
 - (a) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery except where such supply of goods or services of each category is used for making an outward taxable supply of the particular category of goods or services or both or as an element of a taxable composite or mixed supply

- (b) membership of a club, health and fitness centre
- (c) rent-a-cab, life insurance, health insurance except where it is notified by the Government as obligatory for an employer to provide to its employees under any law for the time being in force; or such inward supply of goods or services or both of a particular category is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as part of a taxable composite or mixed supply; and
- (d) travel benefits to employees on vacation i.e. leave or home travel concession.
- (iii) Works contract services when supplied for construction of immovable property, other than plant and machinery, except where it is for further supply of works contract service;

It is important to note that credit of GST paid on works contract services will be allowed only if the output is also works contract services.

- (iv) Goods or services received by a taxable person for construction of an immovable property on his own account, other than plant and machinery, even though it is used in course or furtherance of business;

“Construction” includes re-construction, renovation, additions or alterations or repairs, to the extent of capitalization, to the said immovable property. Please note that ‘alterations’ and ‘repairs’ are also included in this definition.

- (v) Goods or services or both on which the tax paid under composition scheme
- (vi) goods or services or both received by a non-resident taxable person except on goods imported by him
- (vii) Goods or services or both used for personal consumption
- (viii) Goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples
- (ix) Tax paid in terms of sections 74, 129 and 130

The words ‘in respect of’ appearing at the start of section 17(5) needs to be given its full and due meaning. Consider an illustration where input ‘A’ is converted into output ‘B’ (both being goods) and a certain quantity of output ‘B’ that are produced but not yet supplied are destroyed by fire, Now, is GST payable on output ‘B’ or is it sufficient if input tax credit taken on input ‘A’ were reversed,?. Destruction of output ‘B’ does not satisfy the requirements of ‘supply’ and therefore there is no question of payment of tax on the output that are destroyed before they are supplied. This would have been the case under Central Excise law (as Central Excise Duty was payable on manufacture) but those principles do not find place in GST law. Therefore, on destruction of output ‘B’, the only tax that remains to be paid is the credit availed on input ‘A’. Recovery of input credit that was properly availed on ‘A’ which was properly used in the course or furtherance of business in the production of ‘B’ which was destroyed before being supplied renders the credit availed to fail the requirements of section 16(1). Credit is not an entitlement at the time of receipt of inputs but an entitlement on the condition of its participation in a taxable outward supply. It must be added here that, there is no question of reversal of input tax credit under clause (h) in respect of inputs forming part of

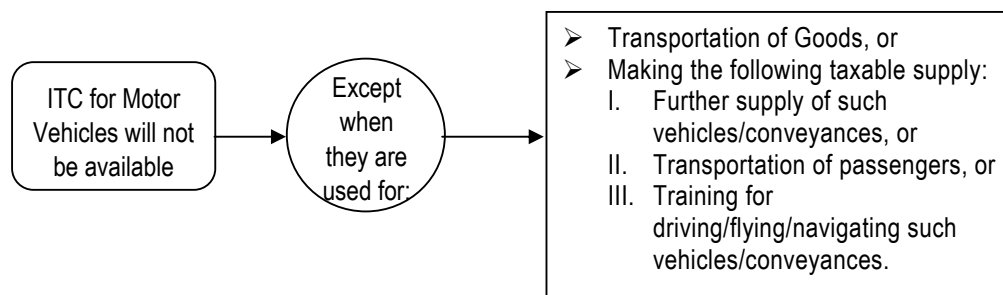
normal (or even abnormal) wastage in the course of production of the output. Credit 'in respect of' inputs that fail to participate in a taxable outward supply are identified and recovered by this clause. Therefore, by this illustration, it becomes clear that the words 'in respect of' are not limited to the very articles that are disqualified from claim of input tax credit under this subsection but also credits 'in respect of' goods or services linked to the 'disqualified articles' are also liable to be disqualified.

7. Plant and machinery: means apparatus, equipment, machinery fixed to earth by foundation or structural support that are used for making outward supply of goods or services or both and includes such foundation and **structural** supports but excludes land, building or any other civil structures, telecommunication towers; and pipelines laid outside the factory premises.

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

Restrictions on ITC: Blocked credits under Sec 17(5)

(a) Motor Vehicles



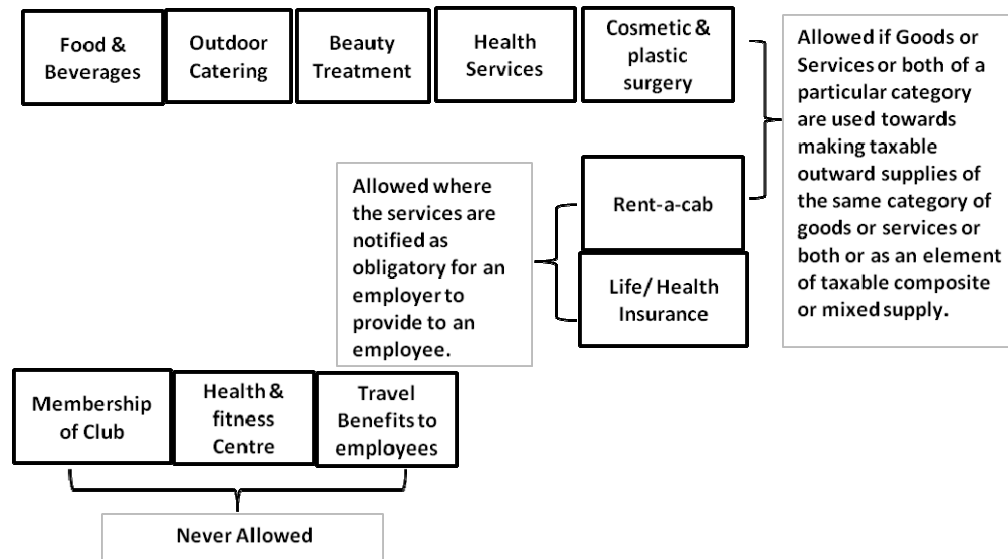
Note: Further, to come out of the restriction applicable to motor vehicles 'claiming' them to be for transportation of goods or transportation of passengers, registrations necessary under the motor vehicles' registration laws must also be in alignment with such a 'claim'. It would not suffice to merely claim motor vehicles which are duly registered for 'private use' to be used for transportation of goods or transportation of passengers. It may be a fact that a motor vehicle registered for private use in fact used often although occasionally for transportation of goods or transportation of passengers, it would still not escape the restriction because of the primary purpose of such a motor vehicle reported at the time of its registration.

Any recovery towards cost of such supplies from employees or other persons by a registered taxable person, input tax credit would be available to the extent these inward supplies are involved in an taxable outward supply.

Also note that rent-a-cab is a term that has been defined in Motor Vehicles Rules, 1989 and motorcab is defined in section 2(25) of the Motor Vehicles Act, 1988 to be limited to vehicles designed to transport 'less than 6' persons. Service tax law, however, expanded the meaning of 'cab' while imposing tax under the category of Rent-a-Cab Operator Services to include vehicles designed to seat more than 12 persons. In this section, rent-a-cab is not defined and it must be admitted to be an expression not of common usage. Now, whether the expansive meaning from the (now repealed) Finance Act, 1994 is to be borrowed or the meaning (now

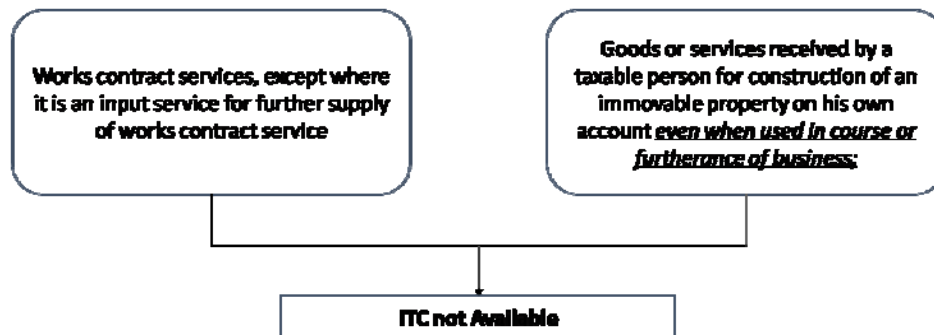
valid) Motor Vehicles Act/Rules is to be borrowed. One thing is clear that this is not a well understood or commonly used expression and there is definitely a need to go somewhere to borrow its meaning. Current law would prevail over repealed law. As such, it would be limited to motorcabs designed to carry 'less than 6 persons'. And credit in respect of transport of persons in a bus or minivan (for more than 6 persons) would not be blocked but only in respect of cars used as cabs.

(b) Supply of goods and services being:



Note: Though credit is restricted in respect of the above supplies, credit would still be allowed when they are used for further taxable supply, composite or mixed supply. It would not suffice to merely claim these restricted supplies are used for further taxable supply in the absence of a clear contractual requirement in an outward supply to include these restricted supplies. Utilization of these restricted supplies for the benefit of the supplier in the course of an outward supply does not deviate the restriction successfully.

(c) Construction of Immovable Property (other than plant & machinery)



Note: Considering that 'works contract services' is not itself a classification of a taxable outward supply, the restriction would apply only in those cases where the inward supply is not used directly in a further taxable outward supply. Goods or services or Works Contract services availed by buuiders/ developers for providing outward supply of services, would be eligible for ITC. The definition of plant and machinery is also unique in including foundation and support which may be a works contract service and credit being allowed in such cases.

(d) Self-construction

Inward supply of goods or services for construction of immovable property for 'own use' would also not be eligible for input tax credit. This restriction applies even when such immovable property is used in furtherance of business. Understanding the scope of 'immovable property' is very important. Immovable property is well understood to be land and building but it also includes everything that is attached to or forming part of the land and rights-in-land. Credit is blocked on all inward supplies leading to the establishment of such immovable property. Inward supply of services from real estate agent, architect, interior decorator and contractor are all banned as these are involved in the establishment of the immovable property. But, inward supplies such as security, house-keeping and property maintenance are not excluded as these are received after establishment of the immovable property. Please note the line that the law draws to prevent indiscriminate extension of this credit ban beyond the purpose for which it is specified.

(e) Non-use in business

Since credit reversal is required whenever inputs are lost stolen or destroyed, distinction is to be made between inputs 'lost' and 'loss' of inputs. As stated earlier, credit is not liable to be reversed in case of 'loss' of inputs that does not amount to inputs being 'lost' even if such 'loss' were normal or abnormal (in comparison to two firms in the industry). Reversal of credit is occasioned when there is any event that results in inputs being 'lost'.

Stocks given away as gifts or free sample appear to be covered by this clause (h), but it is important to note that the manner of giving away gifts or free samples is qualified with the word 'disposal'. Disposal has already been used once before in section 7(1)(a) which is not the same as 'sale' or 'transfer'. Therefore, it appears that gift or free samples given must be such that they are not by way of 'sale' or 'transfer' (or any other form of supply). From our earlier discussion undervaluation of stocks given of away for nonmonetary consideration which were concluded to be a taxable supply, it can be recognized here that 'disposal' by way of gift or free samples must necessarily be stocks that are 'unfit' for supply and not 'saleable' that are supplied for non-monetary consideration. A supply that is rightly taxable cannot be substituted based on its being given away as gift or free samples by mere reversal of relatable input tax credit. When stocks that are 'unfit' for supply are 'disposed off', the words 'in respect of' manages to recover input tax credit relatable to the inputs used in the production of such stocks that no longer make a taxable supply.

17.3 Comparative review:

Aspect	Credit under old regime	Input tax credit under GST regime
Proportionate credit	No explicit distinction made between goods or services used for business and non-business	Specific distinction made between goods or services used for business and non-business
Works contract credit	Restriction to inputs only	Credit Allowed when used for further supply of works contract
Credit on inputs used for construction of immovable property	Input or Input Service used for civil construction not eligible.	Restriction to both inputs and input services.
Credit related to works contract and construction w.r.t plant and machinery	Plant and machinery not excluded from restriction of credit	Plant and machinery is excluded from restriction of credit

17.4 FAQ

Q1. Where goods or services or both received, is used for both taxable and non-taxable supplies, what would be the input tax credit entitlement for the registered person?

Ans. The input tax credit of goods or service or both used in taxable supplies can only be taken by registered person & not non-taxable supplier.

Q2. Whether the taxable supply would include supplies on which tax is payable by recipient on reverse charge basis?

Ans. No.

Q3. Whether tax paid on repair and maintenance of Motor Vehicles used for the purpose of business is eligible for ITC.

Ans. Yes. Restriction placed under Section 17(5) of the CGST Act, 2017 is for Motor Vehicles and conveyance per se. There is no restriction for its repair and maintenance.

17.5 MCQ

Q1. Which of the following is included for computation of taxable supplies for the purpose of availing credit?

- (a) Zero-rated supplies
- (b) Exempt supplies

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

Ans. (a) Zero Rated supplies

Statutory Provision

Section 18: Availability of credit in special circumstances

- (1) *Subject to such conditions and restrictions as may be prescribed-*
 - (a) *A person who has applied for registration under the Act within thirty days from the date on which he becomes liable to registration and has been granted such registration shall, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act.*
 - (b) *A person, who takes registration under sub-section (3) of section 25 shall, be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of grant of registration.*
 - (c) *Where any registered person ceases to pay tax under section 10, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9*
Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed
 - (d) *Where an exempt supply of goods or services or both by a registered person becomes a taxable supply, such person shall be entitled to take credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock relatable to such exempt supply and on capital goods exclusively used for such exempt supply on the day immediately preceding the date from which such supply becomes taxable:*
Provided that the credit on capital goods shall be reduced by such percentage points as may be prescribed
- (2) *A registered person shall not be entitled to take input tax credit under sub-section (1), in respect of any supply of goods or services or both to him after the expiry of one year from the date of issue of tax invoice relating to such supply.*
- (3) *Where there is a change in the constitution of a registered person on account of sale, merger, demerger, amalgamation, lease or transfer of the business with the specific provision for transfer of liabilities, the said registered person shall be allowed to transfer the input tax credit which remains unutilized in his electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business in such manner as may be prescribed.*

- (4) Where any registered person who has availed of input tax credit opts to pay tax under section 10 or, where the goods or services or both supplied by him become wholly exempt, he shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods, reduced by such percentage points as may be prescribed, on the day immediately preceding the date of exercising such option or, as the case may be, the date of such exemption:
Provided that after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.
- (5) The amount of credit under sub-section (1) and the amount payable under sub-section (4) shall be calculated in such manner as may be prescribed
- (6) In case of supply of capital goods or plant and machinery, on which input tax credit has been taken, the registered person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery determined under section 15, whichever is higher:
Provided that where refractory bricks, moulds and dies, jigs and fixtures are supplied as scrap, the taxable person may pay tax on the transaction value of such goods determined under section 15.

Rule 40. Manner of claiming credit in special circumstances. -

- (1) The input tax credit claimed in accordance with the provisions of sub-section (1) of section 18 on the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or the credit claimed on capital goods in accordance with the provisions of clauses (c) and (d) of the said sub-section, shall be subject to the following conditions, namely, -
- (a) the input tax credit on capital goods, in terms of clauses (c) and (d) of sub-section (1) of section 18, shall be claimed after reducing the tax paid on such capital goods by five percentage points per quarter of a year or part thereof from the date of the invoice or such other documents on which the capital goods were received by the taxable person.
- (b) the registered person shall within a period of thirty days from the date of becoming eligible to avail the input tax credit under sub-section (1) of section 18, or within such further period as may be extended by the Commissioner by a notification in this behalf, shall make a declaration, electronically, on the common portal in FORM **GST ITC-01** to the effect that he is eligible to avail the input tax credit as aforesaid:
Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.]
- (c) the declaration under clause (b) shall clearly specify the details relating to the inputs held in stock or inputs contained in semi-finished or finished goods held in stock, or as the case may be, capital goods—
- (i) on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of the Act, in the case of a claim under clause (a) of sub-section (1)

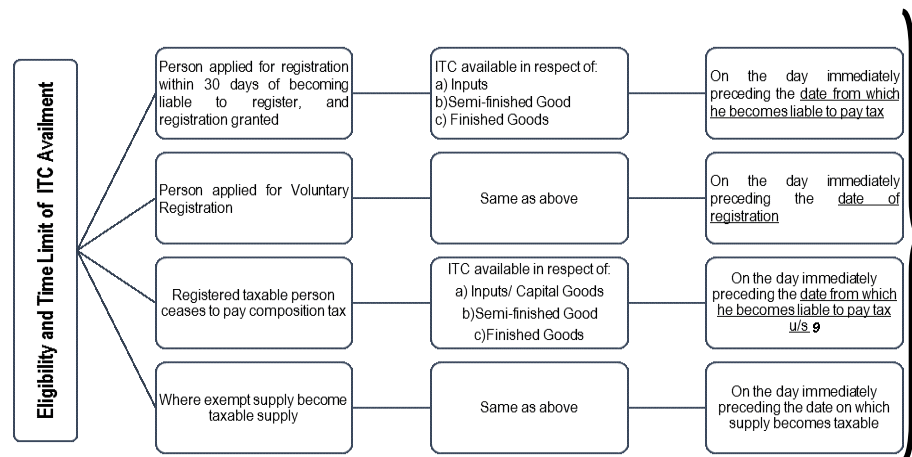
- of section 18;
- (ii) on the day immediately preceding the date of the grant of registration, in the case of a claim under clause (b) of sub-section (1) of section 18;
 - (iii) on the day immediately preceding the date from which he becomes liable to pay tax under section 9, in the case of a claim under clause (c) of sub-section (1) of section 18;
 - (iv) on the day immediately preceding the date from which the supplies made by the registered person becomes taxable, in the case of a claim under clause (d) of sub-section (1) of section 18;
- (d) the details furnished in the declaration under clause (b) shall be duly certified by a practicing chartered accountant or a cost accountant if the aggregate value of the claim because central tax, State tax, Union territory tax and integrated tax exceeds two lakh rupees;
- (e) the input tax credit claimed in accordance with the provisions of clauses (c) and (d) of sub-section (1) of section 18 shall be verified with the corresponding details furnished by the corresponding supplier in FORM GSTR-1* or in FORM GSTR- 4* , on the common portal.
- (2) The amount of credit in the case of supply of capital goods or plant and machinery, for the purposes of sub-section (6) of section 18, shall be calculated by reducing the input tax on the said goods at the rate of five percentage points for every quarter or part thereof from the date of the issue of the invoice for such goods.

18.1 Introduction

Input tax credit is available to a registered person on inputs held in stock, inputs contained in semi-finished and finished goods and on capital goods held in in some cases which are discussed below.

18.2 Analysis

Eligibility of input tax credit on inputs held in stock and contained in semi-finished and finished goods held in stock: The credit on inputs held in stock and inputs contained in semi-finished goods and finished goods held in stock is available in the following manner:



- Declaration in Form GST ITC 1 must be filed within thirty (30) days from the date of becoming eligible to input tax credit. Time limit for filing declaration in Form GST ITC - 1 has been extended by government from time to time* Rule 40 of Central Goods and Service Tax Rules, 2017 requires a declaration to be filed containing details of stocks and capital goods along with a certificate from a Chartered Accountant or Cost Accountant where the credit so claimed exceeds ₹2 lakhs.
- The supplier will not be entitled to credit of goods or services or both after expiry of 1 year from date of issue of tax invoice.
- The credit on capital goods shall be reduced by five (5) percentage per quarter or part thereof from the date of invoice.
- Such credits are subject to verification of details furnished by the supplier in GSTR - 1 or GSTR – 4 on the common portal.

To summarize, the credit of input tax can be taken as and when the person applies for the registration but the entitlement of credit of inputs would be from the day liability to pay tax arises.

Examples:

- (i) A person becomes liable to pay tax on 1st August 2017 and has obtained registration on 15th August 2017. Such person is eligible for input tax credit on inputs held in stock as on 31st July 2017.
- (ii) Mr. An applies for voluntary registration on 5th June 2017 and obtained registration on 22th June 2017. Mr. A is eligible for input tax credit on inputs in stock as on 21st June 2017.
- (iii) Mr. B, registered person was paying tax under composition rate upto 30th July 2017. However, w.e.f 31st July 2017. Mr. B becomes liable to pay tax under regular scheme. Mr. B is eligible for input tax credit on inputs held in stock as on closure of business hours on 30th July 2017.

Illustration (Rule 40): Manner of claiming credit in special circumstances

Akshat Steels Limited is a manufacturer of iron & steel. It procures raw materials and inputs such as iron ore, chemicals, gases, etc. and capital goods including plant & machinery, for the manufacture of such iron & steel. In this example, it has been assumed that iron & steel (which is the outward supply of Akshay Steels Ltd) is exempt from payment of taxes until 31-Mar-2020. Iron & steel become taxable with effect from 01-Apr-2020. The method of availment of input tax credits on inputs contained in stock and capital goods as on 31-Mar-2020 is covered by this illustration

Particulars	Amount (₹)
Value of inputs in stock on 31-Mar-2020	1,00,000
IGST @18%	18,000
All inputs were procured after 01-Jul-2019	

Value of inputs contained in semi-finished goods held in stock on 31-Mar-2020	4,00,000
CGST @ 6%	24,000
SGST @ 6%	24,000
<i>All inputs contained in semi-finished goods were procured after 01-May-2019</i>	
Value of inputs contained in finished goods held in stock on 31-Mar-2020	50,000
CGST @ 6%	3,000
SGST @ 6%	3,000
Capital Goods procured vide invoice dated 22.01.2020	20,00,000
IGST Paid @ 18%	3,60,000
<i>Only inputs worth ₹ 40,000 in finished goods were procured after 01-Apr-2019</i>	
Credit available in respect of inputs:	
CGST (Note 1)	26,400
SGST (Note 2)	26,400
IGST (Note 3)	18,000
Total credit available on inputs	70,800
Value of capital goods used exclusively in relation to exempted goods held on 31-Mar-2020	20,00,000
IGST @ 18%	3,60,000
Credit available in respect of capital goods:	
Date of invoice of capital goods	22-Jan-2020
Date from which the exempt goods become taxable	01-Apr-2020
No. of quarters from date of invoice	1
Percentage points to be reduced (5% per quarter) (Note 4)	5%
IGST paid on the capital goods used exclusively in relation to goods exempted up to 31-Mar-2020	3,60,000
ITC to be reduced by 5%	(18,000)
Credit (IGST) available on capital goods	3,42,000

Working notes:

Note 1: CGST credits on inputs in stock held on 31-Mar-2020:

a	ITC on the value of inputs		
b	ITC on the value of inputs contained in semi-finished goods: All inputs were acquired within 1 year prior to the effective date on which the goods become taxable. Hence, entire ITC would be allowed.	24,000	
c	ITC on the value of inputs contained in finished goods: Out of the total stock of ₹ 50,000/-, inputs totalling to ₹ 10,000/- are older than 1 year from the effective date on which the goods become taxable. Therefore, ITC to this extent stands disallowed. ITC on inputs contained in stock of ₹ 40,000 would be eligible. [Eligible credit = 40,000 * 6%]	2,400	
CGST credit available on inputs			26,400

Note 2: SGST credits on inputs in stock held on 31-Mar-2020:

a	ITC on the value of inputs		
b	ITC on the value of inputs contained in semi-finished goods: <i>Refer Note 1</i>	24,000	
c	ITC on the value of inputs contained in finished goods: <i>Refer Note 1</i>	2,400	
SGST credit available on inputs			26,400

Note 3: IGST credits on inputs on stock held on 31-Mar-2020:

a	ITC on the value of inputs: All inputs were acquired within 1 year prior to the effective date on which the goods become taxable. Hence, entire ITC would be allowed.	18,000	
b	Input tax credit on the value of inputs contained in semi-finished goods	-	
c	Input tax credit on the value of inputs contained in finished goods	-	
IGST credit available on inputs			18,000

Note 4: Rule 40(1)(a) of the Central Goods and Service Tax Rules, 2017 provides that input tax credit on capital goods can be claimed after reducing 5% per quarter of a year or part thereof, from the date of invoice in respect of which capital goods are received. Therefore, the number of quarters is 1, being the first quarter of the year 2020. The reversal of credit would therefore be, to the extent of 5% of the IGST credit of ₹3,60,000, i.e., IGST credit on capital goods would stand reduced to the extent of ₹ 18,000.

Illustration (Rule 42): Manner of determination of ITC in respect of inputs or input services and reversal thereof

Rule 42 of the Central Goods and Services Tax Rules, 2017

Sl. No	Particulars	Reference	CGST	SGST/UTGST	IGST
1	Total input tax on inputs and input services for the tax period May 2018	T	1,00,000	1,00,000	50,000
	Out of the total input tax (T):				
2	Input tax used exclusively for non-business purposes (Note 1)	T1	10,000	10,000	5,000
3	Input tax used exclusively for effecting exempt supplies (Note 1)	T2	10,000	10,000	5,000
4	Input tax ineligible under Section 17(5) (Note 1)	T3	5,000	5,000	2,500
	Total		25,000	25,000	12,500
	ITC credited to Electronic Credit Ledger (Note 1)	$C1 = T - (T1 + T2 + T3)$	75,000	75,000	37,500
	Input tax credit used exclusively for taxable supplies (including zero-rated supplies)	T4	50,000	50,000	25,000
	Common credit	$C2 = C1 - T4$	25,000	25,000	12,500
	Aggregate value of exempt supplies for the tax period May 2018 (Note 2 & 3)	E	25,00,000	25,00,000	25,00,000
	Total Turnover of the registered person for the tax period May 2018 (Note 2)	F	1,00,00,000	1,00,00,000	1,00,00,000
	Credit attributable to exempt supplies	$D1 = (E/F) * C2$	6,250	6,250	3,125

	Credit attributable to non-business purposes	$D2 = C2 * 5\%$	1,250	1,250	625
	Net eligible common credit	$C3 = C2 - (D1 + D2)$	17,500	17,500	8,750
	Total credit eligible (Exclusive + Common)	$G = T4 + C3$	67,500	67,500	33,750

Note 1: T1, T2, T3 and T4 shall be DETERMINED AS ABOVE and declared in Form GSTR-2

Note 2: If the registered person does not have any turnover for May 2018, then the value of E and F shall be considered for the last tax period for which such details are available

Note 3: Aggregate value excludes taxes

Note 4: The registered person is expected to make such computation for each tax period and for the whole year as well. In case the resultant computation results in short credit availed, then such credit can be claimed in the electronic credit ledger. Further, if on computation for the whole year, the registered person has claimed excess credit on a month on month basis, then such excess credit claimed for the year shall be added back to the output liability and will be liable for payment with interest.

Illustration (Rule 43): Manner of determination of ITC in respect of capital goods and reversal thereof in certain cases

Sl. No	Particulars	Reference	IGST
1	ITC on capital goods used exclusively for non-business purposes (Note 1)	T1	10,000
2	ITC on capital goods used exclusively for effecting exempt supplies (Note 1)	T2	10,000
	Total		20,000
3	ITC on capital goods used exclusively for taxable supplies (including zero-rated supplies) (Note 1)	T3	50,000
4	ITC on capital goods (other than T1, T2 and T3) (Annexure A)	$A = b+f$	3,90,000
5	ITC on capital goods whose residual life remain in beginning of tax period (Annexure A)	Tr	6,500
7	Aggregate value of exempt supplies for the tax period May 2018 (Note 2 & 3)	E	25,00,000
8	Total Turnover of the registered person for the tax period May 2018 (Note 2)	F	1,00,00,000
10	Credit attributable to exempt supplies	$Te = (E/F) * Tr$	1,625

Note 1: T1, T2 and T3 should be declared in Form GSTR-2. T3 alone will be credited to the electronic credit ledger

Note 2: If the registered person does not have any turnover for May 2018, then the value of E and F shall be considered for the last tax period for which such details are available

Note 3: Aggregate value excludes taxes

Annexure A - ITC on capital goods whose residual life is remaining

Sl. No	Particulars	Reference	Amount
For May 2018			
1	Inward supply value of Machinery X	A	12,50,000
	IGST @ 12%	B	1,50,000
	Invoice Value		14,00,000
	Date of inward supply		12 April 2018
	Life of the capital goods (in months) - for GST purpose is 5 years	C	60
	ITC attributable for 1 month	$Tm1 = b/c$	2500
2	Inward supply value of Machinery Y	E	20,00,000
	IGST @ 12%	F	2,40,000
	Invoice Value		22,40,000
	Date of inward supply		21 May 2018
	Life of the capital goods (in months) - for GST purpose is 5 years	G	60
	ITC attributable for May 2018 (1 month)	$Tm2 = f/g$	4000
	Aggregate of ITC on common credits	$Tr = Tm1 + Tm2$	6500

Rule 44 of the Central Goods and Service Tax Rules, 2017: Credit Reversal**Illustration 1: Where input tax credit lapses**

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		1,12,000
2	Date of shift to composition scheme		01 April 2019 (Can be opted in Financial year beginning)
3	Date of inward supply and use of capital goods		01 September 2017
4	Period of use (days)		577
	Period of use (months)		19
5	Residual life in months	B	41
	(Considering full life as 5 years)		
6	ITC attributable to residual life	$C = (A*B/60)$	8,200
	(To be added to the output tax liability of the registered person)		
5	Balance of ITC as on 31.03.2019		10,000
6	ITC utilized for capital goods for residual life		8,200
7	Balance ITC - will lapse		1,800

Illustration 2: Where input tax credit becomes payable

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		1,12,000
2	Date of shift to composition scheme		1st April 2019
3	Date of inward supply and use of capital goods		01 September 2017
4	Period of use (days)		577
	Period of use (months)		19
5	Residual life in months	B	41
	(Considering full life as 5 years)		
6	ITC attributable to residual life	$C = (A*B/60)$	8,200
	(To be added to the output tax liability of the registered person)		
5	Balance of ITC as on 31.03.2019		1,500
6	ITC utilized for capital goods for residual life		8,200
7	Balance tax payable		6,700

Illustration 3: Where no payment is required

Sl. No	Particulars	Reference	Amount
1	Value of capital goods		1,00,000
	IGST @ 12%	A	12,000
	Invoice Value		1,12,000
2	Date of shift to composition scheme		1st April, 2023
3	Date of inward supply and use of capital goods		01 September 2017
4	Period of use (months)		67
	Period of use (years)		5 years 7 months
5	Residual life in months	B	-
	(Considering full life as 5 years)		
6	ITC attributable to residual life	$C = (A*B/60)$	0
	(No payment required)		

Rule 44A. Manner of reversal of credit of Additional duty of Customs in respect of Gold dore bar. -

The credit of Central tax in the electronic credit ledger taken in terms of the provisions of section 140 relating to the CENVAT Credit carried forward which had accrued on account of payment of the additional duty of customs levied under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975), paid at the time of importation of gold dore bar, on the stock of gold dore bar held on the 1st day of July, 2017 or contained in gold or gold jewellery held in stock on the 1st day of July, 2017 made out of such imported gold dore bar, shall be restricted to one-sixth of such credit and five-sixth of such credit shall be debited from the electronic credit ledger at the time of supply of such gold dore bar or the gold or the gold jewellery made therefrom and where such supply has already been made, such debit shall be within one week from the date of commencement of these Rules

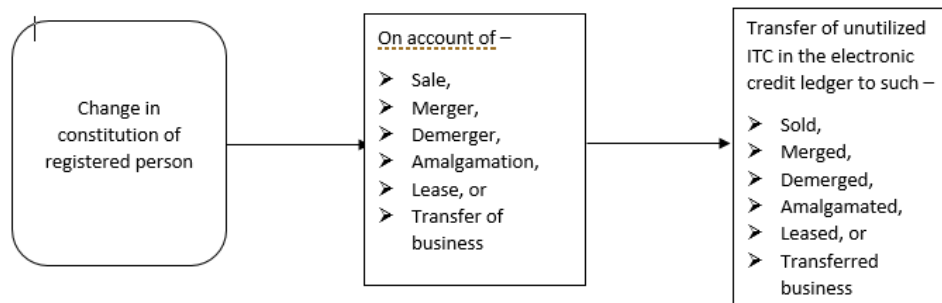
Input tax credit and change in constitution of registered person: The change in constitution of registered person due to sale merger, demerger, amalgamation, lease or transfer of business with provision for transfer of liabilities envisages that:

- The registered person is allowed to transfer the input tax credit remaining unutilized in the electronic credit ledger to such sold, merged, demerged, amalgamated, leased or transferred business.

- (ii) Rule 41 prescribes such credit transfer be made on the Common Portal in FORM GST ITC 2 and in case of demerger, credit to be transferred must be apportioned to the value of assets transferred in the arrangement to each such unit.
- (iii) Chartered Accountant or Cost Accountant to certify that the arrangement contains a specific provision for the transfer of liabilities.
- (iv) Form GST ITC 2 filed by the transferor will have to be accepted by the transferee on the Common Portal. Please refer to discussion on Registrations in case of such arrangements to examine the timing of seeking registration by transferee.
- (v) Transferee to duly account for the stocks & capital goods received in books of accounts.

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

ITC: Change in Constitution of registered Person

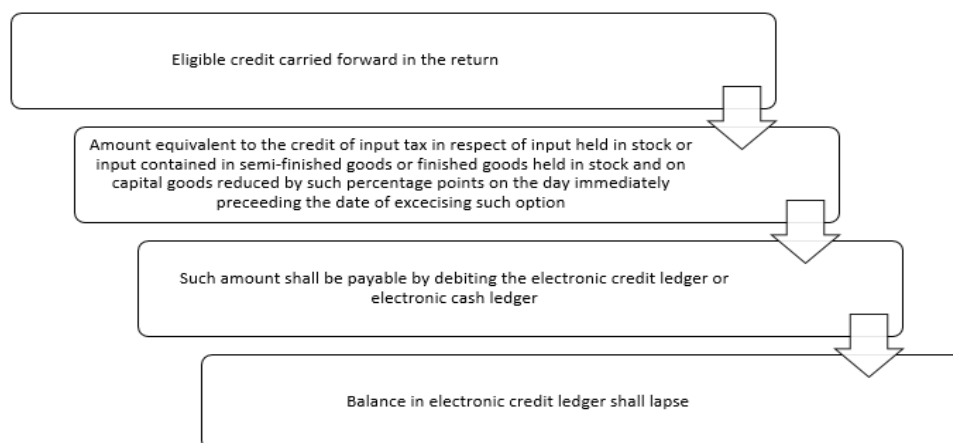


When registered person switches over from regular scheme to composition scheme:

- Pay an amount by debiting electronic cash ledger / credit ledger, equivalent to input tax credit of -
 - Inputs held in stock
 - Inputs contained in semi-finished or finished goods held in stock and
 - Capital goods
- On the day immediately preceding the date of such switch over.
- Balance of input tax credit lying in the electronic credit ledger, after payment of the above said amount, shall lapse.
- Such amount is calculated in manner to be prescribed

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

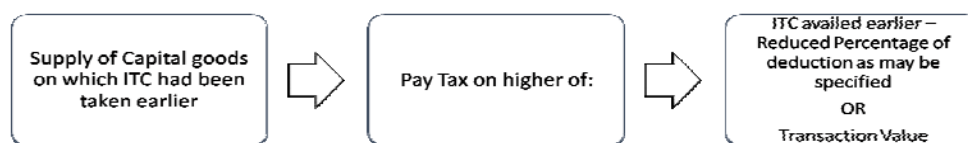
Switching from regular to composition- Pay and Exit



Supply of capital goods on which input tax credit is taken: The registered person shall pay an amount equal to:

- Input tax credit taken on such capital goods
- Reduced by
 - percentage points as prescribed or
 - tax on the transaction value of such capital goods,
 whichever is higher.

Supply of Capital goods on which ITC already taken



Please note that there is no saving clause in the event the taxable person entertained a *bona fide* view as to the non-taxability of certain supplies or availability of an exemption which is later overturned by a superior Court and demand crystallizes. In this scenario, limitation of availment of input tax credit lands a double blow to this taxable person. That is, not only would GST have been paid on inputs, input services and capital goods on which no credit would have been availed (due to this *bona fide* view having been entertained) but also, the full extent of the output tax becomes payable (without any relief towards credit that would otherwise have been available) due to the decision of the superior Court. Please exercise great caution while entertaining view about non-taxability or exemption. At the same time, please note it is not permitted to take a hyper-conservative view – where even with the availability of a clear and

absolute exemption, the taxable person chooses to pay GST in order to protect credit from the limitation – cannot be taken in view of the mandatory nature of such exemptions as clearly stated in explanation to section 11. Also, please note the difference between ‘taxable person’ and ‘registered person’ – are two deliberately dissimilar phrases used in the law – and credit is allowed u/s 16(1) only to a ‘registered person’ where as u/s 9(1) tax levied is payable by every ‘taxable person’ implying that the liability subsists even if not registered but credit avails, only if registered.

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

18.3 Comparative review:

Aspect	Credit under old regime	Input tax credit under GST regime
Credit on stock-in-hand	Rule 3(2) of CCR Rules, 2004	Specified persons in specified situations are eligible for input tax credit on stock
Credit on sale merger or transfer of business	Rule 10 of CCR Rules, 2004	Specific section covering the sale, merger etc
Reversal on goods becoming exempt	Rule 11(3) of CCR, 2004	To be reversed as per section 18(4)

Statutory Provision

19. Taking input tax credit in respect of inputs and capital goods sent for job work

- (1) *The “principal” shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on inputs sent to a job-worker for job-work.*
- (2) *Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the “principal” shall be entitled to take credit of input tax on inputs even if the inputs are directly sent to a job worker for job-work without being first brought to his place of business.*
- (3) *Where the inputs sent for job-work are not received back by the “principal” after completion of job-work or otherwise or are not supplied from the place of business of the job worker in accordance with clause (a) or clause (b) of sub-section (1) of section 143 within one year of being sent out, it shall be deemed that such inputs had been supplied by the principal to the job-worker on the day when the said inputs were sent out:
If where the inputs are sent directly to a job worker, the period of one year shall be counted from the date of receipt of inputs by the job worker.*
- (4) *The “principal” shall, subject to such conditions and restrictions as may be prescribed, be allowed input tax credit on capital goods sent to a job-worker for job-work.*
- (5) *Notwithstanding anything contained in clause (b) of sub-section (2) of section 16, the “principal” shall be entitled to take credit of input tax on capital goods even if the capital*

goods are directly sent to a job worker for job-work without being first brought to his place of business.

- (6) Where the capital goods sent for job-work are not received back by the “principal” within a period of three years of being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out:

Provided that where the capital goods are sent directly to a job worker, the period of three years shall be counted from the date of receipt of capital goods by the job worker.

- (7) Nothing contained in sub-section (3) or sub-section (6) shall apply to moulds and dies, jigs and fixtures, or tools sent out to a job-worker for job-work.

Explanation. —For the purpose of this section, “principal” means the person referred to in section 143

Rule 45. Conditions and restrictions in respect of inputs and capital goods sent to the job worker.

- (1) The inputs, semi-finished goods or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where such goods are sent directly to a job-worker.
- (2) The challan issued by the principal to the job worker shall contain the details specified in rule 55.
- (3) The details of challans in respect of goods dispatched to a job worker or received from a job worker or sent from one job worker to another during a quarter shall be included in FORM GST ITC-04* furnished for that period on or before the twenty-fifth day of the month succeeding the said quarter [or within such further period as may be extended by the Commissioner by a notification in this behalf:

Provided that any extension of the time limit notified by the Commissioner of State tax or the Commissioner of Union territory tax shall be deemed to be notified by the Commissioner.]

- (4) Where the inputs or capital goods are not returned to the principal within the time stipulated in section 143, it shall be deemed that such inputs or capital goods had been supplied by the principal to the job worker on the day when the said inputs or capital were sent out and the said supply shall be declared in FORM GSTR-1* and the principal shall be liable to pay the tax along with applicable interest.

Explanation. - For the purposes of this Chapter,-

- (1) the expressions “capital goods” shall include “plant and machinery” as defined in the Explanation to section 17;
- (2) for determining the value of an exempt supply as referred to in sub-section (3) of section 17-
- (a) the value of land and building shall be taken as the same as adopted for the purpose of paying stamp duty; and
- (b) the value of security shall be taken as one per cent. of the sale value of such security.

19.1 Introduction

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

19.2 Analysis

(i) Relevant Definitions:

- **Job work:** Any treatment or process undertaken by a person on goods belonging to another registered person (section 2(68)).
-
- **Job worker:** A person who undertakes any treatment or process on goods belonging to another registered person.
- **Principal:** A person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

(ii) **Entitlement of credit on inputs:** The principal can take credit of input tax on inputs sent to job-worker subject to fulfilment of the following conditions:

- Rule 45 of Central Goods and Service Tax Rules, 2017 provides the following:
 - To issue a delivery challan for transfer of inputs to the job-worker including where they are sent directly (to maintain paper trail of transaction)
 - The details of delivery challans for goods dispatched to job worker or received from job worker or sent from one job worker to another during the quarter are to be included in Form GST ITC-04 to be furnished on or before 25th day of the month succeeding that quarter. Date of filing ITC - 4 has however been extended from time to time.
 - Delivery challan is to contain all details as required in respect of an invoice prescribed in Rule 55 of Central Goods and Service Tax Rules, 2017. All delivery challans issued in respect of inputs sent to job-worker and those received back are to be reported in GSTR-1
 - In case of non-receipt of the inputs within the time prescribed, the delivery challan issued will be deemed to be tax invoice for the implied supply of inputs
- The inputs, after completion of job-work, are to be received back by the principal within 1 year of their being sent out.
- In case of direct supply, the period of 1 year shall be reckoned from the date the job worker receives such inputs.
- The credit of inputs can be taken even if inputs are sent directly to job-worker's premises without bringing it to principal's place of business.
- If the inputs are not received back within 1 year, it shall be deemed that such inputs had been supplied by principal to the job worker on the day when the said inputs were sent out.

(iii) **Entitlement to credit on capital goods:** The principal can take credit of input tax on capital goods sent to job-worker subject to the fulfilment of the following conditions:

- The capital goods, after completion of job-work, are received back by him within 3 years of their being sent out.
- The principal can take credit of capital goods even if such capital goods are sent directly to job-worker's place without bringing to principal's place of business.
- If the capital goods are not received back within 3 years, it shall be deemed that such capital goods had been supplied by principal to the job worker on the day when the said capital goods were sent out.
- Procedures listed in respect of inputs under Rule 45 of the Central Goods and Service Tax Rules, 2017 will apply to capital goods also (refer above).

It may be noted that unless the Principal is 'registered', the activity will not be 'job-work'. And when the supply – treatment or process – is not job-work, then it will also not be eligible to be classified under HSN 9988 in the Annexure – Scheme of Classification of Services. Although the nature of work performed is the same whether the Principal is registered or not, the classification of supplies will need to be based on another suitable HSN code in chapter 99 because paragraph 3, Schedule II does not refer to 'another person's goods' and not 'another registered person's goods'. Hence, due to the registration status of the Principal, the treatment or process may or may not qualify as job-work but in either case, the work of the supplier will continue to be 'treated as supply of services' though not under HSN 9988.

Treatment of process undertaken may or may not result in manufacture (section 2(72)) where processing of raw material or inputs that results in the emergence of a new product. Whether it results in manufacture or not, the treatment or process will always be 'treated as supply of services' in view of the mandate in paragraph 3, schedule II.

Now, 'goods belonging to another' does not mean 100% of the goods required in the job-work must be provided by the Principal. It is common and often inevitable for the job-worker to apply his own goods. Goods required for job-work can generally be identified as primary, secondary and ancillary material. If the job-worker applies ancillary material in the course of carrying out the treatment or process, the transaction does not cease to be job-work. Similarly, if the Principal provides only ancillary material, it is not justifiable to regard the transaction as job-work. Hence, a reasonable construction of the definition of paragraph 3, schedule II requires the Principal to provide the 'primary material' at least to qualify. Although no one-rule can be prescribed, the classification into primary-secondary-ancillary itself is a subjective matter. Reasonable construction is required based on the role each component plays in relation to the finished product in terms of function and identity to determine 'goods belonging to another' correctly.

Please note that job-working must not be confused with repair or maintenance. Job-working creates the functionality of an article but repair or maintenance restores or improves the functionality already created and possessed by that article or thing.

As regards 'movement of goods' by Principal to job-worker, it is not a supply for the reason that the ingredients required to constitute supply (as detailed in the explanation of clause (a) to (d) under section 7(1)) are not satisfied. It is for this reason that section 19(3) and 19(6) is required to 'deem' this movement of goods to be a supply in the event of failure of job-worker to return processed goods within the permitted time (1 year for inputs and 3 years for capital goods, respectively). Further, 19(3) and 19(6) 'deem' it be a supply not on the date of expiry of the permitted time to return them but retrospectively on the date when the inputs / capital goods were originally sent 'for' job-work. Deeming fiction is capable of providing a meaning that is otherwise not available to a work or phrase. Deeming fiction is used with great caution by the law-maker and when it is used, its construction must be with the same caution and seriousness. Hence, 'movement of goods' for the purpose of job-work is not supply but is 'deemed' to be a supply by a failure of a contingency or condition-subsequent.

It is section 16 and not section 19 that allows input tax credit but section 19 permit availment of input tax credit even when the inputs (or capital goods) are not first received at the premises of the Principal but delivered directly to job-worker. Section 19 also does not deny or recover the input tax credit already availed by the Principal on the occasion of sending them to the job-worker. When movement of goods for job-work is not a supply, where is the need for a provision to permit continuation of credit that was already availed validly. Since credit has been availed, failure to use the inputs (or capital goods) as 'intended' under section 16(1) would cause a break-down of the credit scheme – to allow credit only when the said goods are subsequently supplied and are taxable. And for this reason, transfer of business assets on which credit availed is 'declared' to be supply in paragraph 1, schedule I and diversion for non-business use (in certain cases) is 'treated' as supply in paragraph 4(a) and 4(b), schedule II. But there is no provision to impute supply characteristics to 'movement of goods for job-work'. This responsibility falls on section 19(3) and 19(6), respectively.

This can be contrasted with the 'time of supply' of goods sent-on-approval under section 31(7). Here, the date of acceptance by customer (or end of 6th month) is recognized as supply and hence registers 'time of supply'. It is interesting to note that there is deeming fiction employed here because none is required. In other words, 'sending goods on approval' is not a supply for the same reason that the ingredients required to constitute supply (as detailed in the explanation of clause (a) to (d) under section 7(1)) are not satisfied. And such a test can validly be applied for verifying whether 'movement of goods for job-work' is supply or not. By applying the same test to 'sending goods on approval', the 'time of supply' is not the date of sending them but the date of their acceptance by customer (or end of 6th month).

19.3 Comparative review

Aspect	Credit under erstwhile system	Input tax credit under CGST
Definition of "job work"	Defined in Cenvat Credit Rules to mean processing of material supplied to job	Defined to mean undertaking any treatment or process by a person on goods belonging

	worker to complete whole or part of manufacturing process	to another registered person
Eligibility of Cenvat credit to principal manufacturer	Principal is eligible for Cenvat credit	Similar in CGST. Principal is eligible for Cenvat credit
Conditions for return of inputs and capital goods	For inputs – 180 days For capital goods – 2 years	For inputs – 1 year For capital goods – 3 years
Reversal of credit if inputs/capital goods not returned within specified time	Credit to be reversed	To be treated as deemed supply on the day when such inputs/capital goods are sent out
Re-credit if goods returned after specified time	Re-credit allowed	No such provision

19.4 Related provisions

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

19.5 FAQs

Q1. Whether the principal is eligible to avail input tax credit of inputs sent to job worker for job work?

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

19.6 MCQs

Q1. The inputs sent to job work has to be received back within:

- (a) 1 year
- (b) 2 years
- (c) 180 days

Ans. (a) 1 year.

Q2. The principal is entitled to avail the credit on capital goods sent to job worker directly:

- (a) Yes
- (b) No
- (c) May be

Ans. (a) Yes.

Q3. If the capital goods sent to job worker has not been received within 3 years from the date of being sent:

- (a) Principal has to pay amount equal to credit taken on such capital goods
- (b) No need to pay amount equal to credit taken on such capital goods
- (c) It shall be treated as deemed supply of capital goods to the job worker
- (d) None of the above

Ans. (c) It shall be treated as deemed supply of capital goods to the job worker

Statutory provision

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

(1) *The Input Service Distributor shall distribute the credit of central tax as central tax or integrated tax and integrated tax as integrated tax or central, by way of issue of a document containing, the amount of input tax credit being distributed in such manner as may be prescribed*

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

- (a) *the credit can be distributed to recipients of credit against a document containing such details as may be prescribed;*
- (b) *the amount of the credit distributed shall not exceed the amount of credit available for distribution;*
- (c) *the credit of tax paid on input services attributable to recipient of credit shall be distributed only to that recipient;*
- (d) *the credit of tax paid on input services attributable to more than one recipient of credit shall be distributed amongst such recipient(s) to whom the input service is attributable and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union Territory of such recipient, during the relevant period, to the aggregate of the turnover of all such recipients to whom such input service is attributable and which are operational in the current year, during the said relevant period.*
- (e) *the credit of tax paid on input services attributable to all recipients of credit shall be distributed amongst such recipients and such distribution shall be pro rata on the basis of the turnover in a State or turnover in a Union Territory of such recipient, during the relevant period, to the aggregate of the turnover of all recipients and which are operational in the current year, during the said relevant period.*

Explanation –For the purposes of this section,

- (a) *the “relevant period” shall be-*
 - (i) *if the recipients of credit have turnover in their States or Union Territories in the financial year preceding the year during which credit is to be distributed, the said financial year; or*
 - (ii) *if some or all recipients of the credit do not have any turnover in their States or Union Territories in the financial year preceding the year during*

which the credit is to be distributed, the last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed.

- (b) *the expression of 'recipient of credit' means the supplier of goods or services or both having the same Permanent Account Number as that of Input Service Distributor.*
- (c) *the term 'turnover' in relation to any registered person engaged in the supply of taxable goods as well as goods not taxable under this Act, means the value of turnover, reduced by the amount of any duty or tax levied under entry 84 of List I of the Seventh Schedule to the Constitution and entry 51 and 54 of List II of the said Schedule*

Rule 39. Procedure for distribution of input tax credit by Input Service Distributor. -

(1) *An Input Service Distributor shall distribute input tax credit in the manner and subject to the following conditions, namely, -*

- (a) *the input tax credit available for distribution in a month shall be distributed in the same month and the details thereof shall be furnished in FORM GSTR 6* in accordance with the provisions of Chapter VIII of these rules;*
- (b) *the Input Service Distributor shall, in accordance with the provisions of clause (d), separately distribute the amount of ineligible input tax credit (ineligible under the provisions of sub-section (5) of section 17 or otherwise) and the amount of eligible input tax credit;*
- (c) *the input tax credit because central tax, State tax, Union territory tax and integrated tax shall be distributed separately in accordance with the provisions of clause (d);*
- (d) *the input tax credit that is required to be distributed in accordance with the provisions of clause (d) and (e) of sub-section (2) of section 20 to one of the recipients 'R1', whether registered or not, from amongst the total of all the recipients to whom input tax credit is attributable, including the recipient(s) who are engaged in making exempt supply, or are otherwise not registered for any reason, shall be the amount, "C₁", to be calculated by applying the following formula -*

$$C_1 = (t_1 \div T) \times C$$

where,

"C" is the amount of credit to be distributed,

"t₁" is the turnover, as referred to in section 20, of person R₁ during the relevant period, and

"T" is the aggregate of the turnover, during the relevant period, of all recipients to whom the input service is attributable in accordance with the provisions of section 20;

- (e) *the input tax credit on account of integrated tax shall be distributed as input tax credit of integrated tax to every recipient;*
- (f) *the input tax credit on account of central tax and State tax or Union territory tax shall*
 - (i) *in respect of a recipient located in the same State or Union territory in which the Input Service Distributor is located, be distributed as input tax credit of central tax and State tax or Union territory tax respectively;*
 - (ii) *in respect of a recipient located in a State or Union territory other than that of the Input*

Service Distributor, be distributed as integrated tax and the amount to be so distributed shall be equal to the aggregate of the amount of input tax credit of central tax and State tax or Union territory tax that qualifies for distribution to such recipient in accordance with clause (d);

- (g) the Input Service Distributor shall issue an Input Service Distributor invoice, as prescribed in sub-rule (1) of rule 54, clearly indicating in such invoice that it is issued only for distribution of input tax credit;
- (h) the Input Service Distributor shall issue an Input Service Distributor credit note, as prescribed in sub-rule (1) of rule 54, for reduction of credit in case the input tax credit already distributed gets reduced for any reason;
- (i) any additional amount of input tax credit on account of issuance of a debit note to an Input Service Distributor by the supplier shall be distributed in the manner and subject to the conditions specified in clauses (a) to (f) and the amount attributable to any recipient shall be calculated in the manner provided in clause (d) and such credit shall be distributed in the month in which the debit note is included in the return in FORM GSTR-6*;
- (j) any input tax credit required to be reduced on account of issuance of a credit note to the Input Service Distributor by the supplier shall be apportioned to each recipient in the same ratio in which the input tax credit contained in the original invoice was distributed in terms of clause (d), and the amount so apportioned shall be
 - (i) reduced from the amount to be distributed in the month in which the credit note is included in the return in FORM GSTR-6*; or
 - (ii) added to the output tax liability of the recipient where the amount so apportioned is in the negative by the amount of credit under distribution being less than the amount to be adjusted.

(2) If the amount of input tax credit distributed by an Input Service Distributor is reduced later for any other reason for any of the recipients, including that it was distributed to a wrong recipient by the Input Service Distributor, the process specified in clause (j) of sub-rule (1) shall apply, *mutatis mutandis*, for reduction of credit.

(3) Subject to *sub-rule* (2), the Input Service Distributor shall, on the basis of the Input Service Distributor credit note specified in clause (h) of sub-rule (1), issue an Input Service Distributor invoice to the recipient entitled to such credit and include the Input Service Distributor credit note and the Input Service Distributor invoice in the return in FORM GSTR-6* for the month in which such credit note and invoice was issued.

20.1 Introduction

This Section sets forth the way input tax credit (of services) is distributed to supplier of goods or services or both of same entity having same PAN. Procedure for distribution is given in Rule 39 of Central Goods and Service Tax Rules, 2017.

20.2 Analysis

- (i) An ISD shall distribute the eligible ITC in accordance with Rule 39 elucidated in the following paras.

- (ii) Input Service Distributor (ISD) is an office of the supplier of goods or services or both where a document (like invoice) of services attributable to other locations are received (since they might be registered separately). Since the services relate to other locations the corresponding credit should be transferred to such locations (having separate registrations) as services are supplied from there. Care should be taken to ensure that an inter-branch supply of services should not be misinterpreted as a distribution by ISD. Please recollect that ISD cannot be an office that does any supply of its own but must be one that merely collects invoice for services and issues prescribed document for its distribution.

Examples hereunder are as per rules.

Illustration: Corporate office of XYZ company Ltd., is at New Delhi, having its business locations of selling and servicing of goods at New Delhi, Chennai, Mumbai and Kolkata. For example, if the software license and maintenance is used at all the locations, invoice indicating CGST and SGST is received at Corporate Office. Since the software is used at all the four locations, the input tax credit of entire services cannot be claimed at New Delhi. The same has to be distributed to all four locations. For that reason, the Delhi Corporate office has to act as ISD to distribute the credit.

Rule 39: Central Goods and Service Tax Rules, 2017

The example provided below illustrates the application of Rule 39 of the Central Goods and Service Tax Rules, 2017 for distribution of credits by an Input Service Distributor (ISD) in terms of Section 20.

Yoko Infotech Ltd. has its head office in Mumbai, for which it additionally has an ISD registration. The company has 12 units across India including its head office. It receives the following invoices in the name of the ISD at Mumbai, for the month of January 2018:

Invoice A: ₹ 100,000 @ IGST 18,000 issued by Peace Link Technologies (registered in Uttar Pradesh) for repairs executed in 3 units – **Bangalore, Kolkata, Gurgaon** (Note: Gurgaon location is not registered as it is engaged in making only exempt supplies);

Invoice B: ₹ 300,000 @ CGST 27,000, SGST 27,000 issued by M/s. Tec Force (registered in Pune) for repairs executed in 3 units – **Mumbai, Bangalore, Kolkata**;

Invoice C: ₹ 500,000 @ IGST 90,000 issued by M/s.Georgia Marketing (registered in Bangalore) for marketing services for the **company**;

Invoice D: ₹ 10,000 @ CGST 900 & SGST ₹900 issued by M/s. Gopal Coffee works (registered in Mumbai) for supply of beverages during the month to its **Mumbai unit**.

All taxes have been considered at 18% (CGST and SGST at 9% each).

The turnover of each of the units during the year 2016-17 is: Mumbai: 1 crore; Bangalore 2 crore; Kolkata 1 crore; Gurgaon 2 crore; each of the other 8 units: 50 lakhs, resulting in the aggregate turnover of the company in the previous financial year, of 10 crores.

Distribution of credits by the ISD:

Particulars	Invoice	Bangalore	Kolkata	Mumbai	Gurgaon	8 units	Total
Invoice A							
T/o in State	Note 1	2 crore	1 crore	-	2 crore	-	5 crore
Pro-rata ratio		40%	20%	-	40%	-	100%
Credit	18,000	7,200	3,600	-	7,200	-	18,000
Type	IGST	IGST	IGST	-	IGST	-	
Invoice B							
T/o in State	Note 2	2 crore	1 crore	1 crore	-	-	4 crore
Pro-rata ratio		50%	25%	25%	-	-	100%
CGST Credit	27,000						
• Distribution		13,500	6,750	6,750	-	-	27,000
Type	CGST	IGST	IGST	CGST	-	-	
SGST Credit	27,000						
• Distribution		13,500	6,750	6,750	-	-	27,000
Type	SGST	IGST	IGST	SGST	-	-	
Invoice C							
T/o in State	Note 3	2 crore	1 crore	1 crore	2 crore	0.5 * 8 crore	10 crore
Pro-rata ratio		20%	10%	10%	20%	5% * 8 units	100%
Credit	90,000	18,000	9,000	9,000	18,000	4,500 * 8 units	90,000
Type	IGST	IGST	IGST	IGST	IGST	IGST	
Invoice D							
Attributable to	Note 4	-	-	Yes	-	-	-
Credit (ineligible)	900	-	-	900	-	-	900
Type	CGST	-	-	CGST	-	-	
Credit	900	-	-	900	-	-	900

(ineligible)							
Type	SGST	-	-	SGST	-	-	

Credit of CGST, SGST and IGST on invoice		Total eligible credits distributed as CGST, SGST and IGST as applicable (Refer Note below)					
CGST	27,000	-	-	6,750	-	-	6,750
SGST	27,000	-	-	6,750	-	-	6,750
IGST	108,000	52,200	26,100	9,000	25,200	4,500 each (viz. total of 36,000)	148,500
TOTAL	162,000	52,200	26,100	22,500	25,200	36,000	162,000
It can be seen from the illustration that credit of CGST of ₹ 27,000 is distributed as CGST credit only to the extent of ₹ 6,750; likewise, credit of SGST of ₹ 27,000 is distributed as SGST credit only to the extent of ₹ 6,750. This is because, the intra-State service billed to the ISD is attributable to 1 unit in the same State as the ISD and 2 other units located in different State. Thus, the balance of CGST credit and SGST credit is distributed as IGST to such units. This is the reason why the credit of IGST lying with the ISD prior to distribution is only ₹ 108,000 while the credit of IGST that is distributed aggregates to ₹ 148,500.							

Note 1: The credit of IGST should always be distributed as IGST credit to all the units to which the service is attributable, regardless of where they are located.

- The credits should be distributed only to those units to which the service is attributable. Given that the service mentioned in the case of Invoice A is attributable only to Bangalore, Kolkata and Gurgaon, the entire input tax credit applicable to the case should be distributed to the said 3 units, on a pro rata basis in the ratio of their respective 'Turnover in State' to the aggregate of the 3 'Turnover in State' (i.e., 2 Cr + 1Cr + 2 Cr). Further, no differentiation is made to whether the unit is registered or not, and therefore, credit attributable to the Gurgaon unit is distributed to that unit although it is not registered, which implies, it is a loss of credit.
- The 'turnover in State' is arrived at a value for the 'relevant period'. Since all 12 units were operational during the preceding financial year, the relevant period would be the preceding financial year.

Note 2: The credit of CGST and SGST should be distributed as IGST credit to all the units located outside the State in which the ISD is located, and as CGST and SGST respectively, in case of distribution of credit to a unit located in the same State as the ISD. Thus, the CGST and SGST credits are distributed as IGST credits to Bangalore and Kolkata, and as CGST & SGST respectively, to Mumbai.

- Given that the service supplied in terms of Invoice B is attributable only to Bangalore, Kolkata and Mumbai, the entire input tax credit applicable to the case should be distributed to the said 3 units, on a pro rata basis in the ratio of their respective 'Turnover in State' to the aggregate of the 3 'Turnover in State' (i.e., 2 Cr + 1Cr + 1 Cr).

Note 3: The credit of IGST is distributed as IGST to all the units to which the service is attributable.

- Invoice C relates to a supply of service that is attributable to all the units, and hence, the credits would be distributed on a pro-rata basis of the 'Turnover in State' of each of the units, to the aggregate of 'Turnover in State' of all the 12 units, i.e., ₹10 Cr.;
- For convenience of presentation, only one column is shown to reflect the distribution to each of the 8 units, having the same 'turnover in State', and to which the same invoice is attributable.

Note 4: Given that the services for receipt of food and beverages would not be eligible input services, the taxes relating to Invoice D should be distributed as ineligible input tax (900 + 900), and the distribution must be done separately.

Since the service is wholly attributable to the Mumbai unit, the distribution is done only to such unit.

- (iii) **Distribution of credit where ISD and recipient are located in different States under CGST Act:** As per Rule 39(1)(e) and (f) of Central Goods and Service Tax Rules, 2017 ISD shall distribute as prescribed, credit of CGST as CGST or IGST and credit of IGST as IGST by issuing prescribed document mentioning the amount of credit distributed to recipient of credit located in different States.

Illustration: In the above illustration, if the corporate office of XYZ Ltd being an ISD situated in Delhi receives invoices indicating ₹ 4 lakhs of CGST in one service and ₹ 7 lakhs as of IGST in another case. It shall distribute CGST of ₹ 4 Lakhs as CGST or as IGST and credit of IGST of ₹ 7 Lakhs also as IGST to its locations at Chennai, Mumbai and Kolkata under a prescribed document containing the amount of credit distributed.

- (iv) **Distribution of credit where ISD and recipient are located in different States under SGST Act:** ISD could distribute as prescribed credit of SGST as IGST only (and not as SGST of other State) by issuing a prescribed document containing the amount of credit distributed.

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

- (v) **Distribution of credit where ISD and recipient are located within the State under CGST Act:** In cases where an entity has different registration within the same State by an entity, it may have to distribute credit to such location also similar to locations with

different registrations outside the State. In order to enable the same, it is provided that ISD can distribute in the prescribed manner, credit of CGST as CGST and credit of IGST as IGST by issuing prescribed document mentioning the amount of credit distributed to recipient being a business vertical.

Illustration: ABC Ltd., having its office at Bangalore is having another business vertical in Mysore which is separately registered. In such a case out of input tax credit of ₹ 4 lakhs of CGST, the credit attributable to ABC Ltd, Bangalore, shall be distributed to Mysore location as CGST. Similarly out of input tax credit of ₹ 10 Lakh of IGST, the credit attributable to ABC Ltd, Bangalore shall be distributed to Mysore location as IGST.

- (vi) **Distribution of credit where ISD and recipient are located within the State under SGST Act:** Similar to the provisions of CGST as indicated supra under CGST Act, even under the SGST Act, it is provided that an ISD can distribute in the prescribed manner, credit of SGST and IGST as SGST (of the same State and none other State) by issuing prescribed document mentioning the amount of credit distributed to recipient being a business vertical.

Illustration: In the same example of ABC Ltd., above the input tax credit say ₹ 6 lakhs of SGST shall be distributed as SGST.

- (vii) **Conditions to distribute credit by ISD:** The conditions to distribute the credit by ISD are as follows:
- (a) Credit to be distributed to recipient under prescribed documents containing prescribed details. Such document should be issued to each of the recipient of credit.
 - (b) Credit distributed should not exceed the credit available for distribution.
 - (c) Tax paid on input services used by a particular location (registered as supplier), is to be distributed only to that location.
 - (d) Credit of tax paid on input service used by more than one location who are operational is to be distributed to all of them based on the pro rata basis of turnover of each location in a State to aggregate turnover of all such locations who have used such services.

Note: The period to be considered for computation is the previous financial year of that location. If it does not have any turnover in the previous financial year, then previous quarter of the month to which the credit is being distributed.

- (viii) For a detailed discussion on Tax invoice or Credit note to be issued by an ISD reference maybe made to Chapter VII. The said Chapter VII clearly indicates the particulars to be included in such a document.

Illustration 1: A Ltd as an ISD has input service credit of ₹ 35 lakhs used by more than one locations, to be distributed among recipients locations X, Y and Z. The turnover of X, Y, Z in preceding financial year, is ₹ 10 crores, ₹ 15 crores and ₹ 5 crores respectively. The credit of

₹ 5 lakhs pertains to input service received only by Z. The credit attributable to X, Y, Z are as follows:

Particulars	Amount (in ₹)
Total Credit to be distributed as ISD	35 Lakhs
Credit of service used only by Z location	5 Lakhs
Credit available for distribution for all units	30 Lakhs
Credit distributable to X 10 crores / 30 crores * 30 Lakhs	10 Lakhs
Credit distributable to Y 15 crores / 30 crores * 30 Lakhs	15 Lakhs
Credit distributable to Z 5 crores / 30 crores * 30 Lakhs 5 Lakhs Credit directly attributable to Z 5 Lakhs	10 Lakhs

Illustration 2: Distribution of input tax credit by an ISD to its units is shown as under:

M/s XYZ Ltd, having its head Office at Delhi, is registered as ISD. It has three units in different State namely 'Delhi', 'Jaipur' and 'Gujarat' which are operational in the current year. M/s XYZ Ltd furnishes the following information for the month of July 2018 & asks to distribute the credit to various units.

- (i) CGST paid on services used only for Delhi Unit: ₹ 300000/-
- (ii) IGST, CGST & SGST paid on services used for all units: ₹ 1200000/-
- (iii) Total Turnover of the units for the Financial Year 2017-18 are as follows:-

Unit	Turnover (₹)
Delhi	5,00,00,000
Jaipur	3,00,00,000
Gujarat	2,00,00,000
Total	10,00,00,000

Solution: Computation of Input Tax Credit Distributed to various units: -

Particulars	Total Credit Available	Delhi	Jaipur	Gujarat
		Credit distributed to all Units		
CGST paid on services used only for Delhi Unit.	300000	300000	0	0
IGST, CGST & SGST paid on services used	1200000	600000	360000	240000

in all units- Distribution on pro rata basis to all the units which are operational in the current year (Refer Note1)				
Total	1500000	900000	360000	240000

Note 1: Credit distributed pro rata basis based on the turnover of all the units are as under: -

- (a) Unit Delhi: $(50000000/100000000)*1200000 = ₹ 600000$
- (b) Unit Jaipur: $(30000000/100000000)*1200000 = ₹ 360000$
- (c) Unit Gujarat: $(20000000/100000000)*1200000 = ₹ 240000$

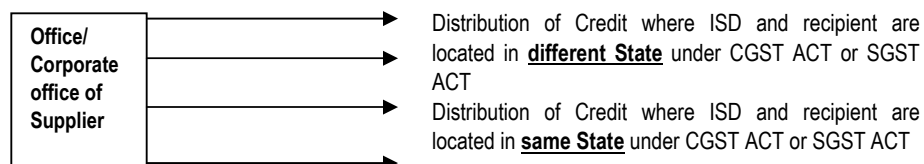
Relevant period for distribution of credit:

- (a) If the recipient of credit has turnover in their State in preceding financial year of the year in which credit is distributed – Such financial year.
- (b) If some or all recipients do not have any turnover in their State in preceding financial year of the year in which credit is distributed – Last quarter for which details of such turnover of all the recipients are available, previous to the month during which credit is to be distributed.

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

Input Service Distributor – Sec. 20.

- ITC is distributed to supplier of goods or services or both of same entity having the same PAN
- Common Services used at for



Input Service Distributor

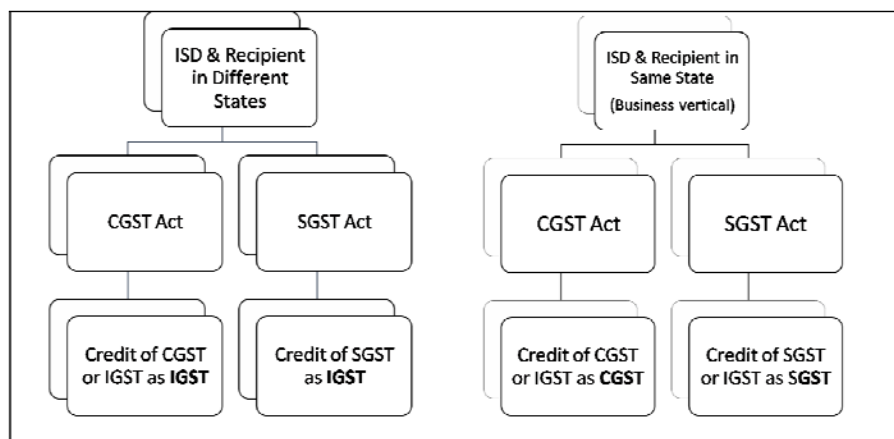


Illustration 3: Consider an example where a Company has a Branch-M in Mumbai and a Branch-D in Delhi. This Company is also incorporated in Delhi. Branch-M incurs various expenses that are supply of services in Delhi where CGST-SGST is liable to be charged in Delhi by that supplier. Obviously, credit of this tax cannot be availed by Branch-D because the underlying expense is not 'in relation to business' of Branch-D because it is exclusively in relation to business of Branch-M. When credit cannot be claimed by Branch-D and Branch-M does not want to forego this credit, the option available is for Branch-M to obtain ISD registration in Delhi. Now, in exactly, the same manner, if Branch-M incurs expenses in Maharashtra (say in Nasik), the implications would be that credit not allowable to Branch-M for these supplies and Branch-D is eligible to obtain ISD registration in Maharashtra, if credit is not to be foregone.

From this example, the following questions arise for careful consideration:

Question	Response
(i) Is ISD registration required in 'all but one' States for a registered taxable person? (All but one may all States/UT other than Home State)	Yes. If tax charged by the supplier is not IGST but CGST-SGST of the host-State where supplies are taking place, then a registered taxable person would require ISD registration in each those host-States except home-State
(ii) Is ISD registration an entity-level office in a given State or is it a registered taxable persons-specific office in other States (outside the home State of that registered taxable person)?	Yes, ISD is an entity-level office because section 2(61) defines ISD as "... means an office of the supplier which receives tax invoice...." It does not say it is an "office of the registered taxable person which receives tax invoice...."

(iii) Will ISD registration be required for each registered taxable person in 'all but one' States? (All but one may all States/UT other than Home State)	No. One entity-level ISD registration in all States will suffice for credit distribution requirement of all registered taxable persons having same PAN
(iv) Can an ISD distribute credit of taxes paid in that State alone (whether IGST or CGST-SGST) to registered taxable persons in all other States or only to that State for whose benefit the ISD registration was obtained?	No, since ISD is an entity-level registration, one ISD in a State can distribute credit to all registered taxable persons in all other States having same PAN. Further, this ISD can also distribute credit to separately registered business verticals in that same State
(v) When GSTIN registration is obtained in one State, is there any need to also obtain ISD in the same State or is GSTIN and ISD registrations mutually exclusive in a given State?	Yes, GSTIN registration does not permit distribution of credit. If taxes are paid that is not related to the business of that registered taxable person in that State, then for want of 'nexus', credit cannot be availed by him. And to save from loss of credit, ISD registration is the only option to distribute this credit whichever registered taxable person (called 'recipient of credit') satisfies this nexus test.
(vi) Can a Company who has independent operations in all 29 States and 2 UTs and is therefore registered in all 31 locations also be required to have 31 ISD registrations?	Yes, absolutely. This is because each registered taxable person stated to be truly independent of other business (of registered taxable persons) and receives supplies in those host-States where CGST-SGST paid in those host-States is to be distributed to the relevant home-State
(vii) Is it possible, when GSTIN registration is already available in any given State, for the Company to completely avoid ISD registration?	No, for the reasons stated in (vi) & (i) above, it would not be possible to avoid ISD registration
(viii) If a Company, to avoid ISD compliances, decides to avoid ISD registration in every State where it is already having GSTIN registration?	It is possible that a Company may consider the possibility doing so subject to legitimate credits which can be availed as an ISD
(ix) If a Company were to instruct all registered taxable persons in a State who may have credit loss in other States misdirect the suppliers into issuing tax invoice with GSTIN of that State?	Yes, it is possible for a Company to misdirect a supplier. This supplier will only look for genuine GSTIN and similarity of name. It is not the supplier's responsibility to examine 'nexus' while issuing tax invoice
(x) Is ISD registration, therefore, necessary	Yes, as explained in (vii) above, ISD

in every State where this 'nexus' test cannot be fulfilled by each registered taxable person?	registration is necessary in every State where 'nexus' test is not fulfilled
(xi) Therefore, if multiple ISD registrations or GSTIN-plus-ISD registrations are unavoidable (as explained above), is there any solution to resolve this multiplicity of monthly and quarterly compliances?	Yes, only if 'nexus' is established between the 'no nexus' supplies in a State and the registered taxable person in that same State. If no such 'nexus' exists, credit claim by registered taxable person becomes improper. If nexus is established, please examine valuation of inter-branch supply of services is as per proviso to Rule 28 or as per Rule 30 of Central Goods and Service Tax Rules, 2017 relating to Valuation.

ISD is not merely a matter of compliance but involves great revenue implications to a registered taxable person. Compliance will also not be nominal. So, this is yet another indicator that the business model that has been in place until now has reached end-of-life and a new model needs to be examined. Please consider the following example of a CA in practice with branches in 3 States where the facts are as follows:

Common facts for consideration:	
Head office	Maharashtra
Branch offices	West Bengal and Delhi
Client base	All 3 States
Skills based	Distributed in all offices, based on the assignment, staff from all offices join to complete the assignment
Completion	Sign-off only by Partners who are in Maharashtra and West Bengal

Business models and their comparison are as follows:

Criteria	Under Erstwhile Law	Under GST Law – A	Under GST Law – B
ST (GST) registration	Centralized at Mumbai	All 3 branches	All 3 branches
Billing to clients	From all 3 offices	From Mumbai only	From all 3 offices
Internal billing	None	Branches issue tax invoice to HO at 'cost plus 10%' as per Rule 30 of Central Goods and Service Tax Rules, 2017 relating to Valuation	Every branch including HO to bill each other for their respective contribution on 'revenue split' or 'proportion of contribution' method

ST credit of branches	Availed at Mumbai due to centralized registration (ISD registration not required)	Branches and HO avail input tax credit on tax invoices issued by respective suppliers	Branches and HO avail input tax credit on tax invoices issued by respective suppliers including internal bills
ST credit at HO	Mumbai credits, entity-level credits and branch-specific credits	HO retains credit of all entity-level credits and avails credit of tax invoice issued by branches	HO retains credit of all entity-level credits
Loss, cost or risk	None	IGST outflow on non-credit costs included in valuation and 10% mark-up. Non-credit costs of branches are salaries, depreciation, etc.	Nexus risk on credits: <ul style="list-style-type: none"> entity-level costs like audit fee central vendor bills like data-telecom, travel, etc. Administrative challenge in assignment-level billing allocation
Mitigation	NA	Branch to invoice HO on 30 th in respect of client-level billings due on 1 st of next month so that the incremental IGST outflow from HO to branches is recovered quickly	GST does not impose any 'one-to-one' correlation of credits. Entity-level credit can be contended to be allowed in HO. Assignment-level billing allocation left to each branch to self-regulate

There is no doubt that the above are not recommendations but case for comparative illustration regarding application of the law to a business and to highlight that it is impossible to continue the erstwhile business model in GST, at least in many sectors.

The illustrations considered in this section are matters to be considered for discussion/deliberations only and are not views envisaged. The reader may or may not agree with the views in the discussion in this Chapter/section.

20.3 Comparative review

These provisions are similar to the provisions contained in the Rule 7 of CENVAT credit rules for distribution of credit of input service by an ISD.

It appears that the distribution of credit among the recipients prescribed in CENVAT credit Rules has been continued in proposed GST law. The conditions for distribution of credit for each recipient also appear to be continued as before.

20.4 Related provisions

Section	Description
Section 2(61)	Definition of Input Service Distributor
Explanation to Section 20(2)	Definition of relevant period.

20.5 FAQ

Q1. Whether CGST and IGST credit can be distributed by ISD as IGST credit to units located in different States?

Ans. Yes. CGST credit can be distributed as IGST and IGST credit can be distributed as IGST by an ISD for the units located in different States.

Q2. Whether SGST credit can be distributed as IGST credit by an ISD to units located in different States?

Ans. Yes. ISD can distribute SGST credit as IGST for the units located in different States.

Q3. Whether the SGST and IGST Credit can be distributed as SGST credit?

Ans. Yes. ISD can distribute SGST and IGST credit as SGST.

Q4. What are the conditions to be fulfilled by ISD to distribute the credit?

Ans. The conditions to be fulfilled by ISD to distribute credit are:

- Credit distributed to recipient under prescribed documents, which is issued to each of the recipient of credit.
- Credit distributed should not exceed the credit available for distribution.
- Tax paid on input services used by a particular location (registered as supplier), to be distributed only to that location.
- Credit of tax paid on input service used by more than one location who are operational is to be distributed to all of them based on the pro rata basis of turnover of each locations in a State to aggregate turnover of all such locations who have used such services.

Q5. What are the documents through which the credit can be distributed by ISD?

Ans. The document under which the credit can be distributed is yet to be prescribed. The act provides that the credit can be distributed only through prescribed document.

Q6. How to distribute common credit among all the units of a ISD?

Ans. The common credit used by all the units can be distributed by ISD on pro rata basis i.e. based on the turnover of each unit to the aggregate turnover of all the units to which credit is distributed.

20.6 MCQ

Q1. The ISD may distribute the CGST and IGST credit to recipient outside the State as_____

- (a) IGST
- (b) CGST
- (c) SGST

Ans. (a) IGST

Q2. The ISD may distribute the CGST credit within the State as_____

- (a) IGST
- (b) CGST
- (c) SGST
- (d) Any of the above.

Ans. (b) CGST

Q3. According to the condition laid down for distribution of credit, ISD can distribute_____

- (a) Credit in excess of credit available
- (b) Only certain percentage of total credit available
- (c) Credit equal to the total credit available for distribution.
- (d) All of the above.

Ans. (c) Credit equal to the total credit available for distribution.

Q4. The credit of tax paid on input service used by more than one supplier is _____

- (a) Distributed among the suppliers who used such input service on pro rata basis of turnover in such State.
- (b) Distributed equally among all the suppliers
- (c) Distributed only to one supplier.
- (d) Cannot be distributed.

Ans. (a) Distributed among the suppliers who used such input service on pro rata basis of turnover in such State.

Statutory provision

21. Manner of recovery of credit distributed in excess

Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipient(s) along with interest, and the provisions of section 73 or 74, as the case may be, shall mutatis mutandis apply for determination of amount to be recovered

21.1 Introduction

The CGST Act clearly lays down that credit distribution is not 'to self', that is, a registered taxable person cannot distribute credit to himself. Each registered person being a distinct person u/s 25, must distribute to another registered taxable person but having the same PAN

to whom the credit is most accurately attributable. And the consequence of incorrect distribution, due to inadvertence or misapplication of the provisions, are discussed here.

21.2 Analysis

(i) Excess Credit distributed in contravention of provision:

Excess credit distributed to one or more recipient of credit in contravention of ISD provision under Section 20 is recoverable from the recipient of such credit along with Interest. The recovery will be under the provisions of Section 73 or 74.

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

Solution: The excess credit of 1,50,000 (₹ 16,50,000- ₹ 15,00,000) distributed will be recovered from the recipient along with interest and the provisions of section 73 or 74 shall apply mutatis mutandis for effecting such recovery.

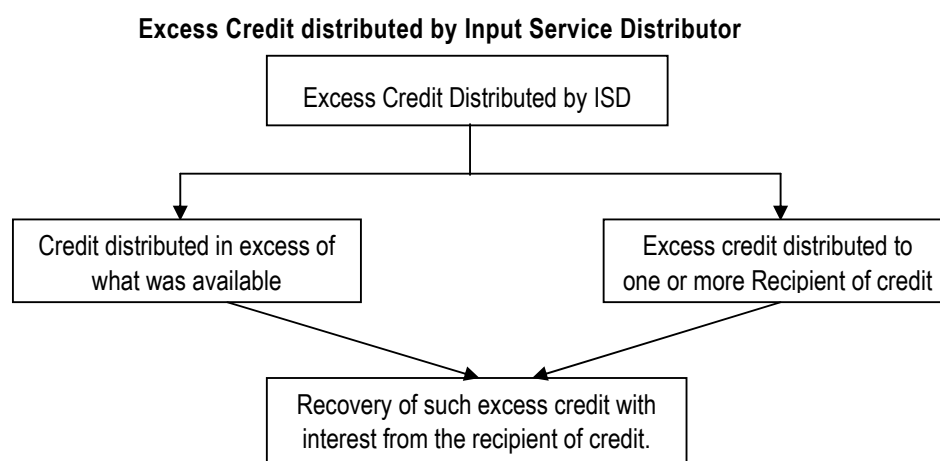
Example-2 Total Credit Available to ISD is ₹ 15,00,000/- & the credit should have been distributed equal to all the units as all units had equal turnover, however credit distributed in violation of Section 21, as under:

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

What will be the consequences?

Solution: The excess credit of ₹ 2,00,000 (₹ 7,00,000- ₹ 5,00,000) shall be recovered from Delhi and ₹ 1,00,000 (₹ 600,000 – ₹ 5,00,000) shall be recovered from Jaipur along with interest and the provisions of section 73 or 74 shall apply mutatis mutandis for effecting such recovery.

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



21.3 Comparative review

Earlier recovery provision was specified in Rule 14 of CENVAT Credit Rules. The CENVAT credit taken or utilized wrongly or has been erroneously refunded, was recovered along with interest under the provisions of sections 11A and 11AB of the Excise Act or sections 73 and 75 of the Finance Act.

Earlier, there was no specific provision for excess distribution of credit by ISD. Now specific provision is provided in the GST law providing for recovery of amount along with interest. Further, the relevant period for recovery of excess amount distributed is also provided in GST law.

21.4 Related provisions

Section	Description
Section 20	Manner of distribution of credit by Input service distributor
Section 73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts.
Section 74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized due to fraud or any wilful misstatement or suppression of facts.

21.5 FAQ

- Q1. Whether the excess credit distributed could be recovered by the department?
- Ans. Yes. Excess credit distributed could be recovered along with interest from recipient by the department.
- Q2. What are the consequences of credit distributed in contravention of the provision of the Act?
- Ans. The credit distributed in contravention of the provision of the Act is to be recovered from the unit to which it is distributed along with interest.

Chapter–VI

Registration

- 22. Persons liable for registration
- 23. Persons not liable for registration
- 24. Compulsory registration in certain cases
- 25. Procedure for registration
- 26. Deemed registration
- 27. Special provisions relating to casual taxable person and non-resident taxable person
- 28. Amendment of registration
- 29. Cancellation of registration
- 30. Revocation of cancellation of registration

Statutory provision

22. Persons liable for registration

- (1) *Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:*
Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.
- (2) *Every person who, on the day immediately preceding the appointed day, is registered or holds a licence under an erstwhile law, shall be liable to be registered under this Act with effect from the appointed day.*
- (3) *Where a business carried on by a taxable person registered under this Act is transferred, whether on account of succession or otherwise, to another person as a going concern, the transferee or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession.*
- (4) *Notwithstanding anything contained in sub-sections (1) and (3), in a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, demerger of two or more companies pursuant to an order of a High Court, Tribunal or otherwise, the transferee shall be liable to be registered, with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court or Tribunal.*

Explanation. For the purposes of this section, —

- (i) the expression “aggregate turnover” shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals;
- (ii) the supply of goods, after completion of job work, by a registered job worker shall be treated as the supply of goods by the principal referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker;
- (iii) the expression “special category States” shall mean the States as specified in sub-clause (g) of clause (4) of article 279A of the Constitution.

22.1 Introduction

Section 22 provides for registration of every supplier effecting the taxable supplies. Registration of a business with the tax authorities implies obtaining a unique identification code from the concerned tax authorities so that all the operations of, and data relating to the business can be agglomerated and correlated. In any tax system, this is the most fundamental requirement for identification of the business for tax purposes and for having any compliance verification mechanism. A registration from the concerned tax authorities will confer among others the following advantages to the registrant.

- Legally recognised as a supplier of Goods and/or Services;
- Proper accounting of taxes paid on the input goods and / or services;
- Utilisation of input taxes for payment of GST due on supply of goods and / or services or both;
- Pass on the credit of the taxes paid on the goods and / or services supplied to purchasers or recipients.

22.2 Analysis

- Every supplier shall be liable to be registered under the Act in the State from which he makes a taxable supply of Goods or Services or both. It is important to note that registration is required ‘in’ the State ‘from where’ taxable supplies are made. Registration is not required ‘in’ the State ‘to’ which taxable supplies are made, even though this is a destination-based tax. This greatly reduces the burden of the taxable person from having to seek registration in every State ‘to’ which taxable supplies are made. If the supplies are ‘to’ another State, then the nature of tax will not be CGST-SGST but IGST and is paid to the Union who will ensure that the same reaches the appropriate ‘destination’ State. Therefore, for purposes of obtaining registration, it is important to identify the ‘origin’ of supply even though GST is a ‘destination’ based tax. Tax goes to the destination-State but registration is in the origin-State. Place of Supply (as determined from IGST Act) provides the ‘destination’ and this is not relevant for registration. The Location of Supplier is relevant for registration.

The State “from” where taxable supply is made is a question of fact and that must be determined based on the requirement of law. In the case of services, Location of Supplier of Services is defined in 2(71) of CGST Act but in the case of goods, Location of Supplier of Goods is not defined. And this is not an oversight but deliberate. Services leave no trail as to the location ‘from’ where they are supplied and for that reason, a definition is required. Whereas goods leave a trail, that is, where the goods are actually ‘located’. This can be seen from the definition of Place of Business 2(85) of CGST Act. Place of Business is where business is ‘ordinarily carried on’ – this would be the location ‘from’ where taxable supplies are made, whether for goods or for services. But, if this is not (in case of goods), this definition goes on to include ‘place where goods are stored’. Hence, location of supplier of goods is where business is ordinarily carried on or where the goods themselves are located, if that were more accurate. For example, a company incorporated outside India purchases goods from a manufacturer and instructs that the goods be deposited with a warehouse-keeper in India. And then after some time, supplies the goods from the warehouse to a customer also within India. By being incorporated outside India, the place where business is ordinarily carried on is not in India but the location where goods are stored being within India, attracts the requirement to register at the warehouse. It is true that mere storage is not the ‘place of business’ in general understanding but in GST this appears to the unequivocal intent of the law-maker. Care should be taken to correctly identify where registration ought to be obtained so as not to end up with a serious misapplication of the requirements of law.

Registration is required if his aggregate turnover in a financial year exceeds Rupees Twenty Lakhs. This threshold limit will be Rupees Ten Lakhs if a taxable person conducts his business in any of the special category states as specified in sub-clause (g) of clause (4) of Article 279A of the Constitution i.e. Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand. However, the threshold limit remains Rupees Twenty Lakhs for the State of Jammu and Kashmir.

How the Aggregate Turnover is Calculated?

XYZ Pvt. Ltd. is a manufacturing unit in Mumbai, Maharashtra along with unit at Assam. Turnover details of all the units are as follows:

Mumbai Unit: ₹ 8 Lakhs

Assam Unit: ₹ 11 Lakhs

Assam Unit is a special category state wherein the registration limit is ₹ 10 lakhs. Hence, in the given case XYZ Pvt. Ltd would be required to take registration in Assam due to aggregate turnover being ₹ 11 Lakhs. Now it needs to be analyzed whether Mumbai unit also requires to get registered even though the aggregate turnover of all the units is less than ₹ 20 lakhs.

So even though aggregate turnover is less than 20 Lakhs, registration would be mandatory in Mumbai also by virtue of mandatory registration in Assam

- It means that for each State, the supplier liable for registration will have to take a separate registration even though such supplier may be supplying goods or services or both from more than one State as a single entity. The application for registration shall be made within 30 days from the date when he becomes liable for registration.
- It is necessary to admit the distinction between 'person and taxable person'. Person is defined in the most familiar manner in section 2(84) and a taxable person is defined in section 2(107). A proper reading of section 22 helps us understand that a State is the smallest registrable unit in GST – except where multiple business verticals are registered separately under section 25. A taxable person is therefore the presence of the person in a State from where taxable supplies are made in the name of such person. When a person becomes liable to be registered in a State at any place from where taxable supplies are made therein such person shall be a taxable person.
- Casual taxable person or a non-resident taxable person shall apply for registration at least 5 days prior to the commencement of business.
- A person having multiple business verticals [as defined in Section 2(18)] in one State may obtain separate registrations for each of the business vertical, subject to prescribed conditions.
- Every registered person shall display his certificate of registration in a prominent location at his principal place of business and at every additional place or places of business.
- Every registered person shall display his Goods and Services Tax Identification Number on the name board exhibited at the entry of his principal place of business and at every additional place or places of business.
- For calculating the Threshold limit, the turnover shall include all supplies made by the taxable person, whether on his own account or made on behalf of all his principals. Further, supply of goods by a registered Job-worker, after completion of job work, shall be treated as the supply of goods by the "principal" referred to in section 143 (i.e. Job work procedure) of this Act. The value of such goods shall not be included in the aggregate turnover of the registered job worker.
- Every person who, on the day immediately preceding the appointed day, is registered or holds a license under an earlier law, shall be liable to be registered under this Act with effect from the appointed day.
- Every person being an Input Service Distributor shall make a separate application for registration as such Input Service Distributor.
- Every person having a unit in a Special Economic Zone or being a Special Economic Zone developer shall make a separate application for registration as a Business vertical distinct from his other units located outside the Special Economic Zone.

- Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer can proceed to register such person in the manner as may be prescribed
- The registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of thirty days from such date. Where an application for registration has been submitted by the applicant after the expiry of thirty days from the date of his becoming liable to registration, the effective date of registration shall be the date of the grant of registration

Exemption Limit vs. Registration Limit

In the erstwhile law the facility of SSI/ SSP exemptions were provided wherein even though assessee have taken the registration they were not required to collect and pay tax unless they crossed the threshold limit. However, in GST regime no such exemption is provided under the law. Once registration is taken the assessee is mandatorily required to collect and pay tax to the government irrespective of threshold. As per Section 2(107) of the CGST Act, 2017 *“taxable person” means a person who is registered or liable to be registered under section 22 or section 24*; this means a registered person is a taxable person. It is important to note that Sec 9 of CGST Act, 2017 imposes liability to taxable person and therefore once registration is obtained the concept of taxable person gets triggered.

Registration on own Volition

A person, though not liable to be registered under Section 22, may get himself registered voluntarily, and once registered all provisions of this Act, shall apply to such person.

Transfer of Business and Registration

If registered taxable person transfers business on account of succession or otherwise, to another person as a going concern, the transferee, or the successor, as the case may be, shall be liable to be registered with effect from the date of such transfer or succession. This means that the Registration Certificate issued under Section 22 of the Act is not transferable to any other person. In a case of transfer pursuant to sanction of a scheme or an arrangement for amalgamation or, as the case may be, de-merger of two or more companies by an order of a High Court, the transferee shall be liable to be registered with effect from the date on which the Registrar of Companies issues a certificate of incorporation giving effect to such order of the High Court.

Statutory provision

23. Persons not liable for registration

- (1) *The following persons shall not be liable to registration, namely: —*
- (a) *any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the Integrated Goods and Services Tax Act;*

(b) *an agriculturist, to the extent of supply of produce out of cultivation of land.*

- (2) *The Government may, on the recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.*

Central Government vide Notification No. 05/2017-Central Tax, dt. 19-06-2017 has w.e.f 22nd June 2017 amended section 23 of CGST Act, 2017 to include the persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under section 9(3) of the CGST Act, 2017 in the category of persons exempted from obtaining registration under the aforesaid Act.

23.1 Analysis

The main criterion to remain out of the purview of registration is to exclusively engage in the supply of exempted goods or services or both. The term exclusive indicates engaging in only those supplies which are exempted. If a supplier is supplying both exempted and non-exempted goods and/or services, then this provision is not applicable and he is required to take registration under Section 22.

As per Section 1(7) agriculturist means an individual or HUF who undertakes cultivation of land:

- (a) By own labour or
- (b) By the labour of family, or
- (c) By servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family

Thus, an agriculturist is not liable for registration only to the extent of supply of produce out of cultivation of land. If an agriculturist undertakes supplies which are not linked to the cultivation of land, he will fall within the provisions of Section 22 and may have to take registration in respect of such supplies. It is important to consider the nature of activities undertaken by the agriculturist. If the process deviates from 'cultivation' it will travel outside the scope of this exclusion from registration. The exclusion states – to the extent of supply of 'produce out of cultivation' of land – any further processing of the primary produce from cultivation will continue not avail this exclusion.

Cultivation of land does not include pisciculture on inland water body or cattle rearing that graze the produce of land. The produce from emerge from land for it is be 'cultivation of land'. For example, harvesting paddy is cultivation but production of rice is not.

Please note that the exclusion from the requirement to be registered does not result in non-collection of tax on agricultural produce. Where the supplier is not registered (for any reason) and the recipient is registered, then tax is payable by such registered recipient as per section 9(4) of CGST Act and 5(4) of IGST Act.

Further, this section also permits any person whose 'entire' supply consists of 'exempt supplies', then such person is excluded from obtaining registration. Care should be taken to validate the premises about (a) entire supply (b) exempt. Even if small value of supplies is taxable, then even exempt supplies will be included to determine if aggregate turnover has exceeded the threshold limit under section 22 for attracting registration. Also, if inward supplies liable to reverse charge under section 9(3) of CGST Act is attracted, then notwithstanding the exclusion under section 23, registration will need to be obtained compulsorily under section 24. If a person remains outside the requirements of registration due to this section, he would not be liable to pay tax under 9(4) of CGST Act as it does not apply to an unregistered-recipient.

Any other persons, as may be notified, may also be granted this exclusion from registration by the Government. In this regard, the Government has excluded certain persons under this provision.

Central Government vide Notification No. 65/2017-Central Tax, dt. 15-11-2017 w.e.f 15th November 2017 has amended section 23(2), of CGST Act, 2017. the Central Government, on the recommendations of the Council, hereby specifies the persons making supplies of services, other than supplies specified under subsection (5) of section 9 of the said Act through an electronic commerce operator who is required to collect tax at source under section 52 of the said Act, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of twenty lakh rupees in a financial year, as the category of persons exempted from obtaining registration under the said Act, Provided that the aggregate value of such supplies, to be computed on all India basis, should not exceed an amount of ten lakh rupees in case of "special category States" as specified in sub-clause (g) of clause (4) of article 279A of the Constitution, other than the State of Jammu and Kashmir.

Statutory Provision

24. Compulsory registration in certain cases

- (1) Notwithstanding anything contained in sub-section (1) of section 22, the following categories of persons shall be required to be registered under this Act, —
- (i) persons making any inter-State taxable supply;
 - (ii) casual taxable persons making taxable supply;
 - (iii) persons who are required to pay tax under reverse charge;
 - (iv) person who are required to pay tax under sub-section (5) of section 9;
 - (v) non-resident taxable persons making taxable supply;
 - (vi) persons who are required to deduct tax under section 51, whether or not separately registered under this Act;
 - (vii) persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise;

- (viii) *Input Service Distributor, whether or not separately registered under this Act;*
- (ix) *persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52;*
- (x) *every electronic commerce operator;*
- (xi) *every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person; and*
- (xii) *such other person or class of persons as may be notified by the Government on the recommendations of the Council.*

24.1 Analysis

As per Section 22 there are certain conditions subject to fulfilment of which registration must be taken. However, Section 24 enlists 11 types of persons who shall compulsorily obtain the registration even though these persons do not trigger the provisions prescribed under Section 22. Thus Section 24 is an overriding section that makes it mandatory to obtain registration by certain prescribed persons even though the conditions prescribed under section 22 are not met.

Further, the Government on the recommendations of the Council may notify such other person or class of persons who are required to compulsorily obtain the registration.

Categories of persons who shall be required to be registered under this Act irrespective of the threshold

Notwithstanding anything discussed in the paragraph above, the following categories of persons shall get registered compulsorily under this Act:

- Persons making any inter-State taxable supply;
- Casual taxable persons making taxable supply;
- Persons who are required to pay tax under reverse charge;
- Persons who are required to pay tax under sub-section (5) of section 9 (electronic commerce operator)
- Non-resident taxable persons making taxable supply;
- Persons who are required to deduct tax under section 51 (Tax Deduction at Source);
- Persons who supply goods or services or both on behalf of other registered taxable persons whether as an agent or otherwise;
- input service distributor;
- persons who supply goods and/or services, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52,

- Every electronic commerce operator;
- every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered taxable person; and
- Such other person or class of persons as may be notified by the Central Government or a State Government on the recommendations of the Council.

Statutory Provision

25. Procedure for registration

- (1) *Every person who is liable to be registered under section 22 or section 24 shall apply for registration in every such State or Union territory in which he is so liable within thirty days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed:*

Provided that a casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.

Explanation:

Every person who makes a supply from the territorial waters of India shall obtain registration in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

- (2) *A person seeking registration under this Act shall be granted a single registration in a State or Union territory:*

Provided that a person having multiple business verticals in a State or Union territory may be granted a separate registration for each business vertical, subject to such conditions as may be prescribed.

- (3) *A person, though not liable to be registered under section 22 or section 24 may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered person, shall apply to such person.*

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

- (5) *Where a person who has obtained, or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.*

- (6) *Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 in order to be eligible for grant of registration:*

Provided that a person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number issued under the said Act in order to be eligible for grant of registration.

- (7) Notwithstanding anything contained in sub-section (6), a non-resident taxable person may be granted registration under sub-section (1) on the basis of such other documents as may be prescribed.*
- (8) Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action which may be taken under this Act or under any other law for the time being in force, proceed to register such person in such manner as may be prescribed.*
- (9) Notwithstanding anything contained in sub-section (1), —*
 - (a) any specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries; and*
 - (b) any other person or class of persons, as may be notified by the Commissioner,**shall be granted a Unique Identity Number in such manner and for such purposes, including refund of taxes on the notified supplies of goods or services or both received by them, as may be prescribed.*
- (10) The registration or the Unique Identity Number shall be granted or rejected after due verification in such manner and within such period as may be prescribed.*
- (11) A certificate of registration shall be issued in such form and with effect from such date as may be prescribed.*
- (12) A registration or a Unique Identity Number shall be deemed to have been granted after the expiry of the period prescribed under sub-section (10), if no deficiency has been communicated to the applicant within that period.*

25.1 Analysis

Every registered person is considered a 'distinct person' for the limited purposes of GST. This is a very important fiction supplied by law so as to overcome the deficiency to constitute a 'supply' within branches of the same entity or person. But for this fiction, imputing 'supply' in respect of supply-like transactions between branches of the same entity or person would have been impossible, in spite of schedule I. In fact, the fiction of 'distinct persons' flows into schedule I and supports the levy of tax on branch-transfers. While branch transfer involving goods is understandable, branch transfers involving services too are taxable, but that is discussed under supply which may be referred.

Section 25 read with Rule 8 to 26 of the CGST Rules, 2017 related to registration provides a detailed road map on the procedural aspects of the registration. The time limit for application is within 30 days (for persons other than casual taxable person or a non-resident taxable person) and casual taxable person or a non-resident taxable person shall have to obtain the registration at least 5 days prior to the commencement.

Single registration will be granted from one State or Union Territory and in case of persons having business across different States, then multiple registrations are granted. Even in a single state, multiple registrations are possible wherever a person has multiple business verticals.

As per rule 8 of the Central Goods and Service Tax Rules, 2017 a Special Economic Zone unit or Special Economic Zone developer shall make a separate application for registration as a business vertical distinct from its other units located outside the Special Economic Zone. IT further provide detailed procedure for application of registration by a person desirous of seeking registration under GST. Various rules are as under:

Rule 8: Application for Registration

Rule 9: Verification of the application and approval

Rule 10: Issue of Registration Certificate

Rule 11: Separate Registration for multiple business verticals within a State or a Union Territory

Rule 12: Grant of Registration to persons required to deduct/collect TDS/TCS

Registration Process:

Application	Verification	Approval/Rejection
-Form GST Reg-01 -Part A (PAN, e-Mail, Mobile Verification) -Part B (Other details) -Ack. Form GSTReg-02 -Submit the relevant docs	Initial verification within 3 working days -Clarifications/info required -Form GST Reg-03 -Applicant furnish clarifications in Form GST Reg-04 within next 7 working day	Approval within 3 working days -If satisfactory clarifications received- approval shall be given in next 7 days -If clarifications not satisfactory- intimate the rejection in Form GST REG-05 -Deemed registration--No action taken within 3/7 working days

- Said 17 days process applicable to Inter-state, Voluntary, Casual, Reverse Charge
- Registration Certificate is Issued in Form **GST REG-06**

The Registration rules prescribe 30 different forms in respect of registration matters. The application for registration should be disposed off in a time bound manner and detailed time limits have been prescribed under the rules for various purposes.

SL No	Form No	Title of the Form
1	GST-REG-01	Application for registration
2	GST-REG-02	Acknowledgement
3	GST-REG-03	Notice Seeking Additional information/ clarification/ documents relating to application for registration / amendment / cancellation
4	GST-REG-04	Furnishing clarification/additional information/document sought in GST REG03 within 3 days of application
5	GST-REG-05	Order of rejection of Application sought in GST REG03
6	GST-REG-06	Registration Certificate issued
7	GST-REG-07	Application for Registration of Tax Deductor / Tax Collector at source
8	GST-REG-08	Order of cancellation of registration as Tax deductor or Tax collector at source
9	GST-REG-09	Application for Registration for Non-Resident Taxable person
10	GST- REG-10	Application for registration of person supplying online information and data base access or retrieval services from a place outside India to a person in India, other than a registered person
11	GST-REG-11	Application for extension in period of causal taxable person or non-resident taxable person
12	GST-REG-12	Order of Grant of Temporary Suo Moto Registration
13	GST-REG-13	Application to grant UID
14	GST-REG-14	Application for Amendment in Registration Particulars (For all types of registered persons)
15	GST-REG-15	Order of Amendment
16	GST-REG-16	Application for Cancellation of Registration
17	GST-REG-17	Show Cause Notice for Cancellation of Registration
18	GST-REG-18	Reply to the Show Cause Notice issued for Cancellation
19	GST-REG-19	Order for Cancellation of Registration
20	GST-REG-20	Order for dropping the proceedings for cancellation of registration
21	GST-REG-21	Application for Revocation of Cancellation of Registration

22	GST-REG-22	Order for revocation of cancellation of registration
23	GST-REG-23	Show Cause Notice for rejection of application for revocation of cancellation of registration
24	GST-REG-24	Reply to the notice for rejection of application for revocation of cancellation of registration
25	GST-REG-25	Certificate of Provisional Registration
26	GST-REG-26	Application for Enrolment of Existing Taxpayer
27	GST-REG-27	Show Cause Notice for cancellation of provisional registration
28	GST-REG-28	Order of cancellation of provisional registration
29	GST-REG-29	Application for cancellation of provisional registration
30	GST-REG-30	Form for Field Visit Report

Requirement of a Permanent Account Number or Tax Deduction and Collection Account Number

Every person who is liable to take a registration or wants to obtain voluntary Registration shall have a Permanent Account Number (PAN).

Every person required to deduct tax under section 51 may have, in lieu of a Permanent Account Number, a Tax Deduction and Collection Account Number (TAN)

A non-resident taxable person can obtain registration on the basis of any other document as may be prescribed.

Registration for United Nations or Consulate or Embassy:

Any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947 (46 of 1947), Consulate or Embassy of foreign countries and any other person or class of persons as may be notified by the Commissioner, shall obtain a Unique Identity Number. The registration shall be for the purpose(s) notified, including seeking to claim refund of taxes paid by them, on the notified supplies of goods and/or services received by them. The supplier supplying to these organization is expected to mention the UID on the invoices and treat such supplies as business to business (B2B) supplies.

Issuance of Registration by Proper Authority:

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

A registration or a UID shall be deemed to have been granted after the period prescribed (under sub-section (10) of Section 25 of the Act) if no deficiency has been communicated to the applicant within that period. Also, the grant of registration or the Unique Identity Number

under the CGST Act / SGST Act shall be deemed to be a grant of registration or the Unique Identity Number under the SGST/CGST Act provided that the application for registration or the UID has not been rejected/no deficiency has been communicated to applicant by the proper officer under SGST/CGST Act within the time specified. As per Rule 17 of CGST Rules the proper officer may upon submission of GST REG-13 assign UID to these persons and issue a certificate in Form GST REG-06 within a period of 3 working days from the date of submission of application.

Display of Registration certificate and GSTIN on the name board:

Rule 18 of CGST Rules, 2017 provides for display of Registration Certificate & GSTIN on the name board in a prominent location at principal place of business and at every additional place of business.

Statutory Provisions

26. Deemed registration

- (1) *The grant of registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a grant of registration or the Unique Identity Number under this Act subject to the condition that the application for registration or the Unique Identity Number has not been rejected under this Act within the time specified in sub-section (10) of section 25.*
- (2) *Notwithstanding anything contained in sub-section (10) of section 25, any rejection of application for registration or the Unique Identity Number under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a rejection of application for registration under this Act.*

26.1 Analysis

These are the linking provisions between the Central Goods and Services Tax and State/Union Territory Goods and Services Tax Act. By enabling these provisions, the burden of taking registrations under various Acts has been removed. Thus, if a supplier takes a registration under one act it shall be deemed that the registration has also been obtained under the other Act and vice-versa. Even otherwise the registration must be taken on the common portal and is based on the PAN hence the registration will remain common across various Acts.

However, if the registration is rejected under the Central Goods and Services Tax, then such rejection will be treated as if the registration has not been obtained under the Central Goods and Services Tax even though it has been obtained in State/Union Territory Goods and Services Tax Act.

If an application for registration has been rejected under State/Union Territory Goods and Services Tax Act then it shall be deemed that the same has been rejected under the Central Goods and Services Tax Act.

Rejection of Application for Registration:

The proper officer shall not reject the application for registration or the Unique Identification Number (UID) without giving a notice to show cause and without giving the person a reasonable opportunity of being heard.

This implies that the decision to reject an application under this section shall be only after following the principles of Natural justice and after a due process of law by issuance of an order. It should also be noted that any rejection of application for registration or the Unique Identity Number under the CGST Act / SGST Act shall be deemed to be a rejection of application for registration under the SGST Act / CGST Act respectively as the case may be.

Statutory Provision**27. Special provisions relating to casual taxable person and Non- resident taxable person**

(1) The certificate of registration issued to a casual taxable person or a non-resident taxable person shall be valid for a period specified in the application for registration or 90 days from the effective date of registration, whichever is earlier and such person shall make taxable supplies only after the issuance of the certificate of registration:

Provided that the proper officer may, on sufficient cause being shown by the said taxable person, extend the said period of ninety days by a further period not exceeding 90 days.

(2) A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (1) of section 25, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought:

Provided that where any extension of time is sought under sub-section (1), such taxable person shall deposit an additional amount of tax equivalent to the estimated tax liability of such person for the period for which the extension is sought.

(3) The amount deposited under sub-section (2) shall be credited to the electronic cash ledger of such person and shall be utilized in the manner provided under section 49.

27.1 Analysis

The certificate of registration issued to a “casual taxable person” or a “non-resident taxable person” shall be valid for a period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier, extendable by proper officer for further period of maximum 90 days at the request of taxable person.

A casual taxable person or a non-resident taxable person while seeking registration shall make an advance deposit of tax in an amount equivalent to the estimated tax liability. Where any extension of time is sought, such taxable person shall deposit an additional amount of tax equal to the estimated tax liability for the period for which the extension is sought.

Such deposit shall be credited to the electronic cash ledger of and utilized in the manner provided under section 49 (Payment of Tax, interest, penalty and other amounts) of the Act.

Since the nature of the activity carried out by a casual taxable person and non-resident person are temporary as compared to a regular taxable person, additional safeguards have been placed to ensure that the registration is granted for a limited period and the tax liability is recovered in advance.

Rules 13 of the CGST Rules 2017 provides for the detailed process of grant of registration to non-resident taxable person and Rule 15 provides for the process of extension in period of operation by casual taxable person and non-resident taxable person.

A non-resident taxable person shall electronically submit an application, along with a self-attested copy of his valid passport, for registration, duly signed or verified through electronic verification code, in Form GST REG-09, at least five days prior to the commencement of business, in the case of business entity incorporated or established outside India, the application for registration shall be submitted along with its tax identification number or unique number on the basis of which the entity is identified by the Government of that country or its Permanent Account Number.

A person applying for registration as a non-resident taxable person shall be given a temporary reference number by the common portal for making an advance deposit of tax in accordance with the provisions of section 27 and the acknowledgement under sub-rule 5 of rule 8 shall be issued electronically only after the said deposit in his electronic cash ledger.

Rule 9 and rule 10 of the CGST Rules 2017 shall also apply to an application submitted under this rule. The application for registration made by a non-resident taxable person shall be duly signed or verified through electronic verification code by his authorized signatory who shall be a person resident in India having a valid Permanent Account Number.

Where a registered casual taxable person or a non-resident taxable person intends to extend the period of registration indicated in his application of registration, an Application in Form GST REG-11 shall be submitted electronically, by such person before the end of the validity of registration granted to him. Such application shall be acknowledged only on payment of the amount specified in sub-section (2) of section 27.

Statutory Provision

28. Amendment of Registration

- (1) *Every registered taxable person and a person to whom a unique identity number has been assigned shall inform the proper officer of any changes in the information furnished at the time of registration, or subsequent thereto, in such form and manner and within such period as may be prescribed.*
- (2) *The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in such manner and within such period as may be prescribed:*

Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed.

Provided further that the proper officer shall not reject the application for amendment in the registration particulars without giving the person an opportunity of being heard.

- (3) *Any rejection or approval of amendments under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a rejection or approval under this Act.*

28.1 Analysis

There are various situations in which the Registration Certificate issued by the competent authority requires amendment in line with real time situations. Under these circumstances, every registered taxable person shall inform any changes in the information furnished at the time of registration.

The proper officer shall not reject the request for amendment without affording a reasonable opportunity of being heard by following the principles of natural justice. Any rejection or approval of amendments under the State Goods and Services Tax Act or Union Territory Goods and Services Act shall be deemed to be a rejection or approval of amendments under the Central Goods and Services Tax Act.

Rule 19 of the CGST Rules 2017 provide for the detailed process of amendment of registration under GST.

Important Points:

- Any change in registration particulars has to be informed within 15 days of change
- Proper officer may approve / reject amendment
- No rejection without giving an opportunity of being heard
- Rejection of amendment under CGST will be a deemed rejection under SGST and vice-versa

Statutory Provision

29. Cancellation of registration

- (1) *The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed, having regard to the circumstances where, —*
- (a) *the business has been discontinued, transferred fully for any reason including death of the proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or*
 - (b) *there is any change in the constitution of the business; or*

- (c) *the taxable person, other than the person registered under sub-section (3) of section 25, is no longer liable to be registered under Section 22 or Section 24.*
- (2) *The proper officer may cancel the registration of a person from such date, including any retrospective date, as he may deem fit, where, —*
- (a) *a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or*
- (b) *a person paying tax under section 10 has not furnished returns for three consecutive tax periods; or*
- (c) *any registered person, other than a person specified in clause (b), has not furnished returns for a continuous period of six months; or*
- (d) *any person who has taken voluntary registration under sub-section (3) of section 25 has not commenced business within six months from the date of registration; or*
- (e) *registration has been obtained by means of fraud, wilful misstatement or suppression of facts:*
- Provided that the proper officer shall not cancel the registration without giving the person an opportunity of being heard.*
- (3) *The cancellation of registration under this section shall not affect the liability of the person to pay tax and other dues under this Act or to discharge any obligation under this Act or the rules made thereunder for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation.*
- (4) *The cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a cancellation of registration under this Act.*
- (5) *Every registered person whose registration is cancelled shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher, calculated in such manner as may be prescribed:*
- PROVIDED that in case of capital goods or plant and machinery, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods or plant and machinery, reduced by such percentage points as may be prescribed or the tax on the transaction value of such capital goods or plant and machinery under section 15, whichever is higher.*
- (6) *The amount payable under sub-section (5) shall be calculated in such manner as may be prescribed.*

29.1 Analysis

Any Registration granted under this Act may be cancelled by the Proper Officer; the various circumstances and the provisions of the law on this subject have been outlined under this section.

A registration granted can be cancelled when –

- the business is discontinued, transferred fully for any reason including death of proprietor, amalgamated with other legal entity, demerged or otherwise disposed of; or
- there is any change in the constitution of the business; or
- the taxable person is no longer liable to be registered under Section 22.

This is possible after the person is afforded an opportunity of being heard (except no such opportunity need to be provided in case the application is filed by the registered taxable person or his legal heirs, in the case of death of such person, for cancellation of registration) when –

- the registered taxable person has contravened such provisions of the Act or the rules made there under as may be prescribed; or
- a person paying tax under Composition Scheme has not furnished returns for three consecutive tax periods; or
- any taxable person who has not furnished returns for a continuous period of six months; or
- any person who has taken voluntary registration and has not commenced business within six months from the date of registration; or
- Where registration has been obtained by means of fraud, wilful misstatement or suppression of facts.

As such, cancellation of registration, shall not affect the liability of the taxable person to pay tax and other dues under the Act for any period prior to the date of cancellation whether or not such tax and other dues are determined before or after the date of cancellation. The cancellation of registration under State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a cancellation of registration under the Central Goods and Service Tax Act.

Where the registration is cancelled, the registered taxable person shall pay an amount equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher. The payment can be made by way of debit in the electronic credit or electronic cash ledger.

In case of capital goods, the taxable person shall pay an amount equal to the input tax credit taken on the said capital goods reduced by the prescribed percentage points or the tax on the transaction value of such capital goods [under sub-section (1) of section 15 (Value of Taxable

supply) of Act], whichever is higher. The amount payable under these provisions shall be calculated in accordance with generally accepted accounting principles.

As per Rule 20 of the CGST Rules 2017 application for cancellation of registration by a registered person other than persons required to deduct TDS/ TCS or person to whom UID is granted needs to be made in Form GST REG-16 along with requisite details. However, in case of a taxable person who has obtained voluntary registration, the application for cancellation of registration would not be entertained before expiry of 1 year from effective date of registration.

Rule 21 of the CGST Rules 2017 provides for cases of Cancellation of Registration and includes the following:

- a) does not conduct any business from the declared place of business or
- b) issues invoice or bill without supply of goods or services in violation of the provisions of Act or Rules made thereunder.
- c) violates the provisions of section 171 of the Act or the rules made thereunder.

Reasons for Cancellation

- Transfer of business or discontinuation of business
- Change in the constitution of business. (Partnership Firm may be changed to Sole Proprietorship due to death of one of the two partners, leading to change in PAN)
- Persons no longer liable to be registered under Section 22 and 24 (Except when he is voluntarily registered)
- Where registered taxable person has contravened provisions of the Act as may be prescribed
- A composition supplier has not furnished returns for 3 consecutive tax periods/ any other person has not furnished returns for a continuous period of 6 months
- Non-commencement of business within 6 months from date of registration by a person who has registered voluntarily.

Where registration has been obtained by means of fraud, willful statement or suppression of facts, the registration may be cancelled with retrospective effect

Rule 22 of the CGST Rules 2017 provides for process of Cancellation of Registration and includes the following:

- Cancellation can be done by Proper Officer suo moto or on application made by the registered taxable person;
- Retrospective cancellation in case of fraud, wilful misstatement or suppression of fact;
- Liability to pay tax before the date of cancellation will not be affected;
- Cancellation under CGST Act will be deemed cancellation under SGST Act and vice-versa;

- Substantial penalty in case registration obtained with fraudulent intentions;
- Notice of hearing and opportunity of being heard is a MUST before cancellation

Statutory Provision**30. Revocation of cancellation of registration**

- (1) *Subject to such conditions as may be prescribed, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.*
- (2) *The proper officer may, in the manner and within such period as may be prescribed, by order, either revoke cancellation of the registration or reject the application:*
Provided that the application for revocation of cancellation of registration shall not be rejected unless the applicant has been given an opportunity of being heard.
- (3) *The revocation of cancellation of registration under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, as the case may be, shall be deemed to be a revocation of cancellation of registration under this Act.*

30.1 Analysis

Any registered taxable person, whose registration is cancelled, subject to prescribed conditions and circumstances, may apply to proper officer for revocation of cancellation of the registration within 30 days from the date of service of the cancellation order. The proper officer may in prescribed manner and within prescribed period, by an order, either revoke cancellation of the registration, or reject the application for revocation for good and sufficient reasons.

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

Revocation of cancellation of registration under State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be a revocation of cancellation of registration under the Central Goods and Services Tax Act

Rule 23 of the CGST Rules 2017 provides for process of Cancellation of Registration and includes the following:

- Application for revocation or cancellation of registration shall be made within 30 days of date of service of cancellation order;
- No application for revocation shall be filed, if the registration has been cancelled for the failure to furnish returns, unless such returns are furnished and any amount due as tax, in terms of such returns, has been paid along with any amount payable towards interest, penalty and late fee in respect of the said returns

- Revocation of cancellation under CGST will be a deemed revocation under SGST and vice-a-versa
- Upon receipt of the information or clarification, the proper officer shall proceed to dispose of the application within a period of thirty days from the date of the receipt of such information of clarification from the applicant.

Rule 24 of the CGST Rules 2017 provides for the Migration of persons registered under the existing law:

Every person, other than a person deducting tax at source or an Input Service Distributor, registered under an existing law and having a Permanent Account Number issued under the provisions of the Income-tax Act, 1961 shall enroll on common portal, the said person shall be granted registration on a provisional basis and a certificate of registration in Form GST REG-25, incorporating the Goods and Services Tax Identification Number therein, shall be made available to him on the common portal. The taxable person who has been granted multiple registrations under the existing law on the basis of a single Permanent Account Number shall be granted only one provisional registration under the Act.

Rule 25 of the CGST Rules 2017 provides for the physical verification of business premises in certain cases. -

Where the proper officer is satisfied that the physical verification of the place of business of a registered person is required after the grant of registration, he may get such verification done and the verification report along with the other documents, including photographs, shall be uploaded in Form GST REG-30 on the common portal within a period of fifteen working days following the date of such verification.

Rule 26 of the CGST Rules 2017 provides for the Method of authentication:

All applications, including reply, if any, to the notices, returns including the details of outward and inward supplies, appeals or any other document required to be submitted under the provisions of these rules shall be so submitted electronically with digital signature certificate or through e-signature as specified under the provisions of the Information Technology Act, 2000 or verified by any other mode of signature or verification as notified by the Board in this behalf: Provided that a registered person registered under the provisions of the Companies Act, 2013 shall furnish the documents or application verified through digital signature certificate.

Each document including the return furnished online shall be signed or verified through electronic verification code-

- (a) in the case of an individual, by the individual himself or where he is absent from India, by some other person duly authorized by him in this behalf, and where the individual is mentally incapacitated from attending to his affairs, by his guardian or by any other person competent to act on his behalf;

- (b) in the case of a HUF, by a Karta and where the Karta is absent from India or is mentally incapacitated from attending to his affairs, by any other adult member of such family or by the authorized signatory of such Karta;
- (c) in the case of a company, by the chief executive officer or authorized signatory thereof;
- (d) in the case of a Government or any Governmental agency or local authority, by an officer authorized in this behalf;
- (e) in the case of a firm, by any partner thereof, not being a minor or authorized signatory thereof;
- (f) in the case of any other association, by any member of the association or persons or authorized signatory thereof;
- (g) in the case of a trust, by the trustee or any trustee or authorized signatory thereof; or
- (h) in the case of any other person, by some person competent to act on his behalf, or by a person authorized in accordance with the provisions of section 48.

30.2 Comparative Review

Under erstwhile law, the threshold limit for registration under Central Excise was INR 150 lacs (this is optional), under service tax was INR 10 lacs and under many State VAT laws between INR 5 – 10 lacs

Section in CGST Act	Title	Corresponding Section in Central Excise Act, 1944	Corresponding Section in Finance Act, 1994	VAT/New Provision
22	Registrations	Section-6 of CEA 1944 read with Rule 9 of Central Excise Rules 2002	Section 69 of the Finance Act 1994 read with Rule 4 of Service Tax Rules 1994	Different states have different provisions under their ACT.

30.3 FAQ's

- Q1. Who is the person liable to take a registration under the GST Law?
- Ans. In terms of Sub-Section (1) of Section 22 of the CGST Act, every supplier making taxable supplies is liable for registration if his aggregate turnover in a financial year exceeds ₹ 20 lakhs.
- Q2. What is the time limit for taking a registration under GST Law?
- Ans. Every person should take a registration, within 30 days from the date on which he becomes liable to registration, in such manner and subject to such conditions as may be prescribed. Provided casual taxable person or a non-resident taxable person shall apply for registration at least five days prior to the commencement of business.
- Q3. If a person is operating in different states, with the same PAN number, whether he operate with a single registration?

Ans. Every person who is liable to take a registration will have to get registered separately for each of the States where he has a business operation and is liable to pay GST in terms of Sub-section (1) of Section 25 of GST Law.

Q4. Whether a person having multiple business verticals in a State can obtain different registrations?

Ans. In terms of Sub-Section (2) of Section 25, a person having multiple business verticals in a State may obtain a separate registration for each business vertical, subject to such conditions as may be prescribed.

Q5. Is there a provision for a person to get himself registered voluntarily though he may not be liable to pay GST?

Ans. In terms of Sub-section (3) of Section 25 a person, though not liable to be registered under Section 22, may get himself registered voluntarily, and all provisions of this Act, as are applicable to a registered taxable person, shall apply to such person.

Q6. Is possession of a Permanent Account Number (PAN) mandatory for obtaining a registration?

Ans. Every person shall have a Permanent Account Number issued under the Income Tax Act, 1961 (43 of 1961) in order to be eligible for grant of registration under Section 22 of the Act.

Q7. Whether the department through the proper officer, *Suo-moto* proceed with registration of a person under this Act?

Ans. In terms of Sub-Section 8 of Section 25, Where a person who is liable to be registered under this Act fails to obtain registration, the proper officer may, without prejudice to any action that is, or may be taken under this Act, or under any other law for the time being in force, proceed to register such person in the manner as may be prescribed *Suo-motto*.

Q8. When the proper Officer can grant a Certificate for registration?

Ans. In terms of Sub-Section 10 of Section 25, the registration Certificate, shall be granted or rejected after due verification in the manner and within such period as may be prescribed.

Q9. Whether the registration granted to any person is permanent?

Ans. Yes, the registration certificate once granted is permanent unless surrendered, cancelled, or revoked.

Q10. What is the validity period of the registration certificate issued to Casual Taxable Person and non-resident Taxable person?

Ans. The certificate of registration issued to a "casual taxable person" or a "non-resident taxable person" shall be valid for a period of 90 days from the effective date of registration. A proviso has been made available in this statute by enshrining a discretionary authority for the proper officer, who may at the request of the said taxable

person, extend the validity of the aforesaid period of 90 days by a further period not exceeding 90 days.

Q.11. Is there any Advance tax to be paid by Casual Taxable Person and non-Resident Taxable person at the time of obtaining registration under this Special Category?

Ans. Yes, it has been made mandatory in the Act, that a casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration under sub-section (2) of section 27, make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought. This provision of depositing advance additional amount of tax equivalent to the estimated tax liability of such person is applicable for the period for which the extension beyond 90 days is being sought.

Q12. Whether amendments to the Registration Certificates issued by the proper officer is permissible?

Ans. In terms of Section 28, the proper officer may, on the basis of such information furnished either by the registrant or as ascertained by him, approve or reject amendments in the registration particulars in the manner and within such period as may be prescribed:

Q13. Whether Cancellation of registration Certificate is permissible?

Ans. Any registration granted under this Act may be cancelled by the proper officer, on various circumstances and the provisions of the law on this subject have been outlined under Section 29 of the ACT. The proper officer may, either on his own motion or on an application filed, in the prescribed manner, by the registered taxable person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed.

Q14. Whether cancellation of registration under CGST ACT means cancellation under SGST ACT also?

Ans. The cancellation of registration under the CGST Act /SGST Act shall be deemed to be a cancellation of registration under the SGST Act / CGST Act respectively.

Q.15. Can the proper officer cancel the registration on his own?

Ans. Yes, the proper officer can cancel the registration once issued on his own Volition. However, such officer must follow the principles of natural justice by issuing a Notice and providing opportunity of being heard.

Chapter VII

Tax Invoice, Credit and Debit Notes

- 31. Tax invoice
- 32. Prohibition of unauthorized collection of tax
- 33. Amount of tax to be indicated in tax invoice and other documents
- 34. Credit and debit notes

Statutory provision

31. Tax invoice

- (1) *A registered person supplying taxable goods shall, before or at the time of,*
 - (a) *removal of goods for supply to the recipient, where the supply involves movement of goods; or*
 - (b) *delivery of goods or making available thereof to the recipient, in any other case,**issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed:*
Provided that the Government may, on the recommendation of the Council, by notification, specify the categories of goods or supplies in respect of which a tax invoice shall be issued, within such time and in such manner as may be prescribed.
- (2) *A registered person supplying taxable services shall, before or after the provision of service but within a prescribed period, issue a tax invoice, showing the description, value, the tax charged thereon and such other particulars as may be prescribed:*
Provided that the Government may, on the recommendations of the Council, by notification and subject to such conditions as may be mentioned therein, specify the categories of services in respect of which –
 - (a) *any other document issued in relation to the supply shall be deemed to be a tax invoice; or*
 - (b) *tax invoice may not be issued*
- (3) *Notwithstanding anything contained in sub-sections (1) and (2):*
 - (a) *a registered taxable person may, within one month from the date of issuance of certificate of registration and in such manner as may be prescribed, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him;*

- (b) *a registered person may not issue a tax invoice if the value of goods or services or both supplies is less than two hundred rupees' subject to such conditions and in such manner as may be prescribed;*
- (c) *A registered person supplying exempted goods or services or both or paying tax under the provisions of section 10 shall issue, instead of a tax invoice, a bill of supply containing such particulars and in such manner as may be prescribed:*
Provided that the registered person may not issue a bill of supply if the value of the goods or services or both supplied is less than two hundred rupees subject to such conditions and in such manner as may be prescribed;
- (d) *a registered person shall, on receipt of advance payment with respect to any supply of goods or services or both, issue a receipt voucher or any other document, containing such particulars as may be prescribed, evidencing receipt of such payment;*
- (e) *where on receipt of advance payment with respect to any supply of goods or services or both the registered person issues a receipt voucher, but subsequently no supply is made and no tax invoice is issued in pursuance thereof, the said registered person may issue to the person who made the payment, refund voucher against such payment;*
- (f) *a registered person who is liable to pay tax under sub-section (3) or sub section (4) of section 9 shall issue an invoice in respect of goods or services or both received by him from the supplier who is not registered on the date of receipt of goods or services or both;*
- (g) *a registered person who is liable to pay tax under sub section (3) or sub section (4) of section 9 shall issue a payment voucher at the time of making payment to the supplier.*
- (4) *In case of continuous supply of goods, where successive statements of accounts or successive payments are involved, the invoice shall be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.*
- (5) *Subject to the provisions of clause (d) of sub section (3), in case of continuous supply of services,*
 - (a) *where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;*
 - (b) *where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;*
 - (c) *where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.*
- (6) *In a case where the supply of services ceases under a contract before the completion of the supply, the invoice shall be issued at the time when the supply ceases and such*

invoice shall be issued to the extent of the supply made before such cessation.

- (7) *Notwithstanding anything contained in sub-section (1), where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued before or at the time of supply or six months from the date of removal, whichever is earlier.*

Explanation. - The expression "tax invoice" shall include any revised invoice issued by the supplier in respect of a supply made earlier.

Central Government vide Notification No. 12/2017-Central Tax, dt. 28-06-2017 has w.e.f 1st July 2017 notified the following number of digits of Harmonized System of Nomenclature (HSN) Codes which are required to be mentioned in a tax invoice issued by a registered person having prescribed annual turnover:

S. No.	Annual Turnover in the preceding Financial Year	Number of Digits of HSN Code
1.	<i>Upto ₹ 1.5 crore</i>	<i>Nil</i>
2.	<i>More than ₹ 1.5 crore and upto ₹ 5 crores</i>	<i>2</i>
3.	<i>More than ₹ 5 crores</i>	<i>4</i>

Similar requirement for mentioning HSN Codes in tax invoice has been prescribed under IGST Act, 2017 vide Notification No. 05/2017-Integrated Tax, dt. 28-06-2017.

31.1 Introduction

An invoice does not bring into existence an agreement but merely records the terms of a pre-existing agreement. GST requires that an invoice – tax invoice or bill of supply – to be issued on the occurrence of certain event or within a prescribed time. Therefore, an invoice, among others is required to be issued for every other form of supply such as sale, transfer, barter, exchange, license, rental, lease or disposal.

First proviso to Rule 46 of the Central Goods and Services Tax Rules, 2017 provides that the Board may, on the recommendations of the Council, by notification, specify-

- (i) the number of digits of Harmonized System of Nomenclature code for goods or services that a class of registered persons shall be required to mention, for such period as may be specified in the said notification; and
- (ii) the class of registered persons that would not be required to mention the Harmonized System of Nomenclature code for goods or services, for such period as may be specified in the said notification

31.2 Analysis

A. Supplier of taxable goods is required to issue a tax invoice:

- Before or at the time of removal of the goods where the supply involves movement of goods; or

- Before or at the time of delivery of the goods to the recipient where the supply does not involve movement of goods.

So, in order to determine when the tax invoice is to be issued, the supply must be classified into one of these two cases, that is, whether it is case of supply that involves movement or one that does not involve movement of the goods. Please refer to chapter regarding time of supply for detailed discussion about removal and movement of goods, mode & time of delivery of goods and the role of supplier or recipient in determining these questions.

- B.** Supplier of services is required to issue a tax invoice:
- Before provision of the services or
 - After provision of the services but within a specified time.
- C.** In terms of Rule 46 of CGST Rules, 2017, a tax invoice referred to in this section shall be issued by the registered person containing the following: -
- (a) name, address and GSTIN of the supplier;
 - (b) a consecutive serial number, not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
 - (c) date of its issue;
 - (d) name, address and GSTIN or UIN, if registered, of the recipient;
 - (e) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered and where the value of taxable supply is fifty thousand rupees or more;
 - (f) name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is less than fifty thousand rupees and the recipient requests that such details be recorded in the tax invoice;
 - (g) Harmonised System of Nomenclature code for goods or services;
 - (h) description of goods or services;
 - (i) quantity in case of goods and unit or Unique Quantity Code thereof;
 - (j) total value of supply of goods or services or both;
 - (k) taxable value of supply of goods or services or both considering discount or abatement, if any;
 - (l) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
 - (m) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
 - (n) place of supply along with the name of State, in case of a supply in the course of inter-State trade or commerce;

- (o) address of delivery where the same is different from the place of supply;
- (p) whether the tax is payable on reverse charge basis; and
- (q) signature or digital signature of the supplier or his authorized representative:

In respect of the particulars relating to HSN code cited in point (f) supra on the recommendations of the Council the Commissioner may, by notification for a specified period and class of registered persons who will be required to specify the number of digits of HSN code for goods or the Accounting Codes for services; The Commissioner is also empowered to specify by way of notification (on the recommendations of the Council the class of registered persons that would not be required to mention the HSN code for goods or the Accounting Codes for services, for such period as may be specified in the said notification:

D. Tax Invoices in cases of special services

Sl. No.	Class of supplier of taxable services	Nature of document	Optional	Mandatory
1	Insurer, Banking Company, Financial Institution and NBFC	Consolidated Tax Invoice or any other similar document	a. Serial no. b. Address of the recipient of services	All other particulars cited in clause C supra
2	Goods transport agency transporting goods by road	Tax Invoice or any other similar document	None	a. All other particulars cited in clause C supra b. Gross weight of consignment c. Consignor and Consignee name d. Regn. No. of Vehicle e. Details of goods transported f. Origin and destination details g. GSTIN of person liable to pay tax whether as consignor / consignee or as GTA
3	Passenger transport agency	Tax invoice or ticket	a. Serial no. b. Address of	All other particulars cited in clause C supra

			the recipient of services	
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E. In case of exports of goods or services, the invoice shall carry an endorsement

Supply meant for export/supply to SEZ unit or SEZ developer for authorised operations on payment of integrated tax” or “supply meant for export/supply to SEZ unit or SEZ developer for authorised operations under bond or letter of undertaking without payment of integrated tax”, as the case may be, and shall, in lieu of the details specified in clause (c) cited supra, contain the following details:

- (i) name and address of the recipient;
- (ii) address of delivery;
- (iii) name of the country of destination; and

F. Supplies not exceeding ₹200/-

A registered person is not required to issue a tax invoice in accordance with the provisions of clause (b) of sub-section (3) of section 31 i.e. in respect of supply of goods or services or both where the value therein does not exceed a sum of ₹200/- subject to the following conditions, namely: -

- (a) the recipient is not a registered person; and
- (b) the recipient does not require such invoice,

However, in respect of such supplies, the supplier shall issue a consolidated tax invoice for such supplies at the close of each day in respect of all such supplies.

G. Commissioner's powers

The Commissioner, on the recommendations of the Council, is empowered to specify the class of persons rendering services who can issue any other document which could be construed to be a tax invoice or circumstances when a tax invoice need not be issued.

H. Revised Tax Invoice

Within one month from the date of registration, the taxable person may issue a revised tax invoice for supplies from the effective date of registration till the date of issuance of registration certificate. Such person may also issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered.

In a transaction of inter-State supply where the value of supply does not exceed ₹2.50 lakhs a consolidated revised tax invoice is to be issued separately for each of the recipients in a particular State who are not registered.

- I. A registered person who has opted for composition of tax under section 10 of the Act or one who is supplying exempted goods or services or both is required to issue a bill of supply and not a tax invoice.

J. Bill of supply

As per Rule 49 of CGST Rules, 2017 a bill of supply referred to in clause (c) of sub-section (3) of section 31 shall be issued by the supplier containing the following details:-

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number, not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) HSN Code of goods or Accounting Code for services;
- (f) description of goods or services or both;
- (g) value of supply of goods or services or both taking into account discount or abatement, if any; and
- (h) signature or digital signature of the supplier or his authorized representative:

K. Receipt Voucher

As per Rule 50 of CGST Rules, 2017, in case of receipt of advance, a ‘receipt voucher’ be issued and not an invoice (of either kind). A receipt voucher referred to in clause (d) of sub-section (3) of section 31 shall contain the following:

- (a) name, address and GSTIN of the supplier;
- (b) a consecutive serial number not exceeding sixteen characters containing alphabets or numerals or special characters -hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year
- (c) date of its issue;
- (d) name, address and GSTIN or UIN, if registered, of the recipient;
- (e) description of goods or services;
- (f) amount of advance taken;
- (g) rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- (h) amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- (i) place of supply along with the name of State and its code, in case of a supply in the course of inter-State trade or commerce;
- (j) whether the tax is payable on reverse charge basis; and
- (k) signature or digital signature of the supplier or his authorized representative.

Whenever a transaction envisages issue of Receipt Voucher, but thereafter does not translate into a transaction of supply will require issue of a refund voucher containing similar particulars cited supra.

Provided that where at the time of receipt of advance, -

- (i) the rate of tax is not determinable; the tax shall be paid at the rate of eighteen per cent.;
- (ii) the nature of supply is not determinable, the same shall be treated as inter-State supply

L. Tax payable on reverse charge and supplies received from unregistered persons

Where tax is payable on reverse charge basis or on receipt of supplies from unregistered persons - the recipient is required to prepare an invoice – tax invoice or bill of supply – to record and confirm facts relating to supplies received from such persons. Such transactions would also require a payment voucher to be issued (on similar basis as a receipt voucher) at the time of making payment.

M. Tax Invoice for an Input Service Distributor (ISD)

An ISD Invoice or credit note issued by an Input Service Distributor shall contain the following particulars in terms of Rule 54 of Central Goods and Service Tax Rules, 2017.

- (a) name, address and GSTIN of the Input Service Distributor;
- (b) a consecutive serial number containing alphabets or numerals or special characters' hyphen or dash and slash symbolised as, "-", "/", respectively, and any combination thereof, unique for a financial year;
- (c) date of its issue;
- (d) name, address and GSTIN of the recipient to whom the credit is distributed;
- (e) amount of the credit distributed; and
- (f) signature or digital signature of the Input Service Distributor or his authorized representative:

If the Input Service Distributor is an office of a banking company or a financial institution, including a non-banking financial company, a tax invoice shall include any document in lieu thereof, by whatever name called, whether or not serially numbered but containing the information as prescribed above.

N. Continuous supply of goods

Continuous supply of goods, the invoice – tax invoice or bill of supply – is required to be issued:

- when the statement or a running-claim is issued; or
- when payment is received, whichever is earlier

2(32) "continuous supply of goods" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether

or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

O. Continuous supply of services

For continuous supply of services, a tax invoice is required to be issued:

- when payment date is ascertainable as per the contract on or before the due date for payment; or
- when payment date is not ascertainable from the contract on or before the time when the supplier of services receives the payment; or
- when payment is linked to completion of an event on or before the date of completion of the event.

2(33) "continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such condition as it may, by notification, specify.

P. Cessation of services

On cessation of a contract for supply of services, the invoice is required to be issued to the extent supply is complete prior to cessation.

Q. Goods sent on approval

Invoice in respect of goods sent 'on approval' is required to be issued at the earlier of the end of 6 months from their removal or approval to accept supply is indicated to supplier.

Rule 46A provides for the Invoice-cum-bill of supply in case where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice-cum-bill of supply" may be issued for all such supplies.

31.3 Comparative review

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

Under service tax regime, a time limit to issue a tax invoice is prescribed having regard to date of completion of such taxable service or receipt of any payment towards the value of such taxable service, whichever is earlier.

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

Under erstwhile law, invoices or bills of sale etc. can be issued inclusive of tax in certain cases whereas it is mandatory to indicate the amount of tax charged on every transaction in the GST regime

31.4 FAQs

Q1. Is tax invoice required to be raised for advance payments received for goods or services?

Ans. No, tax invoice is not required to be raised for advance payments received for goods or services. The recipient of payment would be required to issue a receipt voucher for receipt of payment.

Q2. Is it mandatory to mention the details of tax amount charged in the invoice?

Ans. Yes, the tax invoice should mandatorily mention the details of tax amount charged in the invoice.

Q3. Is it possible to take input tax credit based on the 'bill of supply'?

Ans. No, it is not possible to take input tax credit based on the bill of supply.

Q4. Can a revised invoice be issued for taxable supplies?

Ans. Yes, the registered taxable person can issue revised invoice. Every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue revised tax invoices in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration.

Provided that the registered person may issue a consolidated revised tax invoice in respect of all taxable supplies made to a recipient who is not registered under the Act during such period

Statutory Provisions

32. Prohibition of unauthorized collection of tax

(1) *A person who is not a registered person shall not collect in respect of any supply of goods or services or both any amount by way of tax under this Act.*

(2) *No registered person shall collect tax except in accordance with the provisions of this Act or the rules made thereunder.*

32.1 Analysis

Collection of tax is not a statutory right but a contractual right. The person collecting taxes acts as an agent of the Government. As such, no recipient is obliged to reimburse the supplier taxes due on the supply. At the same time, every taxable person (in case of forward charge) remains liable to deposit applicable tax to the Government.

This provision casts an obligation of each – unregistered person and registered taxable person with regard to collection of tax on supply:

- unregistered person is not to collect tax or any sum 'by way of' tax; and
- registered taxable person is to collect tax only in the manner prescribed

It is important to differentiate between the restriction placed by this provision and the contractual route necessary to recoup tax by the supplier. Only tax that is collected as 'CGST-SGST' or 'IGST' or UTGST is to be paid to the Government. Any other loss recoupment of input tax credit foregone or forfeited does not come within this restriction.

Statutory Provisions

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

Notwithstanding anything contained in this Act or any other law for the time being in force, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made.

33.1 Analysis

With the non-obstante clause, this provision secures preference over any other provision to the contrary whether in this Act or elsewhere. And it states that all documents need to carry the tax that forms part of the price of supply.

This provision therefore holds that the price charged to be the 'cum tax' price of the supply. Tax included in the price is that actually assessed on the supply.

It means that if the supply price is ₹1000/- which is inclusive of tax then every document must state that "the price of ₹1000 includes – say IGST of ₹180/- or alternatively say supply price is ₹820 and IGST ₹180 total ₹1000.

Statutory Provisions

34. Credit and debit notes

- (1) *Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to exceed the taxable value or tax payable in respect of such supply, or where the goods supplied are returned by the recipient, or where goods or services or both supplied are found to be deficient, the registered person, who has supplied such goods or services or both, may issue to the recipient a credit note containing such particulars as may be prescribed.*
- (2) *Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than September following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed:*

Provided that no reduction in output tax liability of the supplier shall be permitted, if the incidence of tax and interest on such supply has been passed on to any other person.

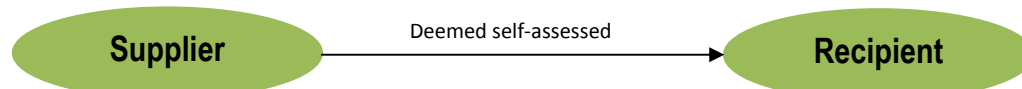
- (3) *Where a tax invoice has been issued for supply of any goods or services or both and the taxable value or tax charged in that tax invoice is found to be less than the taxable value or tax payable in respect of such supply, the registered person, who has supplied such goods or services or both, shall issue to the recipient a debit note containing such particulars as may be prescribed.*
- (4) *Any registered person who issues a debit note in relation to a supply of goods or services or both shall declare the details of such debit note in the return for the month during which such debit note has been issued and the tax liability shall be adjusted such manner as may be prescribed.*

Explanation. – For the purposes of this Act, the expression “debit note” shall include a supplementary invoice.

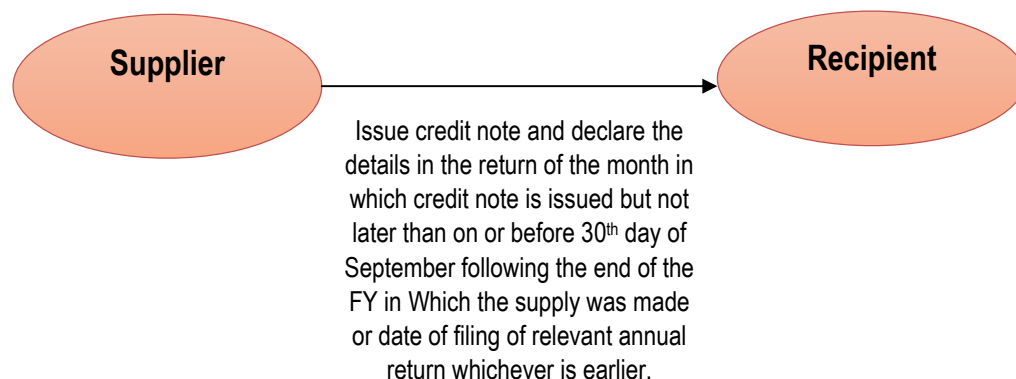
34.1 Analysis

- (a) Credit note and debit note cause some hardship to quickly understand – who owes whom. Credit note is issued when 'I OWE' money to someone, that is, it is issued by the person who owes money. Debit note is issued when 'THEY OWE' money to me, that is, it is again issued by the person who is the receiver of money. When a cash discount is allowed at the time of collecting payment from a customer, then the issuer of the relevant note is the supplier (not customer) who agrees to reduce the amount due from the customer. So, to the extent of such cash discount, the supplier declares 'I OWE' money and when 'I OWE' money, the relevant note is a 'credit note'. And here the supplier issues the credit note to the customer to the extent of the cash discount. Then, the original amount due MINUS the credit note is the revised amount that the customer pays the supplier. Now, if the supplier charges a penalty for delayed payment to the same customer and is accepted, then again, the supplier (not customer) issues the relevant note for the accepted amount of delay penalty. So, to the extent of such delay penalty, the supplier declares that 'THEY OWE' money and when 'THEY OWE' money, the relevant note is a 'debit note'. And here the supplier issues the debit note to the customer to the extent of the delay penalty. Then, the original amount due PLUS the debit note is the revised amount that the customer pays the supplier.
- (b) Now, this provision considers four situations where supplier says, 'I OWE' and issues credit note:
- actual value of supply is lower than that stated in the tax invoice issued previously
 - Tax charged in that invoice is higher than that correctly applicable on the supply
 - goods supplied are returned by the recipient
 - goods or services supplied are deficient

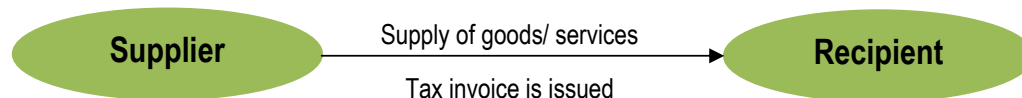
- (c) And it considers two situations where the supplier says, 'THEY OWE' and issues debit note:
- Actual value of supply is higher than that stated in the tax invoice issued previously
 - Tax charged in that invoice is lower than that correctly applicable on the supply
- (d) Credit note and debit note must be considered in the return for the month when it is issued. But, a credit note is required to be issued not later than September of next year or date of furnishing relevant annual return, whichever is earlier, as it involves reducing the tax liability. And where there is such reduction in tax liability by a credit note, the same is permitted with a corresponding responsibility to ensure that the recipient of supply has made a corresponding downward revision in the claim of tax credit.
- (e) Except in the circumstances specified, credit note or debit note is not permitted to be issued merely because a financial adjustment is required to be made in respect of the receivable or payable.
- (f) **Scenario-1 Credit note issue**



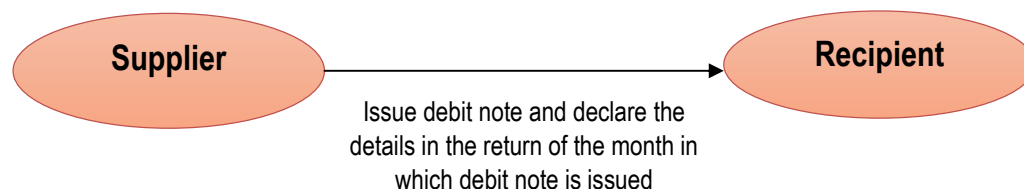
Scenario 1: Tax Charged/ Taxable Value/ Goods returned/ Deficient Services > Tax Charged/ Taxable Value (w.r.t. that supply), then



- (g) **Scenario-2 Debit note issue (include Supplementary invoice)**



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



(h) Supplementary tax invoice and credit or debit notes

A revised tax invoice referred to in section 31 and credit or debit note referred to in section 34 shall contain the following particulars -

- (a) The word "Revised Invoice", wherever applicable, indicated prominently;
 - (b) name, address and GSTIN of the supplier;
 - (c) nature of the document;
 - (d) a consecutive serial number containing alphabets or numerals or special characters - hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
 - (e) date of issue of the document;
 - (f) name, address and GSTIN or UIN, if registered, of the recipient;
 - (g) name and address of the recipient and the address of delivery, along with the name of State and its code, if such recipient is un-registered;
 - (h) serial number and date of the corresponding tax invoice or, as the case may be, bill of supply;
 - (i) value of taxable supply of goods or services, rate of tax and the amount of the tax credited or, as the case may be, debited to the recipient; and
 - (j) signature or digital signature of the supplier or his authorized representative:
- (3) Any invoice or debit note issued in pursuance of any tax payable in accordance with the provisions of section 74 or section 129 or section 130 shall prominently contain the words "Input tax credit not admissible".

(i) Manner of issue of invoices

Sl. No	Description	Original to	Duplicate to	Triplicate to
1	Invoice to be issued in respect of goods	Recipient	Transporter	Supplier
2	Invoice to be issued in respect of services within 30 days from	Recipient	Supplier	Not required

	date of supply of services			
a.	If the supplier of services is an insurer, banking company, financial institution or a NBFC invoice is to be issued within 45 days from the date of supply of service.			
b.	If the supplier of services is an insurer, banking company, financial institution or a NBFC or a telecom operator or a notified class of supplier of services between distinct persons as per section 25 of the CGST Act (refer entry 2 of schedule I) then an invoice, is to be issued before or at the time the supplier records in his books of account or before expiry of the quarter during which supply is rendered.			

(j) Transportation of goods without issue of invoices – exceptional circumstances

The Rules prescribed lists out certain special circumstances for transportation of goods when tax invoice cannot be issued. In such situations, the Rules also specifies the nature of other documents to be carried along with the goods under transportation. Please note that this list is illustrative and not exhaustive.

Nature of supply	Mandatory documents	Particulars to be contained in the document
(1) Supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known (2) Transportation of goods for job work (3) Transportation of goods for reasons other than by way of supply, or (4) Such other supplies notified by the Board	1. The consignor to issue a delivery challan 2. Serially numbered Delivery challan to be issued in lieu of invoice at the time of removal of goods for transportation	(i) Date and number of the delivery challan, (ii) Name, address and GSTIN of the consigner, if registered, (iii) Name, address and GSTIN or UIN of the consignee, if registered, (iv) HSN code and description of goods, (v) Quantity (provisional, where the exact quantity being supplied is not known), (vi) Taxable value, (vii) Tax rate and tax amount – central tax, State tax, integrated tax, Union territory tax or cess, where the transportation is for supply to the consignee, (viii) Place of supply, in case of inter-State movement, and (ix) Signature.
Note: 1. The delivery challan shall be prepared in triplicate, in case of supply of goods, in the following manner: – (a) ORIGINAL FOR CONSIGNEE;		

- (b) DUPLICATE FOR TRANSPORTER; and
 - (c) TRIPLICATE FOR CONSIGNOR.
2. Where goods are being transported on a delivery challan in lieu of invoice, the same shall be declared in FORM [WAYBILL].

(k) Where the goods are being transported in a semi knocked down or completely knocked down condition

1. The supplier to issue the complete invoice before dispatch of the first consignment;
2. The supplier shall issue a delivery challan for each of the subsequent consignments, giving reference of the invoice;
3. Each consignment to be accompanied by copies of the corresponding delivery challan along with a duly certified copy of the invoice; and
4. The original copy of the invoice shall be sent along with the last consignment.

(l) Credit/Debit Notes

- (i) No credit note shall be issued if the incidence of tax and interest on such supply has been passed by him to any other person.
- (ii) The details of credit notes/debit notes should be declared (i) in the return for the month during which they are issued or received; or (ii) in the return for any subsequent month. However, such declaration cannot be later than (i) September following the end of the financial year in which the supply was made or (ii) date of filing of the relevant annual return, whichever is earlier.
- (iii) If the details are not shown as above, the credit / debits notes may not be considered for adjustment of tax liability.

34.2 Comparative review

- (i) Rule 9 of CENVAT Credit Rules, 2004 gives details of the documents and accounts which need to be mandatorily adhered to in order to avail the benefit of CENVAT Credit.
- (ii) As per the Rule, CENVAT Credit can be availed based on: -
 - (a) An invoice
 - (b) Supplementary invoice
- (iii) In the context of excise laws, though credit notes may be issued in situations where taxable value is reduced, typically, no adjustment is made for excise valuation purpose (except when the assessment is provisional). Instead of debit notes for increase in taxable value/tax, supplementary invoices are issued (this is a valid document for taking CENVAT credit). There is no time limit for issuance of credit/debit notes (supplementary invoice).

- (iv) In the context of service tax laws, notes credit notes may be issued in situations where taxable value is reduced. Adjustment of excess tax paid is permissible in specified situations. Instead of debit notes for increase in taxable value/tax, supplementary invoices are issued (this is a valid document for taking CENVAT credit). There is no time limit for issuance of credit/debit notes (supplementary invoice).

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

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

34.3 FAQ's

Q1. Can credit notes/debit notes be raised without raising an appropriate tax invoice?

Ans. No, credit notes/debit notes have to be raised with reference to specific invoice and not otherwise to get the benefit of tax adjustment.

Q2. Is it mandatory to show the details of credit/debit notes in the periodic returns?

Ans. Yes, the details of debit note and credit note is required to be mentioned in periodic returns. If not shown, it is not considered for adjustment of tax liability.

Q3. Are there any situations where credit note cannot be issued?

Ans. Credit note cannot be issued if the incidence of tax and interest on such supply has been passed by tax payer to any other person.

34.4 MCQ

Q1. What is the last date by which you need to issue debit/credit note?

- (a) On or before Sept 30, following the end of financial year
- (b) The date of filing of the relevant annual return
- (c) Earlier of the two dates mentioned in (a) and (b) above
- (d) None of the above

Ans. (c) Earlier of the two dates mentioned in (a) and (b) above

Chapter– VIII

Accounts and Records

35. Accounts and other records

36. Period of retention of accounts

Statutory Provisions

35. Accounts and other records

(1) Every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of—

- (a) production or manufacture of goods;
- (b) inward and outward supply of goods or services or both;
- (c) stock of goods;
- (d) input tax credit availed;
- (e) output tax payable and paid; and
- (f) such other particulars as may be prescribed:

Provided that where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business:

Provided further that the registered person may keep and maintain such accounts and other particulars in electronic form in such manner as may be prescribed.

- (2) Every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.
- (3) The Commissioner may notify a class of taxable persons to maintain additional accounts or documents for such purpose as may be specified therein.
- (4) Where the Commissioner considers that any class of taxable person is not in a position to keep and maintain accounts in accordance with the provisions of this section, he may, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in such manner as may be prescribed.
- (5) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant Accounts and shall submit a copy of the audited annual accounts, the reconciliation statement under sub-section (2) of section 44 and such other documents in such form and manner as may be prescribed.

- (6) *Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74, as the case may be, shall, mutatis mutandis, apply for determination of such tax.*

35.1 Introduction

1. This Section mandates the upkeep and maintenance of records, at the place(s) of business in electronic or other forms.
2. Power is vested with the Commissioner for relaxation as well as for prescribing additional records for certain classes of taxable persons.
3. Furnishing of an audited statement of accounts and reconciliation statement is also contemplated for persons having turnover exceeding prescribed limit.
4. Failure to maintain records or accounts may entail payment of tax as determined by a proper officer in respect of unaccounted transactions.
5. Every owner or operator, of a place of storage, or every transporter whether such owner or operator or transporter is registered or not, shall maintain records and other relevant details as may be prescribed.

‘Place of business’ - Section 2(85) of The CGST Act, 2017 defines “place of business” to include -

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, provides or receives goods services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called;

‘Principal place of business’ - Section 2(89) of the CGST Act, 2017 defines “*principal place of business*” to mean the place of business specified as the principal place of business in the certificate of registration.

35.2 Analysis

To be read along with Rule 56 and 57 of CGST Rules, 2017

- (i) Every registered person shall keep and maintain, at his principal place of business (as mentioned in the certificate of registration), a true and correct account of the following: -
 - Production or manufacture of goods;
 - Inward supply of goods or services or both;
 - Outward supply of goods and/or services or both

- Stock of goods;
 - Input tax credit availed;
 - Output tax payable and paid; and
 - Such other particulars as may be prescribed in this behalf.
- (ii) In case of multiple places of business (as specified in the certificate of registration), the accounts relating to each place of business shall be kept at the respective places of business concerned. Hence, all records are to be maintained at each place of business pertaining to the operations at such place of business. It is important to note that in respect of quantitative information, the 'unit of measurement' must be such that the actual units used for procurement and supply can be determined or computed. For example, in case goods are procured in 'square meters' and they are supplied in 'square feet', the accounts must be maintained in one unit of measurement or a conversion-ratio must be applied so as to extract information in one or other unit.
- (iii) Registered assessee may keep and maintain such accounts and other in the electronic form in such manner as may be prescribed.
- (iv) The Commissioner is vested with powers to notify a class of taxable persons to maintain additional accounts or documents for specified purpose.
- (v) In case the Commissioner considers that any class of taxable persons are not in a position to keep and maintain accounts in accordance with this section, he can, for reasons to be recorded in writing, permit such class of taxable persons to maintain accounts in any other manner.
- (vi) Every registered person whose turnover during a financial year exceeds the prescribed limit shall get his accounts audited by a chartered accountant or a cost accountant and shall submit to the proper officer a copy of the audited statement of accounts together with the electronic reconciliation statement u/s 44(2). Please note that the limit prescribed refers to turnover and not turnover in the State. It appears that above the threshold limit, GST-audit will be required in respect of every registered taxable person separately. Please consider that the scope of this audit report (to be revised and notified under GSTR-9B) will be such that all information as required to make a proper determination of the tax compliance of the registered taxable person. It is expected that every inward and outward supply, whether taxable or not, along with the treatment of input tax paid thereof, whether creditable or not, will need to be explained. Please consider this suggestion by some experts as a five step approach:
- (a) every inward supply would be required to appear in the GSTR-1 of one or other supplier (to the auditee-taxable person) or
 - (b) every inward supply would need to appear in the GSTR-2 of the taxable person (being audited) or
 - (c) it must be excluded under schedule III or
 - (d) exempt under 2/2017 (for goods) or 12/2017 (for services) and

- (e) every outward supply would need to appear in the GSTR-1 of the taxable person (being audited)

Another view that is considered by experts is that only taxable and exempt supplies – inward and outward can be called into examination. Accordingly, the audit will need to confine itself to these transactions only. Transactions that are imputed to be taxable by operation of law would be a very onerous for the auditor to uncover and report as this is not an investigation but an audit of contemporaneous transactions. Considering the minimal governance that industry has been seeking, one would need to await the final GSTR audit requirements to assess the extent of responsibility in this audit exercise.

- (vii) Specific provisions in case of requirement to reverse input tax credit availed, as provided under Section 17(2) or Section 17(5)(h) - Where goods are lost, stolen, destroyed, written off, or disposed of as gifts or free samples, proportionate input tax credit should be reversed. However, where the taxable persons do not account for such transactions, the amount payable would be determined based on the demand provisions (Section 73/74) as if such goods had been supplied.
- (viii) Persons who own/ operate any warehouse, godown, etc. for storage of goods and every transporter should maintain the records of the consigner, consignee and other relevant details of the goods, even if such persons are not registered under the Act – i.e., both registered and unregistered persons shall be required to maintain such records/ details.
- (ix) The law requires every registered person to maintain accounts and records along with relevant details at each place of business and for each place of storage failing which the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services had been supplied by such person. Further the provisions of section 73 or 74 shall apply, mutatis mutandis, for determination of such tax
- (x) The provisions of Section 73 and 74 are in relation to demands and recovery of tax so determined by way of short payment or excess credit availed or utilised with or without wilful misstatement or fraudulent intention.

Rule 56 to 58 of the CGST Rules, 2017 provide guidelines for accounts and records to be maintained.

Rule 56: Maintenance of Accounts by a registered person

Rule 57: Generation and Maintenance of electronic records

Rule 58: Records to be maintained by owner or operator of godown or warehouse and transporters.

35.3 Comparative Review

Maintenance of records has been prescribed under the Central Excise, Service Tax and State VAT laws. The provisions are briefly discussed below:

Service tax records

- Rule 5(1) of Service Tax Rules, 1994 provides that the records including computerised data as maintained by the assessee in accordance with the various laws in force from time to time shall be acceptable.
- Rule 5(2) provides that every assessee, at the time of filing of his first return shall furnish to the department, a list in duplicate of: -
 - (i) All the records maintained by the assessee for accounting of transactions in regard to: -
 - (a) Providing of any service;
 - (b) Receipt or procurement of input service and payment of such input service;
 - (c) Receipt, purchase, manufacture, storage, sale, or delivery, regarding input or capital goods; and
 - (d) Other activities such as manufacture and sale of goods if any.
 - (ii) All other financial records maintained by him in the normal course of business.
- Rules 5(4) and (5) provide for preservation of records in electronic form.

Central Excise Records

- Rule 10 of the Central Excise Rules, 2002 obligates the maintenance of "Daily Stock Account" indicating the particulars regarding description of the goods produced or manufactured, opening balance, quantity produced or manufactured, inventory of goods, quantity removed, assessable value, the amount of duty payable and particulars regarding amount of duty paid.
- Chapter 6 of the Central Excise Manual obligates every assessee to furnish to the Range Officer, a list in duplicate, of all the records prepared or maintained by him for accounting of transactions in regard to receipt, purchase, manufacture, storage, sales or delivery of the goods including inputs and capital goods

Cenvat Records

Rule 9 of Cenvat Credit Rules, 2004 provides for maintenance of various records for availment and utilization of CENVAT credit on inputs, input services and capital goods.

VAT Records

VAT laws of most States obligate every assessee to keep and maintain an up-to-date, true and correct account showing full and complete particulars of his business and such other records as may be prescribed. There is an option to maintain those records at other place or places as he may notify to the registering authority in advance.

Audit of Accounts and Reconciliation Statement

Under the Central excise and service tax laws, there is no requirement for audit of accounts and furnishing reconciliation statement by a Chartered Accountant and Cost accountant. Many

State VAT laws stipulate audit of records by a Chartered Accountant and filing of VAT audit reports. Threshold limits are prescribed for such audits.

Reconciliations between the tax records and audited statement of accounts is generally sought for at the time of assessment, audit or investigation by the revenue authorities. There is no statutory requirement to furnish such reconciliation statements under the erstwhile laws although it is carried out during audit / Certification of records.

35.4 Related provisions

Section or Rule	Description
Section 2(107)	Taxable Person defined
Section 2(85)	Place of business defined
Section 2(89)	Principal place of business defined
Section 44(1)	Annual return

35.5 FAQ

Q1. Where should the books and other records u/s 35 be maintained?

Ans. Such records shall be maintained at his principal place of business, as mentioned in the certificate of registration. If more than one place of business is specified in the certificate, records relating to each place of business should be maintained at that place.

Q2. What are the records that are to be maintained u/s 35?

Ans. The following records are to be maintained u/s 35: -

- (i) Production or manufacture of goods;
- (ii) Inward or outward supply of goods or services or both;
- (iii) Stock of goods;
- (iv) Input tax credit availed;
- (v) Output tax payable and paid; and
- (vi) Such other as may be prescribed.

Q3. In case, more than one place of business is specified in the certificate of registration, can the assessee choose to maintain records at a single place for all the places within that State?

Ans. No, in such cases, the accounts and records relating to each place of business shall be kept at such places of business concerned.

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

Ans. The records need to be maintained physically. In case they are maintained in electronic form, then they must conform to such procedures as may be prescribed.

Q5. Apart from the records maintained above are there any additional document to be submitted/maintained?

Ans. Section 35(5) obligates an assessee who is required to get his accounts audited to file an electronic reconciliation statement and assessee is obliged to submit such a statement in addition to the audited statement of accounts and other documents and records prescribed.

35.6 MCQ

Q1. The books and other records u/s 35 are to be maintained at ____

- (a) Place where the books of account are maintained.
- (b) Principal place of business mentioned in the Registration Certificate.
- (c) Place of address of the Proprietor/ Partner / Director / Principal Officer, etc.
- (d) Any of the above.

Ans. (b) Principal place of business mentioned in the Registration Certificate

Q2. In case, more than one place of business situated within a State are specified in the Registration Certificate, books and other records shall be maintained at ____

- (a) Each place of business
- (b) At the principal place of business mentioned in the Registration Certificate for all places of business in each State.
- (c) Place where the books of account are maintained for all places situated within a State.
- (d) Any place of business in a State pertaining to all places situated within that State.

Ans. (b) At the principal place of business mentioned in the Registration Certificate for all places of business in each State.

Q3. Which of the following is true?

- (a) The assessee can maintain some records with prior permission of the Commissioner.
- (b) The assessee is obligated to maintain such additional records as the Commissioner may notify.
- (c) The assessee can maintain only records notified thereto by the Commissioner.
- (d) The specified class of assessee are obligated to maintain such additional or other records as the Commissioner may notify.

Ans. (d) The specified class of assessee are obligated to maintain such additional or other records as the Commissioner may notify.

Statutory provision**36. Period of retention of accounts**

Every registered person required to keep and maintain books of account or other records in accordance with the provisions of sub-section (1) of section 35 shall retain them until the expiry of seventy-two months from the due date of furnishing of annual return for the year pertaining to such accounts and records:

Provided that a registered person, who is a party to an appeal or revision or any other proceedings before any Appellate Authority or Revisional Authority or Appellate Tribunal or court, whether filed by him or by the Commissioner, or is under investigation for an offence under Chapter XIX, shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceedings or investigation for a period of one year after final disposal of such appeal or revision or proceedings or investigation, or for the period specified above, whichever is later.

36.1. Introduction

This section provides for the period up to which records and accounts must be retained by the assessee.

36.2. Analysis

1. Every assessee shall retain the books of accounts and other records until the expiry of 72 months (6 years) from the due date for filing of Annual Return for the year pertaining to such accounts and records. If the annual returns for the FY 2017-18 are filed on say 31.12.2018, even then, the books of account and other records are to be maintained till 31.12.2024. Even if the annual return is filed earlier, the start date for considering 72 months runs from the end of due date to file the annual return.

This time period is more than the time limit prescribed in section 62(1) for issuance of order of assessment i.e. 5 years from the due date for filing of annual return or date of erroneous refund (as applicable) in cases of fraud, wilful mis-statement, suppression of facts, etc.]

2. In case an appeal or revision or any other proceeding is pending before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, or in case the assessee is under investigation for an offence under Chapter XIX, the assessee shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceeding or investigation for a period of one year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1), whichever is later.

36.3. Comparative Review

- Rule 5(3) of Service Tax Rules, 1994 provides that all records shall be preserved for a period of five years immediately after the financial year to which such records pertain.
- Chapter 6 of the CBEC's Central Excise Manual obligates every assessee to maintain the records for a period of five years immediately after the financial year to which such records pertain.

- Different State VAT laws prescribe different time periods for maintenance of records. However, many States prescribed a period of five years.
- Where the proceedings are pending in appeal, revision etc., the records are generally maintained till the proceedings are finally concluded, though this is not specifically stipulated in the erstwhile laws. In fact, the books and records are required to be maintained till the time frame for revision proceedings stand open and are not barred by limitation of period.

36.4. Related provisions

Section or Rule	Description
Section 2(107)	Taxable Person defined
Section 35	Books of account
Section 44(1)	Annual return

36.5. FAQ

- Q1. Is there any time limit for the retention of the books of account or other records u/s 36?
- Ans. Yes, such records shall be normally retained until the expiry of 72 months from the due date for filing of Annual Return for the year pertaining to such accounts and records.
- Q2. Is a separate time limit for maintenance of records specified where an assessee is involved in any litigation?
- Ans. In case an assessee is a party to an appeal or revision or any other proceeding before any Appellate Authority or Revisional Authority or Appellate Tribunal or Court, (as an appellant or a respondent), or where he is under investigation for an offence under Chapter XIX, then he shall retain the books of account and other records pertaining to the subject matter of such appeal or revision or proceeding or investigation for a period of 1 year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1), whichever is later.

36.6. MCQ

- Q1. The time limit for up keep and maintenance of the books of account or other records u/s 36 is?
- seventy-two months from the date of filing of Annual Return or due date of filing the Annual Return, whichever is earlier.
 - forty-Eight months from the last date of filing of Annual Return Place.
 - seventy-two months from the due date of filing of Annual Return.
 - None of the above.
- Ans. (c) seventy-two months from the due date of filing of Annual Return
- Q2. In case, the assessee is a party to an appeal or revision or any other proceeding before

any Appellate Authority or Appellate Tribunal or Court, (as an appellant or a respondent), then the time limit for retaining the records shall be ____

- (a) Up to the final disposal of such appeal or revision or proceeding.
 - (b) One year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1) 53, whichever is earlier.
 - (c) Six months after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 47(1), whichever is later.
 - (d) One year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1), whichever is later.
- Ans. (d) One year after final disposal of such appeal or revision or proceeding, or for the period specified records u/s 35(1) 53, whichever is later.

Chapter– IX

Returns

- 37. Furnishing details of outward supplies
- 38. Furnishing details of inward supplies
- 39. Furnishing of returns
- 40. First return
- 41. Claim of input tax credit and provisional acceptance thereof
- 42. Matching, reversal and reclaim of input tax credit
- 43. Matching, reversal and reclaim of reduction in output tax liability
- 44. Annual return
- 45. Final return
- 46. Notice to return defaulters
- 47. Levy of late fee
- 48. Goods and services tax practitioners

Statutory Provision

37. Furnishing details of outward supplies

- (1) *Every registered taxable person, other than an input service distributor, a non-resident taxable person and a person paying tax under the provisions of section 10, section 51 or section 52, shall furnish, electronically, in such form and manner as may be prescribed, the details of outward supplies of goods or services or both effected, during a tax period on or before the tenth day of the month succeeding the said tax period and such details shall be communicated to the recipient of the said supplies within the time and in the manner as may be prescribed:*

Provided that the registered person shall not be allowed to furnish the details of outward supplies during the period from the eleventh day to the fifteenth day of the month succeeding the tax period:

Provided further that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided also that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner

(2) Every registered person who has been communicated the details under sub-section (3) of section 38 or the details pertaining to inward supplies of Input Service Distributor under sub-section (4) of section 38, shall either accept or reject the details so communicated, on or before the seventeenth day, but not before the fifteenth day, of the month succeeding the tax period and the details furnished by him under sub-section (1) shall stand amended accordingly.

(3) Any registered person, who has furnished the details under sub-section (1) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (1) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier

Explanation. —For the purposes of this Chapter, the expression “details of outward supplies” shall include details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period

FORM	PARTICULARS	DUE DATE	APPLICABLE FOR
GSTR1	Outward Supplies	10 th of the next month	Normal / Regular Taxpayer
GSTR2	Inward Supplies	15 th of the next month (Deferred till March, 2018)	Normal / Regular Taxpayer
GSTR3	Monthly return [periodic]	20 th of the next month (Deferred till March, 2018)	Normal / Regular Taxpayer
GSTR4	Return by compounding tax payers	18 th of the month next to the quarter	Compounding Taxpayer
GSTR5	Return by non-resident tax payers [foreigners]	20 th of the next month or within 7 days after expiry of registration, whichever is earlier	Foreign Non-Resident Taxpayer
GSTR6	Monthly Return by input service distributors	13 th of the next month	Input Service Distributor
GSTR7	Monthly Return for TDS	10 th of the next month	Tax Deductor
GSTR8	Monthly Return for TCS	10 th of the next month	E-Commerce
GSTR-9	Annual return	31 st December next FY	Normal tax payer (other than casual tax payer)

GSTR-9A	Annual return by Composition Supplier	31 st December next FY	Compounding Taxpayer
GSTR-9B	Annual Return by E-commerce operator	31 st December next FY	E-commerce Operator
GSTR-9C	Annual return along with the copy of audited annual accounts and a reconciliation statement	31 st December next FY	Normal tax payer having aggregate turnover of more than ₹ 2 crores
GSTR-10	Final Return	Within 3 months of the date of cancellation or date of order of cancellation whichever is later	Registered Person whose registration has been cancelled

Note: Above due dates have been extended from time to time. Please refer Annexure- 'A' for the details.

37.1 Introduction

This provision relates to furnishing of details of outward supplies by the supplier.

37.2 Analysis

- (a) A return of Outward supplies under this section should be furnished by every registered taxable person except for the following persons namely,
 - Input service distributor
 - A non-resident taxable person
 - A person paying tax under the provisions of section 10 (composition levy)
 - A person paying tax under the provisions of section 51 (TDS)
 - A person paying tax under the provisions of section 52 (TCS)
 - A person referred to in Section 14 of IGST Act – Person providing Online Information and Data Access & Retrieval Services to a non-taxable online recipient.
- (b) As per the provision of Rule 59 The “Details of outward supplies” shall include details of Invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during any tax period. This e-return shall be filed within 10 days from the end of the tax period in **¹FORM GSTR-1.** (**¹ Refer Annexure ‘A’ for extension of due date for filing GSTR-1.**)
- (c) Such returns shall be for supply of goods or services or both as effected during a tax period and shall be filed electronically
- (d) The registered person shall not be allowed to furnish any details of outward supplies during the period from the **eleventh** day to the fifteenth day of the month succeeding the tax period. This implies that the filing portal may not be available for the person

filing the return of outward supplies during the above said dates. **(Refer Note no. 1 at the end of this chapter).**

- (e) In case of late filing of the above details, the person who defaults shall pay a sum of ₹ 100 for every day of continuing default subject to a maximum to ₹ 5,000 only. **(Refer Note no. 2 at the end of this chapter)**
- (f) The Commissioner is empowered to notify any extension of due date of filing, for any class of persons, beyond the tenth of the succeeding month, with reasons to be recorded in writing. Refer Annexure 'A' for extensions notified, from time to time, for various returns.
- (g) The present process of return filing envisages that the recipient of the supply shall be provided an opportunity to accept, reject, amend or delete the details in a two-way communication process. This opportunity is not available at present as notification for due dates of filing of GSTR-2 shall be issued subsequently. The details provided by the supplier shall be auto – populated and available electronically to the recipient, for matching purposes, in accordance with the provision of Rule 60 in a **FORM GSTR-2A**
- (h) In case any error or omission is discovered in the course of matching as specified in the Act and discussed under Section 42 and 43, rectifications of the same shall be effected and tax and interest, if any as applicable shall be paid on such corrections by the person responsible for filing the return of outward supplies. Section 42 and section 43 are not applicable till further notification as due dates for filing of details in GSTR-2 shall be notified subsequently.
- (i) Such rectification, however, is not permitted after filing of annual return or the return for the month of September of the following financial year to which the details pertain whichever is earlier.

For example, let us say an entity has furnished the annual returns for the year 2018-19 on August 15, 2019. An error is discovered in respect of a transaction pertaining to July 2018. The entity has filed the returns for the month of September 2019 on October 18, 2019. In this above case, the rectification of the error pertaining to a transaction in July 2018 cannot be rectified beyond August 15, 2019

Process and Formats for Filing of returns and the due date

Activity	Due Date
The return for outward supplies shall be filed in FORM GSTR-1	Before 10 th day of the month succeeding the tax period. Refer Annexure A for extension of due dates of GSTR-1.
The details of FORM GSTR-1 furnished by the supplier shall be made available to the recipients in PART-A of FORM GSTR-2A	11 th to the 15 th day of the month succeeding the tax period

Activity	Due Date
The FORM GSTR-2A shall be reviewed and modified by the recipient of the supply and based on the same a FORM GSTR-2 shall be filed by them. In case any outward supplies are not matched with the respective recipients' return of inward supplies (discussed under section 38), the return for outward supplies requires rectification. All such modifications made by the recipient and filed in FORM GSTR-2 , shall be made available to the outward supplier in FORM GSTR-1A .	Before end of 15 th day of the month succeeding the tax period. Due dates for filing of GSTR-2 shall be notified subsequently
Accept or reject the details communicated by GSTN	Before end of 17 th day of the month succeeding the tax period
Submission of FORM GSTR-2 will cause auto-population of FORM GSTR-1A which shall be reviewed by the supplier and relevant corrections shall be effected in FORM GSTR-1 which will be the final details as filed. The supplier may either accept or reject the modification, deletion or inclusion made by the recipients on or before 17 th day of the succeeding month. Such amendments shall be incorporated in the original details filled by the supplier. The revised details shall feature in the returns filed under Sec 39 in the FORM GSTR-3 (auto generated)	Before end of 20 th day of the month succeeding the tax period. 1Due dates for filing of GSTR-3 shall be notified subsequently.

Components of valid GST Return for Outward Supplies made by the Taxpayer (FORM GSTR-1)

This return form would capture the following information:

1. GSTIN
2. Name
3. Period to which the return pertains
4. Aggregate turnover of the taxpayer in the previous Financial Year. This information would be submitted by the taxpayers only in the first year and will be auto-populated in subsequent years.
5. The following particulars shall be furnished – at an invoice / consolidated level based on the table as below:

Type	Supplies made to	Invoice Value	Level of submission
Interstate	Registered Persons	Any	Invoice level
Intrastate	Registered Persons	Any	Invoice level

Type	Supplies made to	Invoice Value	Level of submission
Interstate	Unregistered Persons (stated as Consumer in the return)	> ₹ 250,000	Invoice level

Type	Supplies made to	Invoice Value	Level of submission
Intrastate	Registered Persons	Any	Consolidated
Interstate	Unregistered Persons (stated as Consumer in the return)	< ₹ 250,000	Consolidated

Note: For all B to C supplies (whether inter-State or intra-State) where invoice value is up to ₹ 2,50,000/- State-wise summary of supplies, rate-wise, should be uploaded in Table 7 of the Form GSTR-1.

Instructions –

- Terms used:
 - GSTIN: Goods and Services Tax Identification Number
 - UIN: Unique Identity Number
 - UQC: Unit Quantity Code
 - HSN: Harmonized System of Nomenclature
 - POS: Place of Supply (Respective State)
 - B to B: From one registered person to another registered person
 - B to C: From registered person to unregistered person
- The details in GSTR-1 should be furnished by 10th of the month succeeding the relevant tax period. **(Refer Annexure 'A' for due dates extended from time to time).**
- Aggregate turnover of the taxpayer for the immediate preceding financial year and first quarter of the current financial year shall be reported in the preliminary information in Table 3. This information would be required to be submitted by the taxpayers only in the first year. Quarterly turnover information shall not be captured in subsequent returns. Aggregate turnover shall be auto-populated in subsequent years.
- Invoice-level information pertaining to the tax period should be reported for all supplies as under:
 - For all B to B supplies (whether inter-State or intra-State), invoice level details, rate-wise, should be uploaded in Table 4, including supplies attracting reverse charge and those effected through e-commerce operator. Outwards supply information in these categories are to be furnished separately in the Table.

- (ii) For all inter-State B to C supplies, where invoice value is more than ₹ 2,50,000/- (B to C Large) invoice level details, rate-wise, should be uploaded in Table 5; and
 - (iii) For all B to C supplies (whether inter-State or intra-State) where invoice value is up to ₹ 2,50,000/- State-wise summary of supplies, rate-wise, should be uploaded in Table 7.
5. Table 4 capturing information relating to B to B supplies should:
 - (i) be captured in:
 - a. Table 4A for supplies relating to other than reverse charge/ made through e-commerce operator, rate-wise;
 - b. Table 4B for supplies attracting reverse charge, rate-wise; and
 - c. Table 4C relating to supplies effected through e-commerce operator attracting collection of tax at source under section 52 of the Act, operator wise and rate-wise.
 - (ii) Capture Place of Supply (PoS) only if the same is different from the location of the recipient.
 6. Table 5 to capture information of B to C Large invoices and other information shall be similar to Table 4. The Place of Supply (PoS) column is mandatory in this table.
 7. Table 6 to capture information related to:
 - (i) Exports out of India
 - (ii) Supplies to SEZ unit/ and SEZ developer
 - (iii) Deemed Exports
 8. Table 6 needs to capture information about shipping bill and its date. However, if the shipping bill details are not available, Table 6 will still accept the information. The same can be updated through submission of information in relation to amendment Table 9 in the tax period in which the details are available but before claiming any refund / rebate related to the said invoice. The detail of Shipping Bill shall be furnished in 13 digits capturing port code (six digits) followed by number of shipping bill.
 9. Any supply made by SEZ to DTA, without the cover of a bill of entry is required to be reported by SEZ unit in GSTR-1. The supplies made by SEZ on cover of a bill of entry shall be reported also by DTA unit in its GSTR-2 as imports in GSTR-2. The liability for payment of IGST in respect of supply of services would, be created from this Table.
 10. In case of export transactions, GSTIN of recipient will not be there. Hence it will remain blank.
 11. Export transactions effected without payment of IGST (under Bond/ Letter of Undertaking (LUT)) needs to be reported under "0" tax amount heading in Table 6A and 6B.
 12. Table 7 to capture information in respect of taxable supply of:

- (i) B to C supplies (whether inter-State or intra-State) with invoice value upto ₹ 2,50,000;
 - (ii) Taxable value net of debit/ credit note raised in a particular tax period and information pertaining to previous tax periods which was not reported earlier, shall be reported in Table 10. Negative value can be mentioned in this table, if required;
 - (iii) Transactions effected through e-commerce operator attracting collection of tax at source under section 52 of the Act to be provided operator wise and rate wise;
 - (iv) Table 7A (1) to capture gross intra-State supplies, rate-wise, including supplies made through e-commerce operator attracting collection of tax at source and Table 7A (2) to capture supplies made through e-commerce operator attracting collection of tax at source out of gross supplies reported in Table 7A (1);
 - (v) Table 7B (1) to capture gross inter-State supplies including supplies made through ecommerce operator attracting collection of tax at source and Table 7B (2) to capture supplies made through e-commerce operator attracting collection of tax at source out of gross supplies reported in Table 7B (1); and
 - (vi) Table 7B to capture information State wise and rate wise.
13. Table 9 to capture information of:
- (i) Amendments of B to B supplies reported in Table 4, B to C Large supplies reported in Table 5 and Supplies involving exports/ SEZ unit or SEZ developer/ deemed exports reported in Table 6;
 - (ii) Information to be captured rate-wise;
 - (iii) It also captures original information of debit / credit note issued and amendment to it reported in earlier tax periods; While furnishing information the original debit note/credit note, the details of invoice shall be mentioned in the first three columns, While furnishing revision of a debit note/credit note, the details of original debit note/credit note shall be mentioned in the first three columns of this Table,
 - (iv) Place of Supply (PoS) only if the same is different from the location of the recipient;
 - (v) Any debit/ credit note pertaining to invoices issued before the appointed day under the existing law also to be reported in this table; and
 - (vi) Shipping bill to be provided only in case of exports transactions amendment.
14. Table 10 is similar to Table 9 but captures amendment information related to B to C supplies and reported in Table 7.
15. Table 11A captures information related to advances received, rate-wise, in the tax period and tax to be paid thereon along with the respective PoS. It also includes information in Table 11B for adjustment of tax paid on advance received and reported in earlier tax periods against invoices issued in the current tax period. The details of

information relating to advances would be submitted only if the invoice has not been issued in the same tax period in which the advance was received. As per notification no. 66/2017-CT dated 15.11.2017, tax is not to be paid on advances received against goods.

Instruction 13(iv) Place of Supply (PoS) only if the same is different from the location of the recipient;

Suppose a supplier registered in Delhi providing service in relation to immovable property located in Gujarat to a recipient registered in Mumbai. Therefore, place of supply of service as per section 12 of IGST ACT, 2017 is Gujarat, in such case while filing return by the person registered in Delhi he has to mention that the place of supply for such service is Gujarat in the return in table 9 of GSTR1 presented as below:

9. Amendments to taxable outward supply details furnished in returns for earlier tax periods in Table 4, 5 and 6 [including debit notes, credit notes, refund vouchers issued during current period and amendments thereof]

Details of original document			Revised details of document or details of original Debit/Credit Notes or refund vouchers						Rate	Taxable Value	Amount				Place of supply
GSTIN	Inv. No.	Inv. Date	GSTIN	Invoice		Shipping bill		Value			Integrated Tax	Central Tax	State / UT Tax	Cess	
1	2	3	4	No.	Date	No.	Date	5	10	11	12	13	14	15	16
9A. If the invoice/Shipping bill details furnished earlier were incorrect															
9B. Debit Notes/Credit Notes/Refund voucher [original]															
9C. Debit Notes/Credit Notes/Refund voucher [amendments thereof]															

Indication of HSN details

It is proposed that in the return the description of goods and services may not be required to be submitted by the taxpayer as the same will be identified through the submission of HSN code for goods and Accounting Code for services.

HSN code as specified below shall be furnished in **FORM GSTR-1**. In order to differentiate between the HSN code and the Service Accounting Code (SAC), the latter will be prefixed with "S". The taxpayers who have turnover below the limit of ₹ 1.5 Crore will have to mention the description of goods/service, as the case may be, wherever applicable.

Category of taxable person and turnover in the preceding financial year	Any taxpayer, irrespective of his turnover, may use HSN code at 6- digit or 8-digit level if he so desires.
Aggregate Turnover is < ₹ 1.5 crores	HSN/SAC is not mandatory for taxable person whose aggregate turnover is less than 1.5 crores. (Hence, composition dealers may not be required to specify HSN at 2-digit level also.)

Category of taxable person and turnover in the preceding financial year	Any taxpayer, irrespective of his turnover, may use HSN code at 6- digit or 8-digit level if he so desires.
	For exports 8 digit HSN is mandatory
Aggregate Turnover is ₹ 1.5 to ₹ 5 crores	HSN codes may be specified only at 2-digit chapter level as an optional exercise to start with. This would be mandatory from the second year of GST implementation For exports 8 digit HSN is mandatory SAC code is mandatory
Aggregate Turnover is > ₹ 5 crores	HSN – minimum of 4 digits – mandatory For exports 8 digit HSN is mandatory SAC code is mandatory
All exports included above categories	HSN Codes at 8-digit level

Relaxation during Transition

As per Press Information Bureau Government of India Ministry of Finance circular dated 18-June-2017. For the smooth transition, for the first two months tax would be payable on a simple return (Form GSTR-3B) containing summary of outwards and inwards supplies which will be submitted before 20th of the succeeding month. However, the time line for filing of various returns have been extended from time to time. Please refer Annexure A for various due date extensions in this regard.

No late fees and penalty would be levied for the interim period. This is intended to provide a sense of comfort to the taxpayers and give them an elbow room to attune themselves with the requirements of the changed system. This not only underlines the government's commitment towards ensuring that all the stakeholders are on board but also provides an opportunity to the taxpayers to be ready for compliance.

Late fees for failure to file GSTR-3B has been waived for the months of July 2017, August 2017 and September 2017. From October 2017, the late fees has been reduced to ₹25 per day (both under CGST and SGST/UTGST) and where the central tax payable is nil, the late fees is restricted to ₹ 10 per day (both under CGST and SGST/UTGST).

Statutory Provision

38. Furnishing details of inward supplies

- (1) *Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10, section 51 or section 52, shall verify, validate, modify or delete, if required, the details relating to outward supplies and credit or debit notes communicated under sub-section (1) of section 37 to prepare the details of his inward supplies and credit or debit notes and may include therein, the details of inward supplies and credit or debit notes received by*

him in respect of such supplies that have not been declared by the supplier under sub-section (1) of section 37.

- (2) Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10 or section 51 or section 52, shall furnish, electronically, the details of inward supplies of taxable goods or services or both, including inward supplies of goods or services or both on which the tax is payable on reverse charge basis under this Act and inward supplies of goods or services or both taxable under the Integrated Goods and Services Tax Act or on which integrated goods and services tax is payable under section 3 of the Customs Tariff Act, 1975, and credit or debit notes received in respect of such supplies during a tax period after the tenth day but on or before the fifteenth day of the month succeeding the tax period in such FORM and manner as may be prescribed:

Provided that the Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing such details for such class of taxable persons as may be specified therein:

Provided further that any extension of time limit notified by the Commissioner of State tax or Commissioner of Union territory tax shall be deemed to be notified by the Commissioner

- (3) The details of supplies modified, deleted or included by the recipient and furnished under sub-section (2) shall be communicated to the supplier concerned in such manner and within such time as may be prescribed
- (4) The details of supplies modified, deleted or included by the recipient in the return furnished under sub-section (2) or sub-section (4) of section 39 shall be communicated to the supplier concerned in such manner and within such time as may be prescribed.
- (5) Any registered person, who has furnished the details under sub-section (2) for any tax period and which have remained unmatched under section 42 or section 43, shall, upon discovery of any error or omission therein, rectify such error or omission in the tax period during which such error or omission is noticed in such manner as may be prescribed, and shall pay the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period:

Provided that no rectification of error or omission in respect of the details furnished under sub-section (2) shall be allowed after furnishing of the return under section 39 for the month of September following the end of the financial year to which such details pertain, or furnishing of the relevant annual return, whichever is earlier

38.1 Introduction

This provision relates to furnishing of details of inward supplies by the recipient

38.2 Analysis

- (a) In respect of the return for outward supplies filed by the supplier of goods / services (under section 37) the receiver is required to match his receipts with the details of supplies filed by the supplier.

- (b) The process flow as envisaged requires that the details of outward supplies as filed by the supplier, shall be made available to the recipient of such supply in **Part A of FORM GSTR-2A** after the 10th day of the subsequent month. The receiver is required to – verify, validate, modify or even delete, if necessary – the details furnished by the suppliers.

Part B and **Part C** of the above Form GSTR-2A shall contain respectively details relating to ISD and Tax Deductions at Source and Tax Collections at Source

- (c) **Part A of FORM GSTR 2A** shall contain the following details on an auto-populated basis

S No	Content of FORM GSTR 1
3	Inward supplies received from a registered person other than the supplies attracting reverse charge
4	Inward supplies on which tax is to be paid on reverse charge
5	Debit / Credit notes (including amendments thereof) received during current tax period

- (d) The above details will then be validated by the recipient with reference to their records. Now, these details as accepted by the recipient will be filed by them in the Format i.e. **FORM GSTR-2** for inward supplies of the recipient.
- (e) This detail viz GSTR 2, must be filed by the recipient of (goods/services) supplies within **15 days** from the end of the relevant tax period. The Commissioner is empowered to notify any extension, for any class of taxable persons, with reasons to be recorded in writing. ***The filing of GSTR-2 has been suspended for the time being and the due dates shall be notified later on.***
- (f) Any modification, deletion or inclusion of inward supplies by the receiver in his inward return i.e. **FORM GSTR-2** shall be communicated to the Outward supplier which will be visible to them as GSTR 1A. ***This provision is not applicable as GSTR-2 is not to be filed till further notification is issued in this regard.***
- (g) GSTR 1A shall contain the following particulars auto drafted based on GSTR 2 filed by the recipient

S No	Content of GSTR 1A
3	Taxable outward supplies made to registered persons including supplies attracting reverse charge other than the supplies covered in Table No. 4
4	Zero rated supplies made to SEZ and deemed exports
5	Debit notes, credit notes (including amendments thereof) issued during current period

- (h) In case any error or omission is discovered in the course of matching as specified in the Act and discussed under Section 42 and 43, rectifications of the same shall be effected

and tax and interest, if any as applicable shall be paid on such corrections by the person responsible for filing the return of inward supplies

- (i) Such rectification, however, is not permitted after filing of annual return or the return for the month of September of the following financial year to which the details pertain whichever is earlier.

Components of valid GST Return for Inward Supplies received by the Taxpayer (GSTR-2):

The information submitted in GSTR-1 by the Counterparty Supplier of the taxpayer will be auto-populated in the concerned tables of GSTR-2A. The same may be modified i.e. added or deleted by the Taxpayer. After modification in GSTR-2A, the **FORM GSTR-2** shall be prepared. The recipient would be permitted to add invoices (not uploaded by the counterparty supplier) if he is in possession of invoices and has received the goods or services.

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Final invoice-level inward supply information pertaining to the tax period for goods and services separately

Instructions

1. Terms used:
 - a. GSTIN: Goods and Services Tax Identification Number
 - b. UIN: Unique Identity Number
 - c. UQC: Unit Quantity Code
 - d. HSN: Harmonized System of Nomenclature
 - e. POS: Place of Supply (Respective State)
 - f. B to B: From one registered person to another registered person
 - g. B to C: From registered person to unregistered person
2. Table 3 & 4 to capture information of:
 - (i) Invoice-level inward supply information, rate-wise, pertaining to the tax period reported by supplier in GSTR-1 to be made available in GSTR-2 based on auto-populated details received in GSTR-2A;
 - (ii) Table 3 to capture inward supplies other than those attracting reverse charge and Table 4 to capture inward supplies attracting reverse charge;
 - (iii) The recipient taxpayer has the following option to act on the auto populated information:
 - a. Accept,
 - b. Reject,

	<ul style="list-style-type: none"> c. Modify (if information provided by supplier is incorrect), or d. Keep the transaction pending for action (if goods or services have not been received)
(iv)	After taking the action, recipient taxpayer will have to mention whether he is eligible to avail credit or not and if he is eligible to avail credit, then the amount of eligible credit against the tax mentioned in the invoice needs to be filed;
(v)	The recipient taxpayer can also add invoices (not uploaded by the counterparty supplier) if he is in possession of invoices and have received the goods or services;
(vi)	Table 4A to be auto populated;
(vii)	In case of invoices added by recipient tax payer, Place of Supply (PoS) to be captured always except in case of supplies received from registered person, where it is required only if the same is different from the location of the recipient;
(viii)	Recipient will have the option to accept invoices auto populated as well as add invoices, pertaining to reverse charge only when the time of supply arises in terms of section 12 or 13 of the Act; and
(ix)	Recipient tax payer is required to declare in Column No. 12 whether the inward supplies are inputs or input services or capital goods (including plant and machinery).
3.	Details relating to import of Goods/Capital Goods from outside India as well as supplied by an SEZ Unit to be reported rate-wise by recipient tax payer in Table 5.
4.	Recipient to provide for Bill of Entry information including six digits port code and seven digits bill of entry number.
5.	Taxable Value in Table 5 means assessable value for customs purposes on which IGST is computed (IGST is levied on value plus specified customs duties). In case of imports, the GSTIN would be of recipient tax payer.
6.	Table 6 to capture amendment of information, rate-wise, provided in earlier tax periods in Table 3, 4 and 5 as well as original/ amended information of debit or credit note. GSTIN not to be provided in case of export transactions.
7.	Table 7 captures information on a gross value level.
8.	An option similar to Table 3 is not available in case of Table 8 and the credit as distributed by ISD (whether eligible or ineligible) will be made available to the recipient unit and it will be required to re-determine the eligibility as well as the amount eligible as ITC.
9.	TDS and TCS credit would be auto-populated in Table 9. Sales return and Net value columns are not applicable in case of tax deducted at source in Table 9.
10.	The eligible credit from Table 3, Table 4 & Table 8 relating to inward supplies to be populated in the Electronic Credit Ledger on submission of its return in Form GSTR-3.

11. Recipient can claim less ITC on an invoice depending on its use i.e. whether for business purpose or non-business purpose.
12. Information of advance paid pertaining to reverse charge supplies and the tax paid on it including adjustments against invoices issued should be reported in Table 10.
13. Table 12 to capture additional liability due to mismatch as well as reduction in output liability due to rectification of mismatch on account of filing of GSTR-3 of the immediately preceding tax period.
14. Reporting criteria of HSN will be same as reported in GSTR-1.

Auto-Population in this return from GSTR-1 will be done on or after 11th of the succeeding month in GSTR-2A. Verification, modification or Deletion of the invoice or Credit Note/Debit Note in GSTR-2A by the taxpayer will be permitted upto 15th of the succeeding month. Addition of Inward supplies would also be permitted upto 15th of the succeeding month. Due date for filing of GSTR-2 shall be notified subsequently.

Rule 60 – Form and Manner of Furnishing details of inward supplies

(1) Every registered person required to furnish the details of inward supplies of goods or services or both received during a tax period under sub-section (2) of section 38 shall, on the basis of details contained in **Part A, Part B and Part C** of **FORM GSTR-2A**, prepare such details as specified in sub-section (1) of the said section and furnish the same in **FORM GSTR-2** electronically through the Common Portal, either directly or from a Facilitation Centre notified by the Commissioner, after including therein details of such other inward supplies, if any, required to be furnished under sub-section (2) of section 38.

(2) Every registered person shall furnish the details, if any, required under sub-section (5) of section 38 electronically in **FORM GSTR-2**.

(3) The registered person shall specify the inward supplies in respect of which he is not eligible, either fully or partially, for input tax credit in **FORM GSTR-2** where such eligibility can be determined at the invoice level.

(4) The registered person shall declare the quantum of ineligible input tax credit on inward supplies which is relatable to non-taxable supplies or for purposes other than business and cannot be determined at the invoice level in **FORM GSTR-2**.

(4A) The details of invoices furnished by an non-resident taxable person in his return in FORM GSTR-5 under rule 63 shall be made available to the recipient of credit in Part A of FORM GSTR 2A electronically through the common portal and the said recipient may include the same in FORM GSTR-2.

(5) The details of invoices furnished by an Input Service Distributor in his return in **FORM GSTR-6** under Rule 65 shall be made available to the recipient of credit in **Part B** of **FORM GSTR-2A** electronically through the Common Portal and the said recipient may include the same in **FORM GSTR-2**.

(6) The details of tax deducted at source furnished by the deductor under sub-section (3) of section 39 in **FORM GSTR-7** shall be made available to the deductee in **Part C** of **FORM GSTR-2A** electronically through the Common Portal and the said deductee may include the same in **FORM GSTR-2**. Provisions relating to tax deduction at source have been postponed till 31st March, 2018.

(7) The details of tax collected at source furnished by an e-commerce operator under section 52 in **FORM GSTR-8** shall be made available to the concerned person in **Part C** of **FORM GSTR-2A** electronically through the Common Portal and such taxable person may include the same in **FORM GSTR-2**. (Provisions relating to tax deduction at source have been postponed till 31st March, 2018.)

(8) The details of inward supplies of goods or services or both furnished in **FORM GSTR-2** shall include, inter-alia:

- (a) invoice wise details of all inter-State and intra-State supplies received from registered persons or unregistered persons;
- (b) import of goods and services made; and
- (c) debit and credit notes, if any, received from supplier.

(A) In case of Intra State Supply:

Mr. A carried out following transactions during tax period-

SI No	Buyer	Registered or not	Invoice value	Rate of tax
1	B	YES	1000	5%
2	C	NO	25000	5%
3	D	NO	5000	5%
4	E	NO	15000	12%
5	F	NO	300000	12%

Seller	Registration Status	Value of invoice		Invoice no	Value	Tax
B	Registered	1000	Then invoice wise details of each invoice irrespective of invoice amount	yes	yes	yes

C	Unregistered	25000	Consolidated details of Each rate of tax-5%		₹30000	
D	Unregistered	5000				
E	Unregistered	15000	Consolidate details of rate of tax of 12%		₹315000	
F	Unregistered	300000				

(B) In case of Inter State Supply-

Mr. A carried out following transactions during tax period

Sl. No.	Buyer	Registered or not	State	Invoice value	Rate of tax
1	Raj	YES	Maharashtra	1000	5%
2	Kamal	NO	Gujarat	150000	12%
3	Hirabai	NO	Gujarat	50000	5%
4	Modi	NO	Gujarat	150000	5%
5	Josef	NO	Goa	350000	5%

Seller	Registration Status	Value of invoice		Invoice no	Value	Tax
Raj	Registered	1,000	Then invoice wise details of each invoice irrespective of invoice amount	Yes	Yes	Yes
Kamal	Unregistered	1,50,000	Consolidated details of Each rate of tax-12% for each state		₹ 1,50,000	
Hirabai	Unregistered	50,000	Consolidate details of rate of tax of 5% for each state i.e Gujarat			
Modi	Unregistered	1,50,000			2,00,000	
Josef	Unregistered	3,50,000	As value is more than 2.5 lacs, individual details of invoice	Yes	3,50,000	yes

Rule 82. Details of inward supplies of persons having Unique Identity Number

(1) Every person, who has been issued a Unique Identity Number and claims refund of the taxes paid on his inward supplies, shall furnish the details of such supplies of taxable goods or services or both in **FORM GSTR-11** along with application for such refund claim either directly or through a Facilitation Centre, notified by the Commissioner.

(2) Every person, who has been issued a Unique Identity Number for purposes other than refund of the taxes paid, shall furnish the details of inward supplies of taxable goods or services or both as may be required by the proper officer in **FORM GSTR-11**.

Statutory Provision**39. Returns**

- (1) *Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under the provisions of section 10, section 51 or section 52 shall, for every calendar month or part thereof, furnish, in such FORM and manner as may be prescribed, a return, electronically, of inward and outward supplies of goods or services or both, input tax credit availed, tax payable, tax paid and such other particulars as may be prescribed, on or before the twentieth day of the month succeeding such calendar month or part thereof.*
- (2) *A registered taxable person paying tax under the provisions of section 10 shall, for each quarter or part thereof, furnish, in such FORM and manner as may be prescribed, a return, electronically, of turnover in the state or union territory, inward supplies of goods or services or both, tax payable and tax paid within eighteen days after the end of such quarter.*
- (3) *Every registered person required to deduct tax at source under the provisions of section 51 shall furnish, in such form and manner as may be prescribed, a return, electronically, for the month in which such deductions have been made within ten days after the end of such month.*
- (4) *Every taxable person registered as an Input Service Distributor shall, for every calendar month or part thereof, furnish, in such form and in such manner as may be prescribed, a return, electronically, within thirteen days after the end of such month.*
- (5) *Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish, in such form and manner as may be prescribed, a return, electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier.*
- (6) *The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns under this section for such class of registered persons as may be specified therein*

Provided that any extension of time limit notified by the Commissioner of State tax or Union territory tax shall be deemed to be notified by the Commissioner.

- (7) Every registered person, who is required to furnish a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (5), shall pay to the Government the tax due as per such return not later than the last date on which he is required to furnish such return.
- (8) Every registered person who is required to furnish a return under sub-section (1) or sub-section (2) shall furnish a return for every tax period whether or not any supplies of goods or services or both have been made during such tax period.
- (9) Subject to the provisions of sections 37 and 38, if any registered person after furnishing a return under sub-section (1) or sub-section (2) or sub-section (3) or sub-section (4) or sub-section (5) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the return to be furnished for the month or quarter during which such omission or incorrect particulars are noticed, subject to payment of interest under this Act:
- Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of return for the month of September or second quarter following the end of the financial year, or the actual date of furnishing of relevant annual return, whichever is earlier.*
10. A registered person shall not be allowed to furnish a return for a tax period if the return for any of the previous tax periods has not been furnished by him.

39.1 Analysis

This section deals with filing of GST Return under various class of registered persons

A. Return and due dates for payment of tax and filing of return for the registered person

Section Ref – (A)	Person Liable – (B)	FORM – (C)	CGST Rule – (D)	Due date for payment of tax – (E)	Due Date for filing of return - (F)	Periodicity – (G)
39(1)	Regular Taxpayers (other than registered person covered under subsection 2, 3, 4 & 5 of Section 39)	GSTR-3	Rule – 61	On or before the due date of filing of return – Ref column (F)	On or before 20 th of the month succeeding such calendar month	Monthly
39(2)	Composite Taxable persons	GSTR-4	Rule – 62	On or before the due date	Within 18 th days after end of	Quarterly

				of filing of return – Ref column (F)	such quarter	
39(3)	Any Registered person who is liable to deduct tax under section 51	GSTR-7	Rule – 66	On or before the due date of filing of return – Ref column (F)	On or before 10 th of the month succeeding such calendar month	Monthly
39(4)	Input Service Distributor	GSTR-6	Rule – 65		On or before 13 th of the month succeeding such calendar month	Monthly
39(5)	Non-Resident Taxable person	GSTR-5	Rule – 63	On or before the due date of filing of return – Ref column (F)	Within 20 days end of the calendar month or within 7 days after the last day of the period of registration specified in Section 27(1) whichever is earlier	

B. The extension of time limit for furnishing the returns

The Commissioner may, for reasons to be recorded in writing, by notification, extend the time limit for furnishing the returns for any class of registered persons.

Extension of time limit notified by the State/UT Commissioner shall be deemed to be notified by CGST Commissioner. Refer Annexure 'A' for extension of due dates of various returns under this section.

C. Mandatory to file returns

Every Registered person covered under section 39(1) & 39(2) shall furnish a return for every tax period whether or not any supplies of goods and/or services have been effected during such tax period.

In other words, the registered person covered under Section 39(1) and 39(2) are obliged to file "NIL RETURN" even when there is no transaction effected by them in any tax period.

D. Omission and Rectification

- (i) All registered person who are required to file a return under Section 39(1), 39(2), 39(3), 39(4) & 39 (5) are allowed to rectify any omission or incorrect filed in the return.
- (ii) Any omission or incorrect particulars therein, can be rectified in the return to be filed for the month or quarter, during which such omission or incorrect particulars are noticed, subject to payment of specified interest as applicable.
- (iii) Such rectification cannot be done when omission or incorrect particulars are discovered as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities,
- (iv) No such rectification of any omission or incorrect particulars shall be allowed after the due date for filing of return for the month of September or second quarter following the end of the financial year, or the actual date of filing of relevant annual return, whichever is earlier.

E. Non-submission of previous tax period returns

The registered person shall not be allowed to furnish a return for a tax period if the returns for any previous tax periods has not been furnished him.

F. Monthly return on the basis of finalization of details of outward supplies (FORM GSTR-1) and inward supplies (FORM GSTR-2)**Return of regular taxpayer**

- (i) Every registered taxable person shall file his return in **FORM GSTR-3** other than a taxable person registered under section 10 i.e. composition dealer, or under section 51 i.e. deductor of tax at source or section 52 i.e. a person liable to collect tax at source or an Input Service Distributor or a non-resident taxable person.
- (ii) For every calendar month the registered person shall furnish return in **FORM GSTR-3** electronically in the common portal: and it shall contain
 - (a) inward and outward supplies of goods and/or services,
 - (b) input tax credit availed,
 - (c) tax payable,
 - (d) tax paid and
 - (e) other as may be prescribed

This return should be filed on or before 20th of the month succeeding such calendar month or part thereof. Notification shall be issued later on for filing of GSTR-3.

Contents of FORM GSTR-3:

FORM GSTR-3 return shall capture the following information:

1. Basic details of the Taxpayer i.e. Name and Address along with GSTIN
2. Period to which the Return pertains

3. Turnover Details including Gross Turnover, Export Turnover, Exempted Domestic Turnover, Nil Rated Domestic Turnover, Non GST Turnover and Net Taxable Turnover
4. Final aggregate level outward and inward supply information. These details will be auto-populated from **FORM GSTR-1** and **FORM GSTR-2**.
5. There will be separate tables for calculating tax amounts on outward and inward supplies based on the information contained in various tables in the **FORM GSTR-3** return.
6. There will be a separate table for capturing the TDS credit received and which has been credited to his cash ledger (the deductee).
7. Tax liability under CGST, SGST, IGST and cess if any
8. Details regarding revision of invoices relating to outward and inward supplies
9. Details of other liabilities (i.e. Interest, Penalty, Fee, others etc.).
10. Information about ITC ledger, Cash ledger and Liability ledger (these are running electronic ledgers maintained on the dashboard of taxpayer by GSTN). These would be updated in real time on an activity in connection with these ledgers by the taxpayer. Both the ITC ledger and the cash ledger will be utilized by the taxpayer for discharging the tax liabilities of the returns and others. Details in these ledgers will get auto-populated from previous tax period return (irrespective of mode of filing return i.e. online/ offline utility)
11. Details of ITC utilized against tax liability of CGST, SGST and IGST on supplies of goods and services.
12. Net tax payable under CGST, SGST, IGST and cess if any.
13. Details of the payment of tax under various tax heads of CGST, SGST, IGST and cess if any, separately would be populated from the debit entry in Credit/Cash ledger. GST Law may have provision for maintaining four heads of account for CGST, SGST, IGST and cess if any and at associated minor heads for interest, penalty, fee and others. Excess payment, if any, will be carried forward to the next return period. The taxpayer will have the option of claiming refund of excess payment through the return for which appropriate field will be Provided in the return FORM. The return FORM would display all bank account numbers mentioned in the registration, out of which one will be selected by the taxpayer to which the refund will be credited.
14. Details of other payments - Interest/Penalties/Fee/Others, etc. This will be auto-populated from the Debit entry in Cash ledger irrespective of mode of filing i.e. online / offline utility.
15. Details of ITC balance (CGST, SGST and IGST) at the end of the tax period will be auto-populated in the ITC ledger irrespective of mode of filing return. In case of net exporter or taxpayers dealing with inverted duty structure or similar other cases, where input tax credit is greater than output tax due on supply, the taxpayer would be eligible

for refund. The return would have a field to enable the tax payer to claim the refund or to carry forward the ITC balance (CGST, SGST and IGST). The return form should display all bank account numbers mentioned in the registration, out of which one will be selected by the taxpayer to which the refund will be credited. To begin with GST law may provide that the refund will be processed quarterly.

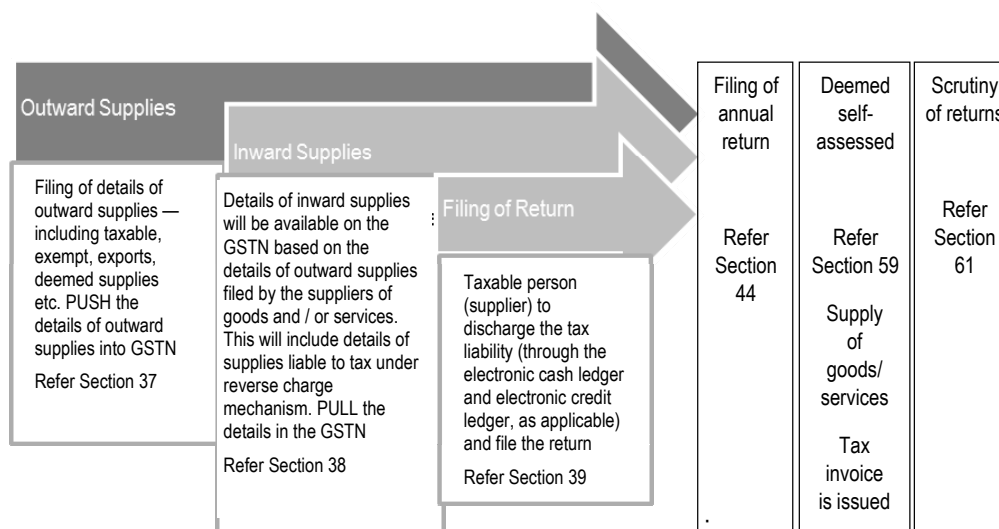
16. Details of cash balance (CGST, SGST, IGST and cess) in personal ledger at the end of the tax period (this will be auto-populated irrespective of mode of filing return).
17. Information regarding quantity of goods (as per Unique Quantity Code) supplied will not be contained in the monthly return. However, the same would be submitted by the taxpayer in the annual return.

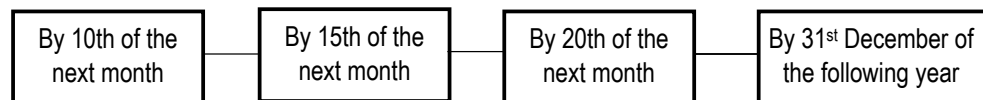
The return (**FORM GSTR-3**) would be entirely auto-populated through **FORM GSTR-1** (of counterparty suppliers), own **FORM GSTR-2**, ISD return (**FORM GSTR-6**) (of Input Service Distributor), TDS return (**FORM GSTR-7**) (of counterparty deductor), own ITC Ledger, own cash ledger, own Tax Liability ledger. However, the taxpayer may be allowed to fill the missing details to begin with.

The return would be filed by 20th of the succeeding month. However, filing of GSTR-3 has been deferred for the time being till a future date to be notified by the Commissioner. Late filing would be permitted on payment of late fees only.

1. Valid Return

Three returns are involved with respect to inward / outward supplies for each tax period. The following chart may be referred to in this regard





Note: Refer Annexure A for due dates for filing GSTR-1 as extended by the Commissioner. Due dates for furnishing of GSTR-2 and GSTR-3 shall be notified later on.

Rule 61. Form and manner of submission of monthly return

1. Every registered person, other than an Input Service Distributor or a non-resident taxable person or a person paying tax under section 10 or section 51 or, as the case may be, under section 52 shall furnish a return specified under sub-section (1) of section 39 in **FORM GSTR-3** electronically through the Common Portal either directly or through a Facilitation Centre notified by the Commissioner.
2. Part A of the return under sub-rule (1) shall be electronically generated on the basis of information furnished through returns in **FORM GSTR-1**, **FORM GSTR-2** and based on other liabilities of preceding tax periods.
3. Every registered person furnishing the return under sub-rule (1) shall, subject to the provisions of section 49, discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or these rules by debiting the electronic cash ledger or electronic credit ledger and include the details in **Part B** of the return in **FORM GSTR-3**.
4. A registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in **Part B** of the return in **FORM GSTR-3** and such return shall be deemed to be an application filed under section 54.
5. Where the time limit for furnishing of details in **FORM GSTR-1** under section 37 and in **FORM GSTR-2** under section 38 has been extended, return in **FORM GSTR-3B**, in lieu of **FORM GSTR-3**, may be furnished in such manner as may be notified by the Commissioner.
6. Where a return in FORM GSTR-3B has been furnished, after the due date for furnishing of details in FORM GSTR-2—
 - (a) Part A of the return in FORM GSTR-3 shall be electronically generated on the basis of information furnished through FORM GSTR-1, FORM GSTR-2 and based on other liabilities of preceding tax periods and PART B of the said return shall be electronically generated on the basis of the return in FORM GSTR-3B furnished in respect of the tax period;
 - (b) the registered person shall modify Part B of the return in FORM GSTR-3 based on the discrepancies, if any, between the return in FORM GSTR-3B and the return in FORM GSTR-3 and discharge his tax and other liabilities, if any; (c) where the amount of input tax credit in FORM GSTR-3 exceeds the amount of input tax credit in terms of

FORM GSTR-3B, the additional amount shall be credited to the electronic credit ledger of the registered person.

G. Quarterly return by the composition supplier

- (i) Registered persons paying tax under composition scheme shall furnish a return in **FORM GSTR-4** for each quarter, electronically, within 18 days after the end of such quarter: The **FORM GSTR-4** shall be prepared on the basis of the **FORM GSTR-4A** made available to him through the common portal. Refer Annexure A for due dates of filing return in GSTR-4 as extended from time to time.
- (ii) **Rule 62 - Form and manner of submission of quarterly return by the composition supplier**
 - (1) Every registered person paying tax under section 10 shall, after adding, correcting or deleting the details in **FORM GSTR-4A**, furnish a quarterly return in **FORM GSTR-4** electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner.
 - (2) Every registered person furnishing the return under sub-rule (1) shall discharge his liability towards tax, interest, penalty, fees or any other amount payable under the Act or these rules by debiting the electronic cash ledger.
 - (3) The return furnished under sub-rule (1) shall include, inter-alia:
 - (a) invoice wise inter-State and intra-State inward supplies received from registered and un-registered persons;
 - (b) import of goods and services made;
 - (c) consolidated details of outward supplies made; and
 - (d) debit and credit notes issued and received, if any;
 - (4) A registered person who has opted to pay tax under section 10 from the beginning of a financial year, shall furnish the details of outward and inward supplies and return under rule 59, rule 60 and rule 61 relating to the period during which the person was liable to furnish such details and returns till the due date of furnishing the return for the month of September of the succeeding financial year or furnishing of annual return of the preceding financial year, whichever is earlier.

H. Furnishing Return by any registered person who is liable to deduct tax at source

- I. (Provisions relating to deduction of tax at source have been postponed till 1st of April 2018. As such, all the provisions relating to deduction of tax at source are not applicable till the 31st day of March 2018)
- (i) Registered person required to deduct tax at source shall furnish a return in **FORM GSTR-7** electronically, for the month in which such deductions have been made along with the payment of tax so deducted, within 10 days after the end of such month. The details furnished by the taxable person required to deduct tax at source in **FORM GSTR-7** shall be made available to each of the supplier in Part-C of his **FORM GSTR-2A**.

(ii) **Contents of FORM GSTR – 7 (TDS Return)**

Refer discussion under section 51 with regard to deduction of tax at source.

The return shall capture the following information:

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains
3. Details of GSTIN of the Supplier along with the invoices against which the Tax has been deducted. This will also contain the details of tax deducted against each major head i.e. CGST, SGST and IGST.
4. Details of other payments - Interest/Penalties/Fee/Others, etc. (This will be auto populated from the Debit entry in Cash ledger)

This return should be filed by 10th of the succeeding month.

(iii) **Rule 66 Form and manner of submission of return by a person required to deduct tax at source**

- (1) Every registered person required to deduct tax at source under section 51 shall furnish a return in **FORM GSTR-7** electronically through the Common Portal either directly or from a Facilitation Centre notified by the Commissioner.
- (2) The details furnished by the deductor under sub-rule (1) shall be made available electronically to each of the suppliers in Part C of **FORM GSTR-2A** on the Common Portal after the due date of filing of **FORM GSTR-7**.
- (3) The certificate referred to in sub-section (3) of section 51 shall be made available electronically to the deductee on the Common Portal in **FORM GSTR-7A** on the basis of the return furnished under sub-rule (1).

J. Furnishing of return by Input Service Distributor(ISD)

- (i) Every Input Service Distributor(ISD) shall, for every calendar month or part thereof, furnish a return in **FORM GSTR-6** electronically within 13 days after the end of such month. Refer Annexure A for extension of due dates. The **FORM GSTR-6** shall be prepared on the basis of the **FORM GSTR-6A** made available to him through the common portal. The details of **FORM GSTR-6A** shall be verified, added, corrected or deleted for the purpose of preparing **FORM GSTR-6**.

(ii) **Content of GSTR – 6 (Return for ISD)**

Refer discussion under section 20 with regard to distribution of credit by Input Service Distributor.

The return shall capture the following information:

1. Basic details of the Taxpayer i.e. Name along with GSTIN
2. Period to which the Return pertains

3. Final invoice-level inward supply information pertaining to the tax period separately for goods and services on which the ITC is being claimed. This will be auto populated on the basis of **FORM GSTR-1** filed by the Counterparty Supplier of the taxpayer. The same may be modified i.e. added or deleted by the Taxpayer while filing the ISD return. The recipient would be permitted to add invoices (not uploaded by the counterparty supplier) if he is in possession of invoices and has received the services.
4. Details of the Invoices along with the GSTIN of the receiver of the credit i.e. to whom the ISD is distributing credit.
5. There will be separate ISD Ledger in the return that will detail the Opening Balance of ITC (to be auto- populated on the basis of previous return), credit for ITC services received, debit for ITC reversal and ITC distributed and Closing Balance.

This return should be filed by 13th day of the succeeding month. **(Refer Annexure A for extension of due dates.)**

(iii) **Rule 65. Form and manner of submission of return by an Input Service Distributor**

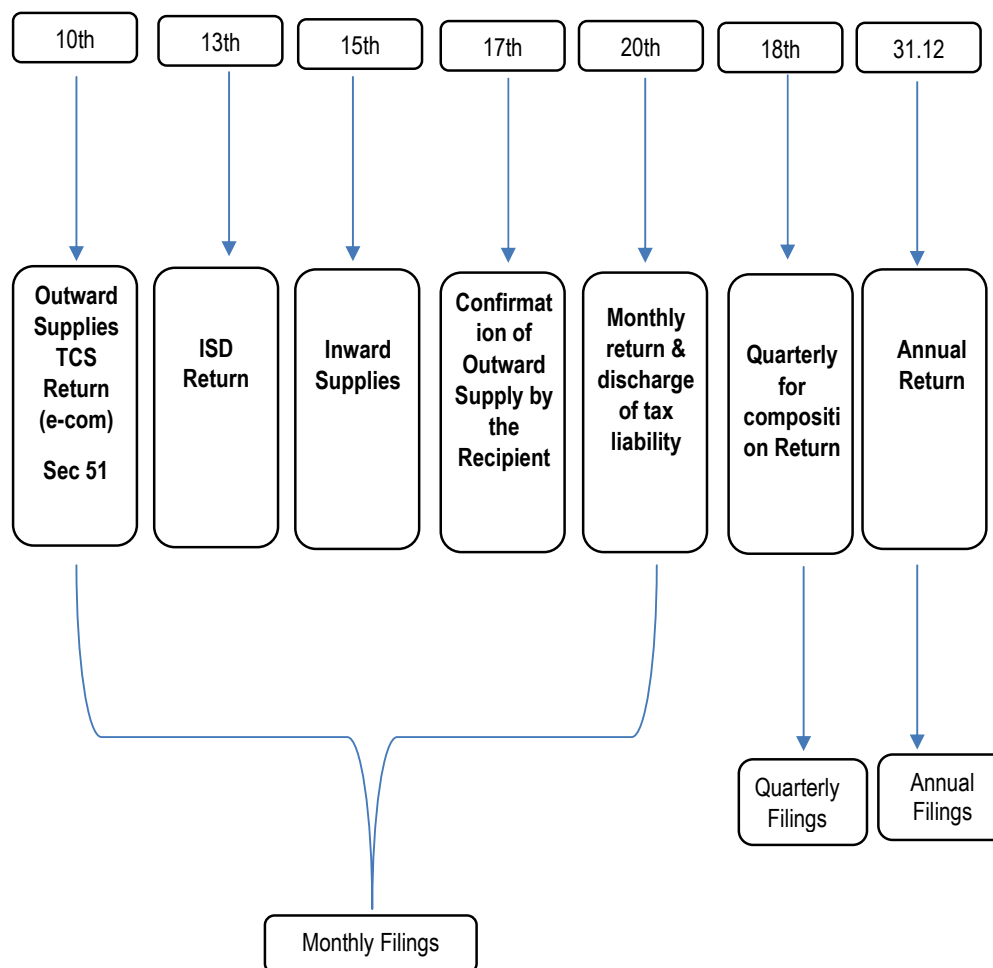
Every Input Service Distributor shall, after adding, correcting or deleting the details contained in **FORM GSTR-6A**, furnish electronically a return in **FORM GSTR-6**, containing the details of tax invoices on which credit has been received and those issued under section 20, through the Common Portal either directly or from a Facilitation Centre notified by the Commissioner.

K. Furnishing of return by Non-Resident Taxable Person

- (i) Every registered non-resident taxable person shall, for every calendar month or part thereof, furnish **FORM GSTR-5** electronically, within twenty days after the end of a calendar month or within seven days after the last day of the period of registration specified under sub-section (1) of section 27, whichever is earlier. Refer Annexure A for extension of due dates.

(ii) **Rule 63 Form and manner of submission of return by non-resident taxable person**

Every registered non-resident taxable person shall furnish a return in **FORM GSTR-5** electronically through the Common Portal, either directly or through a Facilitation Centre notified by the Commissioner, including therein the details of outward supplies and inward supplies and shall pay the tax, interest, penalty, fees or any other amount payable under the Act or these rules within twenty days after the end of a tax period or within seven days after the last day of the validity period of registration, whichever is earlier. **(Refer Annexure A for extension of due dates.)**

Summary of due of Filing of various returns

If the Process “Return Filing” must be understood with due focus on practical aspects, the following Transaction Flow will help.

Steps for Return Filing

Step 1: The taxpayer will upload the final **FORM GSTR-1** return in the Common Portal or by uploading the file containing the said **FORM GSTR-1** return FORM through Apps by 10th day of month succeeding the month during which supplies has been made. Refer Annexure ‘A’ for extension of due dates of filing various returns. The increase / decrease (in supply invoices) would be allowed, only on the basis of the details uploaded by the counter-party purchaser in **FORM GSTR-2**, upto 17th day of the month. (i.e. within a period of 7 days). (**Refer Note No. 1**

given at the end of this chapter and the information given in steps 2 to 8 in consonance with Note No. 1).

In other words, the supplier would not be allowed to include any missing invoices on his own after 10th day of the month.

GSTN will facilitate periodic (may be daily, weekly etc.) upload of such information to minimize last minute load on the system. GSTN will facilitate offline preparation of **FORM GSTR-1**.

Step 2: GST Common Portal (GSTN) will auto-populate **FORM GSTR-2A** of the registered person based on the supply invoice details reported by the counter-party registered person (supplier) on a near real-time basis.

Step 3: Recipient will accept / reject/ modify such auto-populated **FORM GSTR-2A**. (A registered person will have the option to download his provisional purchase statement from the Portal or through Apps using Application Programming Interface (APIs) and update / modify it off-line).

Step 4: Recipient will also be able to add additional purchase invoice details in his **FORM GSTR-2** which have not been uploaded by counter-party registered person (supplier) as described in Step 1 and 2 above, provided he is in possession of valid invoice issued by counter-party registered person and he has received such supplies.

Step 5: Recipient will have the option to do reconciliation of inward supplies with counter-party registered person (suppliers) during the next 7 days by following up with their counter-party registered person for any missing supply invoices in the **FORM GSTR-1** of the counter-party registered person, and prompt them to accept the same as uploaded by the Recipient. All the invoices would be auto-populated in the ITC ledger of Recipient. The Recipient would, however, indicate the eligibility / partial eligibility for ITC in those cases where either he is not entitled or he is entitled for partial ITC.

Step 6: The registered person will finalize their **FORM GSTR-1** and **FORM GSTR-2** by using online facility at Common Portal or using GSTN compliant off-line facility in their accounting applications, determine the liability on their supplies, determine the amount of eligible ITC on their purchases and then generate the net tax liability from the system for each type of tax. Cash details as per personal ledger/ carried forward from previous tax period, ITC carried forward from previous tax period, ITC reversal and associated Interest/Penalty, taxes paid during the current tax period etc. would get auto-populated in the **FORM GSTR-3**.

Step 7: Taxpayers will pay the amount as shown in the **FORM GSTR-3** return generated automatically at the Portal post finalization of activities mentioned in Step 6 above.

Step 8: Taxpayer will debit the ITC ledger and cash ledger and mention the debit entry No. in the **FORM GSTR-3** return and would submit the same.

Statutory provision**40. First Return**

Every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

40.1 Analysis

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

Transaction to be reported	Consideration involved
Outward supplies	From date on which he becomes liable to get registered till the date on which registration is granted

40.2 FAQs

Q1. From when do the first returns needs to be filed by taxable person in respect of outwards supplies?

Ans. First returns of outwards supplies needs to be filed from the date on which he became liable to registration till the end of the month in which the registration has been granted.

Q2. From when do the first returns needs to be filed by taxable person in respect of inward supplies?

Ans. First return of inward supplies needs to be filed from the effective date of registration till the end of the month in which the registration has been granted

Statutory provision**41. Claim of input tax credit and provisional acceptance thereof**

- Every registered person shall, subject to such conditions and restrictions as may be prescribed, be entitled to take the credit of eligible input tax, as self-assessed, in his return and such amount shall be credited on a provisional basis to his electronic credit ledger.*
- The credit referred to in sub section (1) shall be utilised only for payment of self-assessed output tax liability as per the return referred to in the said sub-section.*

41.1 Introduction

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

41.2 Analysis

All registered person shall be eligible to avail eligible input tax credit on self-assessment basis.

Such amount shall be credited to his electronic credit ledger

This self-assessed input tax credit shall be utilised only for payment of self-assessed output tax.

Statutory provision

42. Matching, reversal and reclaim of input tax credit

- (1) *The details of every inward supply furnished by a registered person (hereafter in this section referred to as the "recipient") for a tax period shall, in such manner and within such time as may be prescribed, be matched-*
 - (a) *with the corresponding details of outward supply furnished by the corresponding registered person (hereafter in this section referred to as the "supplier") in his valid return for the same tax period or any preceding tax period,*
 - (b) *with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him, and*
 - (c) *for duplication of claims of input tax credit.*
- (2) *The claim of input tax credit in respect of invoices or debit notes relating to inward supply that match with the details of corresponding outward supply or with the integrated goods and services tax paid under section 3 of the Customs Tariff Act, 1975 in respect of goods imported by him shall be finally accepted and such acceptance shall be communicated, in such manner as may be prescribed, to the recipient.*
- (3) *Where the input tax credit claimed by a recipient in respect of an inward supply is in excess of the tax declared by the supplier for the same supply or the outward supply is not declared by the supplier in his valid returns, the discrepancy shall be communicated to both such persons in such manner as may be prescribed.*
- (4) *The duplication of claims of input tax credit shall be communicated to the recipient in such manner as may be prescribed.*
- (5) *The amount in respect of which any discrepancy is communicated under subsection (3) and which is not rectified by the supplier in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the recipient, in such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.*
- (6) *The amount claimed as input tax credit that is found to be in excess on account of duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.*
- (7) *The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return within the time specified in sub-section (9) of section 39.*
- (8) *A recipient in whose output tax liability any amount has been added under subsection*

(5) or sub-section (6), shall be liable to pay interest at the rate specified under subsection (1) of section 50 on the amount so added from the date of availing of credit till the corresponding additions are made under the said sub-sections.

- (9) Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the recipient by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed

Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the supplier.

- (10) The amount reduced from the output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.

42.1 Introduction

This provision relates to matching, reversal and reclaim of input tax credit. However, the provisions of section 42 shall not be applicable for the financial year 2017-18 due to deferment of filing of Form No. GSTR-2 and GSTR-3.

42.2 Analysis

A. Matching, reversal and reclaim envisages the following circumstances

Situation	Remarks
All Transactions where Input credit details of recipient are matched for output tax as stated by supplier and recipient	The transaction is treated as matched (see Para B below – Matched transactions)
Transactions where input credit as claimed by the recipient is less than the output tax as declared by the supplier in their return	The transaction is treated as matched (see Para B below – Matched transactions)
Transactions where the input tax credit is duplicated by the recipient	Shall be communicated to the registered person in FORM GST MIS 1 (see Para C below – Duplicated transactions of recipient)
Transactions where the claim for input tax credit is higher than the output tax as declared by the supplier	Shall be added to the output tax liability of the recipient (See Para D below)
Transactions where the claim for input tax credit is higher than the output tax as declared by the supplier because the supplier has not furnished a particular transaction	Shall be added to the output tax liability of the recipient (See Para D below)
Interest on such mismatched transactions	See Para E below

B. Matched Transactions

- (i) The details in a return of inward supplies of a recipient should be matched in prescribed time and manner
 - With Outward supplies furnished by corresponding taxable person in his return (supplier)
 - With IGST paid on goods imported under Section 3 of the Customs Tariff Act 1975 which represents the Additional Duty of Customs (for which Credit was available under the erstwhile Central Excise Act)
 - To identify any duplicate claims of input tax credit
- (ii) When the claim for input tax credit in respect of inward supplies matches with the corresponding outward supply or IGST in respect of goods imported, the same shall be finally accepted and communicated to the recipient in the prescribed manner.

(iii) Rule 69 of CGST Rules - Matching of claim of input tax credit

The following details relating to the claim of input tax credit on inward supplies including IGST claimed on imports shall be matched after the due date for furnishing the return in **FORM GSTR-3** (Final return with payment of tax to be filed on or before 20th of the following month). Notification shall be issued later on for due date of filing GSTR-3. The matching is done for the following parameters based on the GSTIN of the Supplier and the recipient

- (a) GSTIN of the supplier;
- (b) GSTIN of the recipient;
- (c) Invoice/ or debit note number;
- (d) Invoice/ or debit note date;
- (e) taxable value; and
- (f) tax amount:

It may be noted that if the supplier has not paid the tax and / or not filed the return on or before the due date (or extended due date, if any), the return filed by him shall not be treated as a valid return for the purposes of the above matching exercise. The transactions between the parties interest, will be treated as unmatched

The rule provides for two specific circumstances, where the claims for input tax credit are treated as Matched

- (a) Where the claim of input tax credit in respect of invoices and debit notes in **FORM GSTR-2** that were accepted by the recipient on the basis of **FORM GSTR-2A** without amendment, if the corresponding supplier has furnished a valid return.
- (b) Where the amount of input tax credit claimed is equal to or less than the output tax paid on such tax invoice or debit note by the corresponding supplier.

Note :

However, where the time limit for furnishing **FORM GSTR-1** specified under section 37 and **FORM GSTR-2** specified under section 38 has been extended, the date of matching relating to claim of input tax credit shall also be extended accordingly.

(iv) Rule 70. Final acceptance of input tax credit and communication thereof

The final acceptance of claim of input tax credit in respect of any tax period, shall be made available electronically in **FORM GST MIS -1** through the Common Portal.

The claim of input tax credit in respect of any tax period which had been communicated as mismatched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in **FORM GST MIS - 1** through the Common Portal.

C. Duplicate Transactions

The duplication of claims of input tax credit shall be communicated to the recipient in such manner as stated below. Further, the amount claimed as input tax credit that is found to be in excess on account of such duplication of claims shall be added to the output tax liability of the recipient in his return for the month in which the duplication is communicated.

Rule 72. Claim of input tax credit on the same invoice more than once

Duplication of claims of input tax credit in the details of inward supplies shall be communicated to the registered person in **FORM GST MIS - 1** electronically through the Common Portal

D. Input tax claim is higher than output tax for a tax period as declared

Where the credit claimed in respect of inward supplies is in excess when compared to the tax declared by the supplier or where the supplier has not at all declared the outward supply in his return, the discrepancies will be communicated to both parties

When discrepancies communicated to the outward supplier are not rectified by supplier in a valid return for the month (not by revision of return for the month in which the discrepancy occurred within 17th), the tax amount involved will be added to the output liability of the recipient for the month succeeding the month in which the discrepancy is communicated

The recipient shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5), if the supplier declares the details of the invoice or debit note in his valid return furnished for the month during which such omission or incorrect particulars are noticed and interest is paid as required under this Act

Rule 71. Communication and rectification of discrepancy in claim of input tax credit and reversal of claim of input tax credit

Any discrepancy in the claim of input tax credit in respect of any tax period, specified in (iii) above and the details of output tax liable to be added by the recipient of supply as per (v) above on account of continuation of such discrepancy shall be made available to the registered person making such claim electronically in **FORM GST MIS -1** and to the supplier electronically in **FORM GST MIS-2** through the Common Portal on or before the last date of the month in which the matching has been carried out.

The supplier to whom discrepancy is made available as above may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

Similarly, a recipient to whom any discrepancy is made available as above may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available within the time permitted.

Where the discrepancy is not rectified by neither the supplier nor the recipient of supply, an amount to the extent of discrepancy shall be added to the output tax liability of the recipient in his return to be furnished in **FORM GSTR-3** for the month succeeding the month in which the discrepancy is made available.

Explanation 1. - Rectification by a supplier means adding or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient.

Explanation 2. - Rectification by the recipient means deleting or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

E. Interest on mismatched transactions

Recipient will be liable to payment of interest in every case when discrepancy is added for the period starting from the date of availing the credit till the corresponding additions are made.

If the supplier declares the details of invoice or debit note in his valid return filed within the time specified u/s 39(9) i.e. before the due date of filing of the return for the month of September of the subsequent financial year or filing of annual return whichever is earlier the recipient is eligible to reduce from his output tax liability the amount so added earlier.

In case of such reduction in output tax liability, he is entitled for refund of interest paid as per (vi) above. However, this interest shall not exceed the amount of interest paid by the supplier.

A Comprehensive Illustration

The recipient of supply has filed his return for the month of July, 2017 on 20th of August, 2017. The mismatch, not rectified either by recipient of supply or by the supplier shall be communicated to both on 31/08/2017.

The supplier ideally should make rectification in his statement of outwards supply for the month of August 2017. Similarly, the recipient may make rectification in the statement of inward supplies for the month of August, 2017. If neither of them rectify or only partially rectify the tax relating to unrectified value shall be added to the output tax liability of the recipient of supply in his return in **FORM GSTR-3** for the month of September 2017. Interest is to be paid on such addition.

However, if the supplier declares the invoice or debit note in any subsequent month but before the time limit prescribed, say in the month Jan 2018, the recipient of supply can reduce the relevant tax amount from the output tax liability for the month of January 2018. He is also eligible for the refund of interest paid earlier.

Example - 1

A Ltd supplies manufactured goods to B Ltd for ₹ 1000 in May 2017; CGST thereon is, say, ₹ 120. Unfortunately, A Ltd did not furnish these details in its outward supply to B Ltd.

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

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

Example – 2

A Ltd, the supplier failed to furnish right details in time. B Ltd the recipient of supply had to pay back the credit utilised for mismatching credit figures, with interest.

Of late, A Ltd has corrected its returns reflecting B Ltd's name and interest for the same paid by A Ltd. B Ltd is entitled for the credit now; it is eligible to claim back the interest paid. This interest cannot exceed the interest paid by A Ltd.

Statutory Provision**43. Matching, reversal and reclaim of reduction in output tax liability**

- (1) *The details of every credit note relating to outward supply furnished by a registered person (hereinafter referred to in this section as the 'supplier') for a tax period shall, in such manner and within such time as may be prescribed, be matched -*
 - (a) *with the corresponding reduction in the claim for input tax credit by the corresponding registered person (hereinafter referred to in this section as the 'recipient') in his valid return for the same tax period or any subsequent tax period, and*
 - (b) *for duplication of claims for reduction in output tax liability.*
- (2) *The claim for reduction in output tax liability by the supplier that matches with the corresponding reduction in the claim for input tax credit by the recipient shall be finally accepted and communicated, in the manner as may be prescribed, to the supplier.*
- (3) *Where the reduction of output tax liability in respect of outward supplies exceeds the corresponding reduction in the claim for input tax credit or the corresponding credit note is not declared by the recipient in his valid returns, the discrepancy shall be communicated to both such persons in the manner as may be prescribed.*
- (4) *The duplication of claims for reduction in output tax liability shall be communicated to the supplier in such manner as may be prescribed.*
- (5) *The amount in respect of which any discrepancy is communicated under sub-section (3) and which is not rectified by the recipient in his valid return for the month in which discrepancy is communicated shall be added to the output tax liability of the supplier, in*

such manner as may be prescribed, in his return for the month succeeding the month in which the discrepancy is communicated.

- (6) *The amount in respect of any reduction in output tax liability that is found to be on account of duplication of claims shall be added to the output tax liability of the supplier in his return for the month in which such duplication is communicated.*
- (7) *The supplier shall be eligible to reduce, from his output tax liability, the amount added under sub-section (5) if the recipient declares the details of the credit note in his valid return within the time specified in sub-section (9) of section 39.*
- (8) *A supplier in whose output tax liability any amount has been added under subsection (5) or sub-section (6), shall be liable to pay interest at the rate specified under subsection (1) of section 50 in respect of the amount so added from the date of such claim for reduction in the output tax liability till the corresponding additions are made under the said sub-sections..*
- (9) *Where any reduction in output tax liability is accepted under sub-section (7), the interest paid under sub-section (8) shall be refunded to the supplier by crediting the amount in the corresponding head of his electronic cash ledger in such manner as may be prescribed*
Provided that the amount of interest to be credited in any case shall not exceed the amount of interest paid by the recipient.
- (10) *The amount reduced from output tax liability in contravention of the provisions of sub-section (7) shall be added to the output tax liability of the supplier in his return for the month in which such contravention takes place and such supplier shall be liable to pay interest on the amount so added at the rate specified in sub-section (3) of section 50.*

43.1 Introduction

This provision relates to matching, reversal and reclaim of output tax liability caused by the issuance of a credit note. However, the provisions of section 43 shall not be applicable for the financial year 2017-18 due to deferment of filing of Form No. GSTR-2 and GSTR-3.

43.2 Analysis

- A. Issuance of Credit note for reduction in output tax liability
 - (a) Where the output tax is reduced by outward supplier by issuing a credit note, details of every such credit note issued should be matched with the corresponding reduction in the credit by the recipient of the amount involved in the credit note in his valid return filed for the current or subsequent tax period. For example, a sale invoice at ₹ 150,000 was overstated by ₹ 50,000 for which a credit note was issued. This credit note should be accounted by the recipient in a valid return filed for the current or subsequent tax period
 - (b) Similarly where the supplier has raised say, two invoices and has paid out put tax twice, where a credit note has been raised, the same shall also be accounted by the recipient. However if the recipient has accounted for the invoice only once, he need not account for the credit note

B. Communication of corrections and impact of corrections

Particulars	Communication
<p>When credit note and claim for reduction of output tax liability by the supplier matches with the corresponding reduction in input tax credit claim by the recipient or is lower than the ITC claim by the recipient for the said credit note</p> <p>Example A – both parties account for a credit note raised by the supplier, that results in lower of output tax liability and input tax credit by ₹ 10000</p> <p>Example B - A issues a credit note for ₹ 10000 reduction in output tax liability as compared to an reduction in input tax credit for ₹ 11000 by the recipient will also be treated as a matched transaction</p>	<p>The same will be accepted and communicated to the supplier in FORM GST MIS-3</p>
<p>When credit note and claim for reduction of output tax liability by the supplier exceeds, partly with the corresponding reduction in input tax credit by the recipient as declared in his returns</p> <p>Example where a credit note that results in the reduction of output tax liability for ₹ 10000 has been accounted for ₹ 4000 and stated as such in their return at ₹ 4000</p>	<p>The discrepancy will be communicated to both parties and shall be added to the output tax liability of the supplier for ₹ 6000, in the month in which the discrepancy is communicated in FORM GST MIS- 3 and FORM GST MIS- 4</p>
<p>When credit note and claim for reduction of output tax liability by the supplier exceeds, wholly with the corresponding reduction in input tax credit by the recipient as declared in his returns</p> <p>Example where a credit note that results in the reduction of output tax liability for ₹ 10000 has not been accounted at all or considered in his returns</p>	<p>The discrepancy will be communicated to both parties and shall be added to the output tax liability of the supplier for ₹ 10,000 in the month in which the discrepancy is communicated in FORM GST MIS- 3 and FORM GST MIS- 4</p>

C. Consequence of acceptance of correction by recipient

If the recipient accepts the discrepancy and rectifies the same by filing a valid return subsequently, then the tax amount involved will be excluded from the output liability of the supplier for the month in which the discrepancy is communicated.

In other words, as soon as discrepancy is communicated, the tax involved will be recovered from the supplier which will be readily reversed when the recipient admits and rectifies the discrepancy.

Discrepancies relating to duplicate claims for reduction of output tax liability will be added to the output liability of the supplier for the month in which the discrepancy is communicated.

D. Charge of interest

Supplier will be liable to payment of interest in every case when discrepancy by way of amount of output tax liability is added and interest will be paid on reversal of the liability added earlier after due rectification by the recipient.

Supplier shall be eligible to reduce, from his output tax liability, the amount of discrepancy added, when the recipient declares the details of the credit note in his valid return within the time specified.

Refund provisions under section 54 shall not to be applicable and this refund will be credited into the electronic cash ledger. Interest paid that is reversed to the supplier will not exceed interest recovered from the recipient. ***Reference may be had to the discussion under section 42 which discusses this aspect of payment of interest by the recipient.***

Any reduction of amount from output tax liability by the supplier in contravention of the provisions will be added to the output liability of the supplier in his return for the month in which such contravention takes place and recovered along with applicable interest.

Rule 73. Matching of claim of reduction in the output tax liability

The following details relating to the claim of reduction in output tax liability shall be matched under section 43 after the due date for furnishing the return in **FORM GSTR-3** –

- (a) GSTIN of the supplier;
- (b) GSTIN of the recipient;
- (c) credit note number;
- (d) credit note date;
- (e) tax amount:

Provided that where the time limit for furnishing **FORM GSTR-1** under section 37 and **FORM GSTR-2** under section 38 has been extended, the date of matching of claim of reduction in the output tax liability shall be extended accordingly.

Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching relating to claim of reduction in output tax liability to such date as may be specified therein.

Explanation 1.- The claim of reduction in output tax liability due to issuance of credit notes in **FORM GSTR-1** that were accepted by the recipient in **FORM GSTR-2** without amendment shall be treated as matched if the corresponding recipient has furnished a valid return.

Explanation 2.- The claim of reduction in the output tax liability shall be considered as matched, where the amount of reduction claimed is equal to or less than the claim of reduction in input tax credit admitted and discharged on such credit note by the corresponding recipient in his valid return.

Rule 74. Final acceptance of reduction in output tax liability and communication thereof

(1) The final acceptance of claim of reduction in output tax liability in respect of any tax period, specified in sub-section (2) of section 43, shall be made available electronically to the person making such claim in **FORM GST MIS-3** through the Common Portal.

(2) The claim of reduction in output tax liability in respect of any tax period which had been communicated as mis-matched but is found to be matched after rectification by the supplier or recipient shall be finally accepted and made available electronically to the person making such claim in **FORM GST MIS-3** through the Common Portal.

Rule 75. Communication and rectification of discrepancy in reduction in output tax liability and reversal of claim of reduction

(1) Any discrepancy in claim of reduction in output tax liability, specified in sub-section (3) of section 43, and the details of output tax liability to be added under sub-section (5) of the said section on account of continuation of such discrepancy shall be made available to the registered person making such claim electronically in **FORM GST MIS-3** and the recipient electronically in **FORM GST MIS-4** through the Common Portal on or before the last date of the month in which the matching has been carried out.

(2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.

(3) A recipient to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of inward supplies to be furnished for the month in which the discrepancy is made available.

(4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the output tax liability of the supplier and debited to tax liability register and also shown in his return in **FORM GSTR-3** for the month succeeding the month in which the discrepancy is made available.

Explanation 1.- Rectification by a supplier means deleting or correcting the details of an outward supply in his valid return so as to match the details of corresponding inward supply declared by the recipient.

Explanation 2.- Rectification by the recipient means adding or correcting the details of an inward supply so as to match the details of corresponding outward supply declared by the supplier.

Rule 76. Claim of reduction in output tax liability more than once

Duplication of claims for reduction in output tax liability in the details of outward supplies shall be communicated to the registered person in **FORM GST MIS - 3** electronically through the Common Portal.

Rule 77. Refund of interest paid on reclaim of reversals

The interest to be refunded under sub-section (9) of section 42 or sub-section (9) of section 43

shall be claimed by the registered person in his return in **FORM GSTR-3** and shall be credited to his electronic cash ledger in **FORM GST PMT-3** and the amount credited shall be available for payment of any future liability towards interest or the taxable person may claim refund of the amount under section 54.

F. Transactions through E-commerce Operators

Rule 78 deals with the matching of details furnished by the e-Commerce operator with the details furnished by the supplier

The following details relating to the supplies made through an e-Commerce operator, as declared in **FORM GSTR-8**, shall be matched with the corresponding details declared by the supplier in **FORM GSTR-1**-

- (c) State of place of supply; and
- (d) net taxable value;

Provided that where the time limit for furnishing FORM GSTR-1 under section 37 has been extended, the date of matching of the above mentioned details shall be extended accordingly.

Provided further that the Commissioner may, on the recommendations of the Council, by order, extend the date of matching to such date as may be specified therein.

Rule 79 deals with Communication and rectification of discrepancy in details furnished by the e-commerce operator and the supplier

- (1) Any discrepancy in the details furnished by the operator and those declared by the supplier shall be made available to the supplier electronically in **FORM GST MIS-5** and to the e-commerce portal electronically in **FORM GST MIS-6** through the Common Portal on or before the last date of the month in which the matching has been carried out.
- (2) A supplier to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement of outward supplies to be furnished for the month in which the discrepancy is made available.
- (3) An operator to whom any discrepancy is made available under sub-rule (1) may make suitable rectifications in the statement to be furnished for the month in which the discrepancy is made available.
- (4) Where the discrepancy is not rectified under sub-rule (2) or sub-rule (3), an amount to the extent of discrepancy shall be added to the **output tax liability of the supplier** in his return in **FORM GSTR-3** for the month succeeding the month in which the details of discrepancy are made available and such addition to the output tax liability and interest payable thereon shall be made available to the supplier electronically on the Common Portal in **FORM GST MIS-3**.

Statutory Provision**44. Annual return**

- (1) Every registered person, other than an Input Service Distributor, a person paying tax under section 51 or section 52, a casual taxable person and a non-resident taxable person, shall furnish an annual return for every financial year electronically in such form and manner as may be prescribed on or before the thirty-first day of December following the end of such financial year.
- (2) Every registered person who is required to get his accounts audited in accordance with the provisions of sub-section (5) of section 35 shall furnish, electronically, the annual return under sub-section (1) along with a copy of the audited annual accounts and a reconciliation statement, reconciling the value of supplies declared in the return furnished for the financial year with the audited annual financial statement, and such other particulars as may be prescribed.

44.1 Introduction

This section applies to all registered taxable person other than,

- Input Service Distributor
- A person paying tax under Section 51 (TDS)
- A person paying tax under Section 52 (TCS)
- A casual tax Taxable person
- Non-resident taxable person

Due date for filing Annual Return is on or before 31st December following the end of the financial year for which Annual return to be submitted.

44.2 Analysis

Every taxable person shall file annual return in **FORM GSTR-9** (**FORM GSTR-9A** in case of person opted to pay tax under composition scheme under section 10) for every financial year electronically on or before 31st December following the end of such financial year

However, this provision shall not apply to,

- Input Service Distributor
- A person paying tax under Section 51 (TDS)
- A person paying tax under Section 52 (TCS)
- A casual tax Taxable person
- Non-resident taxable person

In case the registered person is required to get his accounts audited in accordance with the provisions of Section 35 (5) (whose aggregate turnover during the financial year exceeds ₹ Two crores) shall file annual return **FORM GSTR-9C** electronically along with,

- A copy of audited annual accounts
- Reconciliation statement reconciling the value of supplies as per annual return and as per audited financial statement

Every registered person whose aggregate turnover during a financial year exceeds two crore rupees shall get his accounts audited as specified under sub-section (5) of section 35 and he shall furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C, electronically.

Statutory Provision

45. Final return

Every registered person who is required to furnish a return under sub-section (1) of section 39 and whose registration has been cancelled shall furnish a final return within three months of the date of cancellation or date of order of cancellation, whichever is later, in such form and manner as may be prescribed.

45.1 Introduction

This section applies to all registered taxable person other than,

- Input Service Distributor
- A person paying tax under Section 51 (TDS)
- A person paying tax under Section 52 (TCS)
- Non-resident taxable person
- A person paying tax under Section (10) composition levy

45.2 Analysis

Every registered person whose registration is cancelled shall file final return in **FORM GSTR-10** through common portal within 3 months from the date of cancellation (voluntary cancellation) or date of order of cancellation (forceful cancellation by authority), whichever is later.

However, this provision shall not apply to a register person who is,

- Input Service Distributor
- A person paying tax under Section 51 (TDS)
- A person paying tax under Section 52 (TCS)
- Non-resident taxable person

A person paying tax under Section (10) composition levy

Statutory Provision**46. Notice to return defaulters**

Where a registered person fails to furnish a return under section 39 or section 44 or section 45, a notice shall be issued requiring him to furnish such return within fifteen days in such form and manner as may be prescribed.

46.1 Introduction

This section applies to all registered person who fail to furnish return under section 39 or section 44.

46.2 Analysis**Notice to defaulter**

Notice in **FORM GSTR-3A** shall be issued electronically to a registered person who have failed to file return under 39 (monthly return) and under section 44 (annual return) requiring him to file a return within 15 days.

Statutory Provision**47. Levy of late fee**

- (1) *Any registered person who fails to furnish the details of outward or inward supplies required under section 37 or section 38 or returns required under section 39 or section 45 by the due date shall pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum amount of five thousand rupees.*
- (2) *Any registered person who fails to furnish the return required under section 44 by the due date shall be liable to pay a late fee of one hundred rupees for every day during which such failure continues subject to a maximum of an amount calculated at a quarter per cent. of his turnover in the State or Union territory.*

47.1 Introduction

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

47.2 Analysis

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

Defaulted Return	Late fee
Details of Outward Supplies (Ref: Sec 37)	₹ 100 per day of delay Maximum ₹ 5,000
Details of Inward Supplies (Ref: Sec 39)	same as above
Monthly Return (Ref: Sec 39)	same as above
Details of Supplies made by Composition dealers (Ref Sec 37)	₹ 25 per day of delay Maximum ₹ 5,000

Final Return in case of cancellation of registration (Sec 45)	same as above
Annual Return (Sec 44)	₹ 100 per day of delay Maximum = 0.25% on Turnover in the state/UT*

(Refer Note No. 2 for levy of late fees for failure to furnish details under section 37 or under section 38)

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

Explanation. - Aggregate turnover does not include the value of inward supplies on which tax is payable by a person on reverse charge basis under sub-section 3 of Section 9 and the value of inward supplies

Aggregate turnover = Total turnover – (input supplies for which tax paid under reverse charge + Central Tax + State Tax + UT Tax + Integrated Tax and Cess)

Statutory Provision

48. Goods and Service tax practitioners

- (1) *The manner of approval of goods and services tax practitioners, their eligibility conditions, duties and obligations, manner of removal and other conditions relevant for their functioning shall be such as may be prescribed*
- (2) *A registered person may authorise an approved goods and services tax practitioner to furnish the details of outward supplies under section 37, the details of inward supplies under section 38 and the return under section 39 or section 44 or section 45 in such manner as may be prescribed.*
- (3) *Notwithstanding anything contained in sub-section (2), the responsibility for correctness of any furnished in the return or other details filed by the goods and services tax practitioners shall continue to rest with the registered person on whose behalf such return and details are furnished.*

48.1 Introduction

This provision relates to:

- Procedure followed in appointment/termination of Goods and Service Tax practitioners
- How to engage/disengage GST practitioner by the registered person
- What are all the activities can be performed by GST practitioner on behalf of registered person

48.2 Analysis

Following Procedure must be followed:

- (1) An application in **FORM GST PCT-1** may be made to the officer authorised in this behalf for enrolment as Goods and Services Tax Practitioner by any person who satisfies any of the conditions specified below, namely:
 - (a)
 - (i) he is a citizen of India;
 - (ii) he is a person of sound mind;
 - (iii) he is not adjudicated as insolvent;
 - (iv) he has not been convicted by a competent court for an offence with imprisonment not less than two years; and
 - (b) that he is a retired officer of the Commercial Tax Department of any State Government or of the Central Board of Excise and Customs, Department of Revenue, Government of India, who, during his service under the Government, had worked in a post not lower in rank than that of a Group-B gazetted officer for a period of not less than two years; or
 - (c) he has passed:
 - (i) a graduate or postgraduate degree or its equivalent examination having a degree in Commerce, Law, Banking including Higher Auditing, or Business Administration or Business Management from any Indian University established by any law for the time being in force; or
 - (ii) a degree examination of any Foreign University recognized by any Indian University as equivalent to the degree examination mentioned in clause (i); or
 - (iii) any other examination notified by the Government for this purpose; or
 - (iv) any degree examination of an Indian University or of any Foreign University recognized by any Indian University as equivalent of the degree examination and has also passed any of the following examinations, namely. -
 - (a) final examination of the Institute of Chartered Accountants of India; or
 - (b) final examination of the Institute of Cost Accountants of India; or
 - (c) final examination of the Institute of Company Secretaries of India; or
- (2) On receipt of the application referred to in sub-rule (1), the authorised officer shall, after making such enquiry as he considers necessary, either enrol the applicant as a Tax Return Preparer and issue a certificate to that effect in **FORM GST PCT-2** or reject his application where it is found that the applicant is not qualified to be enrolled as a Goods and Services Tax Practitioner.
- (3) The certificate given to GST practitioner is valid until it is cancelled.

- (4) If any Goods and Services Tax Practitioner is found guilty of misconduct in connection with any proceeding under the Act, the authorised officer may, by order, in **FORM GST PCT-4** direct that he shall henceforth be disqualified under section 48. However, before cancellation show cause notice in **FORM GST PCT-3** to be served and give him a reasonable opportunity of being heard.
- (5) Any person against whom an order of disqualification under sub-rule (4) is made may, within thirty days from the date of the order under sub-rule (4), appeal to the Commissioner against such order.
- (6) A list of Goods and Services Tax Practitioner enrolled under sub-rule (1) shall be maintained on the Common Portal in **FORM GST PCT-5** and the authorised officer may make such amendments to the list as may be necessary from time to time, by reason of any change of address or death or disqualification of any goods and service tax practitioner.
- (7) Any registered person who wants to avail the services of goods and service tax practitioner may, at his option, authorise GST practitioner on the Common Portal in **FORM GST PCT-6** to carry out certain activities on his behalf. Similarly, registered person at any time, can disengage the GST practitioner through common portal by withdrawing such authorisation in **FORM GST PCT-7**.
- (8) Based on the authorisation given to the GST practitioner by the registered person, the statement to be furnished by registered person shall be furnished by GST practitioner. The registered person can sought the confirmation for the completion of the work by GST practitioner either through email or SMS. The statement furnished by GST practitioner shall be available in the common portal for review and confirmation of the registered person.
- If the taxable person fails to confirm the statements furnished by GST practitioner on or before the last date of furnishing of such statement, it shall be deemed that such statement has been confirmed by registered person.
- (9) A GST practitioner can undertake any or all of the following activities on behalf of a registered person, if so authorised by the registered person to:
- (a) furnish details of outward and inward supplies;
 - (b) furnish monthly, quarterly, annual or final return;
 - (c) make deposit for credit into the electronic cash ledger;
 - (d) file a claim for refund; and
 - (e) file an application for amendment or cancellation of registration.
- (10) Any registered person opting to furnish his return through a GST practitioner shall-
- (a) give his consent in **FORM GST PCT-6** to any GST practitioner to prepare and furnish his return; and
 - (b) before confirming submission of any statement prepared by the GST practitioner, ensure that the facts mentioned in the return are true and correct before signature.

(11) The GST practitioner shall-

- (a) prepare the statements with due diligence; and
- (b) affix his digital signature on the statements prepared by him or electronically verify using his credentials.

In all cases Registered person shall remain to be liable for the correctness of the return filed through GST practitioner.

Notes:

Note 1. Filing of GSTR-2 and GSTR-3 have been suspended till further notification. As such, all provisions relating to filing of details of inward supply in GSTR-2, monthly return in GSTR-3, matching provisions specified in section 42 and section 43 shall not be applicable till further notification is issued by the Commissioner in this regard.

Note 2. Late fees for failure to file GSTR-3B has been waived for the months of July 2017, August 2017 and September 2017. From October 2017, the late fees has been reduced to twenty five rupees per day (both under CGST and SGST/UTGST) and where the central tax payable is nil, the late fees is restricted to ten rupees per day (both under CGST and SGST/UTGST).

Chapter-X

Payment of Tax

- 49. Payment of tax, interest, penalty and other amounts
- 50. Interest on delayed payment of tax
- 51. Tax deduction at source
- 52. Collection of tax at source
- 53. Transfer of input tax credit

Statutory provision

49 Payment of Tax, Interest, Penalty and other Amounts

- (1) Every deposit made towards tax, interest, penalty, fee or any other amount by a person by internet banking or by using credit or debit cards or National Electronic Fund Transfer or Real Time Gross Settlement or by such other mode and subject to such conditions and restrictions as may be prescribed, shall be credited to the electronic cash ledger of such person to be maintained in such manner as may be prescribed.
- (2) The input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger, in accordance with section 41, to be maintained in such manner as may be prescribed.
- (3) The amount available in the electronic cash ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable under the provisions of this Act or the rules made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
- (4) The amount available in the electronic credit ledger may be used for making any payment towards output tax under this Act or under the Integrated Goods and Services Tax Act in such manner and subject to such conditions and within such time as may be prescribed.
- (5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of-
 - (a) integrated tax shall first be utilised towards payment of integrated tax and the amount remaining, if any, may be utilised towards the payment of central tax and State tax, or as the case may be, Union territory tax, in that order;
 - (b) the central tax shall first be utilised towards payment of central tax and the amount remaining, if any, may be utilised towards the payment of integrated tax;
 - (c) the State tax shall first be utilised towards payment of State tax and the amount remaining, if any, may be utilised towards payment of integrated tax;
 - (d) the Union territory tax shall first be utilised towards payment of Union territory tax

- and the amount remaining, if any, may be utilised towards payment of integrated tax;*
- (e) the central tax shall not be utilised towards payment of State tax or Union territory tax; and*
 - (f) the State tax or Union territory tax shall not be utilised towards payment of central tax.*
- (6) The balance in the electronic cash ledger or electronic credit ledger after payment of tax, interest, penalty, fee or any other amount payable under this Act or the rules made thereunder may be refunded in accordance with the provisions of section 54.*
 - (7) All liabilities of a taxable person under this Act shall be recorded and maintained in an electronic liability register in such manner as may be prescribed.*
 - (8) Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:*
 - (a) self –assessed tax, and other dues related to returns of previous tax periods;*
 - (b) self-assessed tax, and other dues related to the return of the current tax period;*
 - (c) any other amount payable under this Act or the rules made thereunder including the demand determined under Section 73 or 74.*
 - (9) Every person who has paid the tax on goods or services or both under this Act shall, unless the contrary is proved by him, be deemed to have passed on the full incidence of such tax to the recipient of such goods or services or both.*
- Explanation.1- For the purposes of this section,*
- (a) the date of credit to the account of the Government in the authorised bank shall be deemed to be the date of deposit in the electronic cash ledger;*
 - (b) the expression*
 - (i) “tax dues” means the tax payable under this Act and does not include interest, fee and penalty; and*
 - (ii) “other dues” means interest, penalty, fee or any other amount payable under this Act or the rules made thereunder.*

49.1 Introduction

This section provides for the following:

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

3. The section further provides for availability of credit in the cash ledger or the credit ledger depending on the payment made by the taxable person.
4. It provides for utilization of credit and prescribes the method of cross utilization of credit.
5. Transfer of input tax credit from CGST to IGST account when CGST is utilized for payment of IGST; similar provisions are there in SGST Act and UTGST Act also.

In the following analysis, sections referred are generally referred to CGST Act unless otherwise mentioned in specific.

49.2 Analysis

A. ELECTRONIC CASH LEDGER:

The provisions regarding Electronic Cash Ledger and amounts credited into this ledger are dealt with in sub-Section (1) & (3) of Section 49 of the CGST Act.

1. Deposit of tax, interest, penalty, fee or any other amount by a taxable person can be made by the following modes: -
 - Internet Banking
 - Credit /Debit cards
 - National Electronic Fund Transfer (NEFT)
 - Real Time Gross Settlement (RTGS)
 - Over the Counter payment (OTC) through authorized banks for deposits up to ten thousand rupees per challan per tax period, by cash, cheque or demand draft. This amount restriction is not applicable to remittances by
 - Government Departments
 - Proper Officer or any other Officer recovering outstanding dues or during any investigation or enforcement activity or ad hoc deposit
 - Any Other Mode as may be prescribed.
2. The 'deposit' made by one of the above-mentioned modes will be credited to the Electronic Cash Ledger of the taxable person. This ledger shall be maintained in **FORM GST PMT-05**
3. Any person, or a person on his behalf, shall generate a challan in **FORM GST PMT-06** on the Common Portal and enter the details of the amount to be deposited by him towards tax, interest, penalty, fees or any other amount
4. The challan in **FORM GST PMT-06** generated at the Common Portal shall be valid for a period of fifteen days

5. Any payment required to be made by a person who is not registered under the Act, shall be made on the basis of a temporary identification number generated through the Common Portal
6. Date of credit into the account of the Government is deemed to be the **date of deposit** (not the actual date of debit to the account of the taxable person)
7. On successful credit of the amount to the concerned government account maintained in the authorised bank, a Challan Identification Number (CIN) will be generated by the collecting Bank and the same shall be indicated in the challan
8. Where the bank account of the person concerned, or the person making the deposit on his behalf, is debited but no Challan Identification Number (CIN) is generated or generated but not communicated to the Common Portal, the said person may represent electronically in **FORM GST PMT-07** through the Common Portal to the Bank or electronic gateway through which the deposit was initiated¹
9. The amount available in the Electronic Cash Ledger may be used for making any payment towards tax, interest, penalty, fees or any other amount payable for the same head under the provisions of the Act or Rules.
10. Any payment made towards respective Account Heads shall only be utilized for offset of liability of that head of account. For example, if IGST is paid through a Challan, then this cash balance against IGST in the cash ledger shall only be utilized for payment of IGST.
11. Any amount deducted under section 51 (TDS by Central / State Government or local authority or Government Agencies) or collected under section 52 (TCS by e-commerce operator) and claimed in **FORM GSTR-02** by the registered taxable person from whom the said amount was deducted or, as the case may be, collected shall be credited to his electronic cash ledger.

B. ELECTRONIC CREDIT LEDGER

1. Sub Section (2) of Section 49 of the CGST Act provides that the self-assessed Input Tax Credit as per return filed by a taxable person shall be credited to its **Electronic Credit Ledger**.
2. This ledger shall be maintained in **FORM GST PMT-02** for each registered person eligible for input tax credit under the Act on the Common Portal and every claim of input tax credit under the Act shall be credited to the said Ledger.
3. The Electronic credit ledger may include the following:
 - Transitional credit of Excise and Service tax as CGST Credit and State VAT credit as SGST Credit.
 - ITC on inward supplies from registered tax payers.

- ITC available based on distribution from input services distributor (ISD).
- ITC on Input of Stock held/ semi-finished goods or finished goods held in stock on the day immediately preceding the date from which the taxpayer became liable to pay tax provided he applies for registration within 30 days from the date of his liability.
- Permissible ITC on inputs held in stock and inputs contained in semi- finished or finished goods held in stock on the day of conversion from composition scheme to regular tax scheme.
- ITC eligible on payment made on reverse charge basis

The above list is illustrative and not exhaustive.

4. A registered person shall, upon noticing any discrepancy in his electronic credit ledger, communicate the same to the officer exercising jurisdiction in the matter, through the Common Portal in **FORM GST PMT-04**

COMMON POINTS FOR ELECTRONIC CASH & CREDIT LEDGER

1. Where a person has claimed refund of any amount from the electronic cash or credit ledger, the said amount shall be debited to the electronic cash or credit ledger
2. If the refund so claimed is rejected, either fully or partly, the amount debited earlier, to the extent of rejection, shall be credited to the electronic cash or credit ledger by the proper officer by an order made in **FORM GST PMT-03**

MANNER OF UTILISATION OF ITC AND CROSS UTILIZATION

1. The amount available in the electronic credit ledger may be used for making payment towards output tax payable under the Act or Rules. The manner of utilization, conditions and time lines is prescribed.
2. The **Electronic Credit Ledger** has the following (cross) credit utilization arrangement –

Credit of:	Allowed for Payment of		
	IGST	CGST	SGST
IGST	✓ (1)	✓ (2)	✓ (3)
CGST	✓ (2)	✓ (1)	
SGST	✓ (2)		✓ (1)

3. Hence cross-utilization of credit is available only as above **in that order**. The main restriction is that the CGST credit cannot be utilized for payment of SGST or UTGST and vice versa. Please note the fact that IGST credit is available seamlessly, subject to order of utilization as mentioned above.

4. Sub-Section (6) provides that the balance in the cash or credit ledger after payment of tax, interest, penalty, fee or any other amount may be refunded in accordance with the provisions of section 54 (dealing with refunds)
5. A unique identification number shall be generated at the Common Portal for each debit or credit to the electronic cash or credit ledger, as the case may be. The said UIN must be used to discharge tax liability.

C. ELECTRONIC TAX LIABILITY LEDGER:

1. **Tax Liability Ledger** is required to be maintained electronically for all liabilities of a taxable person in **FORM GST PMT-01**.
2. This ledger shall be debited by the following amounts (liability is created by debiting)
 - the amount payable towards tax, interest, late fee or any other amount payable in separate sub-head as per the return furnished by the said person;
 - the amount of tax, interest, penalty or any other amount payable as determined by a proper officer in pursuance of any proceedings under the Act or as ascertained by the said person;
 - the amount of tax and interest payable as a result of mismatch under section 42 or section 43 or section 50; or
 - any amount of interest that may accrue from time to time
3. This ledger shall be credited for the following payments (liability is discharged by crediting)
 - Tax Deducted at Source under section 51
 - Tax Collected at Source under section 52
 - Reverse Charge on supply of goods or services under sub-section 3 of section 9 of CGST /SGST Act, sub-section 3 of section 5 of IGST Act and sub section 3 of section 7 of UTGST Act
 - Tax on supplies from unregistered suppliers under sub section 4 of section 9 of CGST/SGST Act, sub section 4 of section 5 of IGST Act and sub section 4 of section 7 of UTGST Act

Order of discharge of tax

Sub-Section (8) prescribes the chronological order in which the liability of a taxable person must be discharged:

1. Self-assessed tax and other dues arising out of returns for **previous tax periods** must be discharged first.
2. Self-assessed tax and other dues relating to the return of the **current tax period**.

3. Any other amount payable under the Act/Rules (liability arising out of demand notice or adjudicated proceedings etc.).

Presumption that incidence of tax is passed on

Sub-Section (9) of CGST/SGST Act provides that the incidence of tax on goods/services is **deemed** to have been passed to the recipient of such goods and / or services when the tax is paid unless the contrary being proved.

49.3 Comparative Review

The Electronic Cash Ledger, Electronic Credit Ledger and Tax Liability Register are unique features of the GST law. This would ensure only eligible credits are availed thereby eliminating the need for Forms such as 'C' or 'F' or 'H' etc. (Ref: Relevant provisions of CST Act 1956).

On the other hand, assessee would be expected to reconcile their financial ledgers with the corresponding Electronic ledgers.

49.4 FAQ

- Q1. What are the three types of Ledgers to be maintained by a taxable person under the GST Law?

Ans. The three types of ledgers to be maintained are: Electronic credit ledger, electronic cash ledger and electronic tax liability register.

- Q2. What are the deposit amounts that need to be reflected in the Electronic Cash Ledger?

Ans. Electronic Cash Ledger shall contain details of every deposit made towards tax, interest, penalty or any other amount (including the Tax Deducted at Source u/s 51 and Tax Collected at Source u/s 52).

- Q.3 What are the major and minor heads of Credit in the Electronic Cash Ledger?

Ans

Major heads	Minor Heads
IGST	Tax
CGST	Interest
SGST	Penalty
UTGST	Any other amount
CESS	Fees

- Q4. What is meant by Cross-utilization of credit and how is it done in the Electronic Credit Ledger?

Ans. Cross utilization means utilizing Credit of IGST against liabilities of CGST/ SGST/

UTGST or Credit of CGST / SGST / UTGST against IGST. Electronic Credit Ledger under IGST/ CGST/ SGST/ UTGST Act. The amount available in the Electronic Credit ledger may be used for making payment towards output tax payable under the Act or Rules.

Q5. Is cross-utilization permissible among Major heads in the Electronic Cash Ledger?

Ans. No, cross-utilization is not permissible among major heads in the Electronic Cash Ledger. But there is a facility available on Common portal where excess amount paid under major head can be apply for Refund.

Q6. What are the amounts to be reflected in the Electronic Credit Ledger?

Ans. The input tax credit as self-assessed in the details of inward supplies (Form GSTR-2) of a taxable person shall be reflected in the electronic credit ledger.

Q7. Can direct remittances to the treasury be shown in the Electronic Credit Ledger?

Ans. No, direct remittances to the treasury cannot be shown in the electronic credit ledger. But in case of Import of Goods or Payment made under reverse charge has to be avail and then it will be reflected in electronic Credit Leader.

Q8. What is the order in which tax liability has to be discharged?

Ans. The order in which the liability of a taxable person must be discharged is as under:

1. Self-assessed tax and other dues arising out of returns for previous tax periods must be discharged first.
2. Self-assessed tax and other dues relating to the return of the current tax period.
3. Any other amount payable under the Act/Rules (liability arising out of demand notice or adjudicated proceedings etc.).

49.5 MCQ

Q1. Deposits towards tax, penalty, interest, fee or any other amount are credited into the ---- of a taxable person:

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

Ans. (c) Electronic Cash Ledger

Q2. The Input Tax Credit as self-assessed by a taxable person is credited into the

- (a) Electronic Credit Ledger

- (b) Tax Liability Ledger
- (c) Electronic Cash Ledger
- (d) None of the above

Ans. (a) Electronic Credit Ledger

Q3. Cross-Utilization of credit of available IGST after utilization towards payment of IGST is done in the following chronological order:

- (a) CGST then SGST/UTGST
- (b) SGST/UTGST then CGST
- (c) CGST, UTGST and SGST simultaneously
- (d) None of the Above

Ans. (a) CGST then SGST//UTGST

Q4. Which of the following Statements is true?

- (a) ITC of CGST is first utilized for payment of CGST and the balance is utilized for payment of SGST/UTGST
- (b) ITC of SGST is first utilized for payment of SGST and the balance is utilized for payment of CGST
- (c) ITC of CGST is first utilized for payment of CGST and the balance is utilized for payment of IGST
- (d) None of the Above

Ans. (c) ITC of CGST is first utilized for payment of CGST and the balance is utilized for payment of IGST

Statutory provision

50. Interest on delayed payment of tax

- (1) *Every person who is liable to pay tax in accordance with the provisions of this Act or the rules made thereunder, but fails to pay the tax or any part thereof to the Government within the period prescribed, shall, for the period for which the tax or any part thereof remains unpaid, pay, on his own, interest at such rate, not exceeding eighteen percent, as may be notified by the Government, on the recommendation of the Council.*
- (2) *The interest under sub-section (1) shall be calculated, in such manner as may be prescribed, from the day succeeding the day on which tax was due to be paid.*
- (3) *A taxable person who makes an undue or excess claim of input tax credit under sub-section (10) of section 42 or undue or excess reduction in output tax liability under sub-section (10) of section 43, shall pay interest on such undue or excess claim or on such undue or excess reduction, as the case may be, at such rate not exceeding twenty four percent, as may be notified by the Government on the recommendations of the Council.*

50.1 Introduction

This section lays down the provisions for payment of interest under the Act for delayed payment of tax.

50.2 Analysis

Section 50 of CGST Act makes it mandatory for a tax payer to pay interest on belated payment of tax i.e. when he fails to pay tax (or part of tax) to the Government's account within the due date.

Interest - When Payable

Interest under section 50 of CGST Act is payable in the following three circumstances

1. Sub-section (1): Delay in payment of tax, in full or in part
2. Sub-section (3): Undue or excess claim of input tax credit under section 42 (10)
3. Sub-section (3): Undue or excess reduction in output tax liability under section 43 (10)

It may also be recalled that –

- a) section 42 (10) CGST/SGST Act deals with contravention of provisions for matching of claims for input tax credit by a recipient and
- b) section 43 (10) CGST/SGST Act deals with contravention of provisions for matching of claims for reduction in output tax liability by a supplier

Rate of Interest

The actual rate of interest notified by the Government vide *notification no. 13/ 2017 Central tax Dated 28 June 2017* are as follows:

S. No.	CGST Act, 2017 Sections	Section description	Rate of interest
1.	50(1)	Failure to pay tax or part thereof to the Government within period prescribed	18%
2.	50(3)	For undue or excess claim of ITC or reduction of output tax liability	24%
3.	54(12)	Interest on withheld refund	6%
4.	56	Interest on delayed refunds	6%
5.	Proviso to 56	Interest on refund arising from order passed by Adjudicating Authority/ Appellate Authority/ Tribunal/ Court and not refunded within 60 days	9%

Manner of Computation of Interest

1. The manner of computation of period of interest under sub-section (1) or sub-section (3) has not been addressed in the Rules. Generally, the period of interest shall be from the date following the due date of payment to the actual date of payment of tax.

2. Where the **tax admitted** by the taxable person in his return has not been deposited along with the returns, interest is leviable immediately on the payment of the admitted tax.

It may be noted that Section 39 (7) lays down the last date for remittance as the last date on which the taxable person is required to furnish such return. Also, Section 2 (117) lays down that a return shall be considered valid only if the tax payable as per the return is paid in full.

3. Sections 73 (5) & 73 (6) provide that if the tax along with interest has been paid, the adjudicating authority shall not serve any show cause notice.
4. Section 73 (8) provides that where a person has been served with show cause notice but has made the payment of tax and penal interest under Section 50 within thirty days of issue of notice, no penalty is payable and all proceedings in respect of that tax amount are deemed to be concluded.
5. Thus, from a conjoint reading of Sections 50 (1), 73 (5), 73 (6) and 73 (8) of the Act, it is evident that where a person makes a voluntary payment of interest along with belated payment of tax whether admitted and on his own or within thirty days from the date of issue of show cause notice, then the proceedings are deemed to be concluded and no penalty is leviable.

Other Important Points to Note

1. The term 'tax' here means the tax payable under the Act or Rules made thereunder.
2. The phrase 'on his own' used in sub-section (1) indicates that such payment of interest should be made voluntarily (i.e.) even without a demand.
3. There are no specific provisions for payment of interest on the interest amount due.
4. The interest payable under this section shall be debited to the Electronic Tax Liability Register as per sub Rule 1 of Rule 85
5. Such liability for interest can be settled by adjustment with balance in Electronic Cash Ledger but not with balance in Electronic Credit Ledger

50.3 Comparative Review

1. This provision is similar to that in service tax and excise laws. In the case of VAT laws, if the payment of tax and interest is after issuance of show cause notice, it is at the discretion of the adjudicating authority to drop the penalty. Some State VAT laws have mandatory penalty provisions.
2. The view laid down by the Hon'ble Supreme Court in [Prathibha Processors v. UOI (1996) 11 SCC 101] that interest is automatic as it is compensatory in nature and not penal in character, holds good even under the subject Act.

50.4 FAQ

Q1. When is a person liable to pay interest?

Ans. When a person who is liable to pay tax under the provisions of the Act or the respective rules made thereunder, fails to pay the whole/ part of the tax due, to the account of the Government, within the prescribed time, he shall be liable to pay interest.

Q2. How is the interest computed?

Ans. Interest is computed for the period for which the tax remains unpaid at the notified rate not exceeding 18%, i.e., from the date following the day on which tax becomes due to be paid, till the date of payment of tax.

Q3. Is penalty still payable if a person pays the tax and interest as per show cause notice?

Ans. Where the person has made payment of tax and interest under Section 50 within thirty days of issue of the show cause notice, no penalty is payable and all proceedings in respect of that tax amount is deemed to be concluded.

Q4. Is interest leviable on excess claim of Input Tax Credit or undue claim of Input Tax Credit?

Ans. Yes, interest is also leviable where there is undue or excess claim of ITC under Section 42 (10) of CGST Act under matching of inward supply but interest is not payable for only availment without utilizing input tax Credit in case of block Credit as per section 17(5).

Q5. Is interest leviable on excess reduction of reduction of Output tax liability?

Ans. Yes, interest is also leviable where there is undue or excess reduction in output tax liability under section 43 (10) of CGST Act.

Q6. Is a show cause notice or demand required to determine the liability to pay interest?

Ans. No, there is no requirement of demand from the department to determine the interest liability. It is the responsibility of the person liable to pay tax to compute and pay the interest 'on his own'.

50.5 MCQ

Q1. Interest is payable on: -

- (a) Belated payment of tax
- (b) Undue/excess claim of Input Tax Credit in case matching
- (c) Undue/Excess reduction of output tax liability
- (d) All of the above

Ans. (d) All of the above

Q2. Interest is calculated: -

- (a) From the date following the day on which tax becomes due to be paid
- (b) Last day such tax was due to be paid
- (c) No periods specified
- (d) None of the above

Ans. (a) From the date following the day on which tax becomes due to be paid

Statutory provision

51 Tax Deducted at Source

(1) *Notwithstanding anything to the contrary contained in this Act, the Government may mandate, —*

- (a) *a department or establishment of the Central Government or State Government; or*
- (b) *local authority; or*
- (c) *Governmental agencies; or*
- (d) *such persons or category of persons as may be notified by the Government on the recommendations of the Council,*

(hereafter in this section referred to as “the deductor”), to deduct tax at the rate of one per cent from the payment made or credited to the supplier (hereafter in this section referred to as “the deductee”) of taxable goods or services or both, where the total value of such supply, under a contract, exceeds two lakh and fifty thousand rupees:

Provided that no deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient.

Explanation.—For the purpose of deduction of tax specified above, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

- (2) *The amount deducted as tax under this section shall be paid to the Government by the deductor within ten days after the end of the month in which such deduction is made, in such manner as may be prescribed.*
- (3) *The deductor shall furnish to the deductee a certificate mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the Government and such other particulars in such manner as may be prescribed.*
- (4) *If any deductor fails to furnish to the deductee the certificate, after deducting the tax at source, within five days of crediting the amount so deducted to the Government, the deductor shall pay, by way of a late fee, a sum of one hundred rupees per day from the day after the expiry of such five-day period until the failure is rectified, subject to a*

maximum amount of five thousand rupees.

- (5) *The deductee shall claim credit, in his electronic cash ledger, of the tax deducted and reflected in the return of the deductor furnished under sub-section (3) of section 39, in such manner as may be prescribed.*
- (6) *If any deductor fails to pay to the Government the amount deducted as tax under sub-section (1), he shall pay interest in accordance with the provisions of sub-section (1) of section 50, in addition to the amount of tax deducted.*
- (7) *The determination of the amount in default under this section shall be made in the manner specified in section 73 or section 74.*
- (8) *The refund to the deductor or the deductee arising on account of excess or erroneous deduction shall be dealt with in accordance with the provisions of section 54:
Provided that no refund to the deductor shall be granted, if the amount deducted has been credited to the electronic cash ledger of the deductee.*

51.1 Introduction

With an objective of ensuring smooth rollout of GST, the provisions of Tax Deduction at Source (Section 51 of the CGST / SGST Act 2017) and Tax Collection at Source (Section 52 of the CGST/SGST Act, 2017) has been postponed. Thereby, Persons who will be liable to deduct or collect tax at source will be required to take registration, but the liability to deduct or collect tax will arise from the date the respective sections are brought in force. It has further been clarified that persons supplying goods or services through electronic commerce operator liable to collect tax at source would not be required to obtain registration immediately, unless they are so liable under Section 22 or any other category specified under Section 24 of the CGST Act, 2017.

Notification No. 33/2017 – Central Tax has appointed 18th September 2017 as the date from which Section 51(1) shall come to force. The Notification also notifies the following persons under Section 51(1)(d) as liable for TDS;

- (a) an authority or a board or any other body, -
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by any Government,
 - with fifty-one percent or more participation by way of equity or control, to carry out any function;
- (b) society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860 (21 of 1860);
- (c) public sector undertakings;

The Notification also states that TDS provisions shall come into effect **from a date to be notified** subsequently, on the recommendations of the Council, by the Central Government.

Press Release issued by the Government highlighting decisions of 22nd GST Council Meeting, reads that after assessing the readiness of the trade, industry and Government departments, it has been decided that registration and operationalization of TDS/TCS provisions shall be postponed till 31.03.2018.

This section provides for deduction of tax at source in certain circumstances. The Section specifically lists out the deductors who are mandated by the Central Government to deduct tax at source, the rate of tax deduction and the procedure for remittance of the tax deducted. The amount of tax deducted is reflected in the Electronic Cash Ledger of the deductee.

51.2 Analysis

CGST Act vide Section 2 (53) defines the term Government to *mean* the Central Government. Section 51 (1), *ibid* refers to TDS related mandating by 'Government' (Central/State Government). Such mandating shall be for the following persons -

Department or Establishment of Central Government or State Government
Local Authority.
Government Agencies.
Persons or category of persons notified by the Central Government on recommendation of the Council. (Notified vide Notification No. 33/2017- Central Tax)

1. The above 'persons' are referred to as deductors.
2. The deductors have to deduct tax at the rate of 1% from the payment made or credited to the supplier of taxable goods and / or services, notified by the Central Government or State Government on the recommendations of the Council. Deduction is required where the total value of supply under 'a contract' exceeds INR 2.5 lakhs. Value of supply shall exclude the tax indicated in the invoice. No deduction shall be made if the location of the supplier and the place of supply is in a State or Union territory which is different from the State or as the case may be, Union territory of registration of the recipient
3. The amount deducted shall be paid to the Central Government within ten days after the end of the month in which such deduction is made.
Sub Rule 9 of rule 87 of the CGST rules provides) that payment shall be made by debiting the electronic cash ledger and crediting the electronic tax liability register.
4. The deductor shall furnish a TDS certificate in Form GSTR-7A to the deductee mentioning therein the following:
 - (a) contract value
 - (b) rate of deduction
 - (c) Amount deducted

- (d) Amount paid to the appropriate Government
 - (e) Any other particulars as may be prescribed
5. This certificate has to be furnished within five days of remittance as mentioned above.
 6. Certificate not furnished by the deductor: - If the deductor does not furnish the certificate of deduction-cum- remittance within five days of the remittance, the deductor has to pay a late fee of INR 100 per day from the 6th day until the day he furnishes the certificate. The maximum late fee is prescribed as INR 5000.
 7. Non-remittance by the deductor: If the deductor does not remit the amount deducted as TDS, he is liable to pay penal interest under Section 50 in addition to the amount of tax deducted.
 8. The amount of tax deducted reflected in Electronic Cash Ledger of deductee in the return in Form GSTR-7 filed by deductor shall be claimed as credit.

This provision enables the Government to cross-check whether the amount deducted by the deductor is correct and that there is no mis-match between the amount reflected in the Electronic Cash Ledger as reflected in the return filed by deductor. One may draw easy analogy from existing practice in income tax related E-TDS returns filed by deductor and 26AS statement available for viewing the TDS remitted in respect of his transactions by deductee.
 9. Refund on excess collection: The deductor or the deductee can claim refund of excess deduction or erroneous deduction. The provisions of section 54 relating to refunds would apply in such cases. However, if the amount deducted has been credited to the Electronic Cash Ledger of the deductee, the deductor cannot claim refund (only deductee can claim).
 10. As mentioned above, UTGST Act 2017, subject to its own provisions, adopts the provisions in CGST Act in respect of Tax Deduction at Source *mutatis mutandis* (Ref: Sec 21 of UTGST Act).

51.3 Comparative review

Provisions for deduction of tax at source exist in the VAT laws. There were no TDS provisions in central excise or service tax laws, though there was a concept of reverse charge. Under most State VAT laws, TDS provisions are applicable on payments made to works contractors. Some States had provisions for TDS on 'transfer of right to use goods'

Comparative table between State VAT Law and CGST Act:

S.No.	State VAT Law	CGST Act
1.	Applicable only to works contractors.	Applicable to recipients notified by the Central Government on recommendations of GST council.

2.	Two different standard rates	One standard rate viz. 1%
3.	Deductor - every works contractee or awardee of contract	(a) A department or establishment of the Central or State Government, or (b) Local authority, or (c) Governmental agencies, or (d) Such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council (Refer Notification 33/2017 – Central Tax and para 51.1)
4.	Two certificates have to be furnished by the Deductor. 1. Certificate of deduction 2. Certificate of remittance.	One single certificate of deduction – cum - remittance to be furnished by the Deductor within five days of remittance.
5.	If certificate of deduction alone is furnished by the Deductor, burden on the works contractor to prove deduction of tax at source.	No such burden cast on the Deductee. More onus is on the Deductor.
6.	Refund provisions and Credit provisions not clear.	Refund provisions clear. Credit can also be claimed from the amount reflected in the Electronic Cash Ledger.
7.	TDS would apply on payments towards transfer of property in goods in the State. Inter-state supplies are generally not subject to TDS.	TDS would apply on the payment made or credited to the supplier. No TDS on interstate supplies.

51.4 FAQ

Q1. Who are the 'persons' who can deduct tax at source under Section 51 of CGST Act?

Ans. The following persons are to deduct tax at source as per the provisions of Section 51 of the CGST Act:

- (a) A department or establishment of the Central or State Government,
- (b) Local authority,
- (c) Governmental agencies,
- (d) Such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council.

Q.2 Under what circumstances can the Deductors mentioned in Section 51 deduct tax at source?

Ans. The Deductors u/s 51 are required to deduct tax from the payment made or credited to the supplier of taxable goods and/ or services, notified by the Central Government on the recommendations of the Council, where the total value of such supply, under a contract, exceeds rupees 2.50 lakh.

Q3. What is the rate of tax deduction at source?

Ans. The prescribed rate of tax to be deducted at source is 1% from the payment made or credited to the supplier of taxable goods and / or services.

Q4. What is the time limit for remittance of the deducted tax by the deductor into the credit of the Government?

Ans. The amount deducted shall be paid to the credit of the Government within 10 days from the end of the month in which such deduction is made.

Q5. What is the nature of certificate to be furnished by the deductor to the deductee and what is the time limit?

Ans. The Deductor shall furnish a certificate in in Form GSTR-7A mentioning therein the contract value, rate of deduction, amount deducted, amount paid to the appropriate Government and such particulars as may be prescribed in this behalf, to the deductee. This certificate is to be furnished within five days of crediting the amount so deducted to the appropriate Government, failing which, the deductor would be liable to pay late fee being rupees one hundred per day during which the failure continues but subject to Maximum of rupees 5000.

Q6. Can the deductee claim credit of the remittance of TDS amount by the Deductor?

Ans. Yes, the deductee can claim credit of the tax deducted, in his electronic cash ledger. This deduction would also be reflected in the return of the deductor filed under sub-section (3) of Section 39, in the manner prescribed.

Q7. Can tax, once deducted, be claimed as a refund? Who can claim refund?

Ans. Yes, it is possible to claim refund arising on account of excess or erroneous deduction, and this would be governed by the provisions of Section 54.

Such refund may be claimed either by the deductor or the deductee, but not both. Further, no refund would be available to the deductor once the amount deducted has been credited to the electronic cash ledger of the deductee.

51.5 MCQ

Q1. The deduction of tax by the Deductor under Section 51 of CGST Act is at the rate of:

(a) 2%

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

Ans. (c) 1%

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

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

Ans. (b) 10 days

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

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

Ans. (c) 5 days

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

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

Ans. (c) Electronic Cash Ledger

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

- (a) Deductor
- (b) Deductee or Deductor
- (c) Both Deductor and Deductee

(d) None of the above

Ans. (b) Deductee or Deductor

Q6. Tax deduction shall be made if -

(a) A contract is for an amount exceeds ₹ 25 lakh

(b) A supplier supplies goods or services or both exceeding ₹ 2.5 lakh in a year

(c) A recipient receives goods or services or both exceeding ₹ 2.5 lakh in a year from various contractors

(d) None of the above

Ans. (b) A supplier supplies goods or services or both exceeding ₹ 2.5 lakh in a year

Statutory provision

52. Tax Collected at Source

(1) Notwithstanding anything to the contrary contained in this Act, every electronic commerce operator (hereafter in this section referred to as the "operator"), not being an agent, shall collect an amount calculated at such rate not exceeding one per cent., as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

Explanation. —For the purposes of this sub-section, the expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.

(2) The power to collect the amount specified in sub-section (1) shall be without prejudice to any other mode of recovery from the operator.

(3) The amount collected under sub-section (1) shall be paid to the Government by the operator within ten days after the end of the month in which such collection is made, in such manner as may be prescribed.

(4) Every operator who collects the amount specified in sub-section (1) shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under sub-section (1) during a month, in such form and manner as may be prescribed, within ten days after the end of such month.

(5) Every operator who collects the amount specified in sub-section (1) shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected under the said sub-section during the

financial year, in such form and manner as may be prescribed, before the thirty first day of December following the end of such financial year.

- (6) *If any operator after furnishing a statement under sub-section (4) discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest, as specified in sub-section (1) of section 50:*

Provided that no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.

- (7) *The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished under sub-section (4), in such manner as may be prescribed.*
- (8) *The details of supplies furnished by every operator under sub-section (4) shall be matched with the corresponding details of outward supplies furnished by the concerned supplier registered under this Act in such manner and within such time as may be prescribed.*
- (9) *Where the details of outward supplies furnished by the operator under sub-section (4) do not match with the corresponding details furnished by the supplier under section 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.*
- (10) *The amount in respect of which any discrepancy is communicated under sub-section (9) and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.*
- (11) *The concerned supplier, in whose output tax liability any amount has been added under sub-section (10), shall pay the tax payable in respect of such supply along with interest, at the rate specified under sub-section (1) of section 50 on the amount so added from the date such tax was due till the date of its payment.*
- (12) *Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—*
- (a) *supplies of goods or services or both effected through such operator during any period; or*

(b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

(13) Every operator on whom a notice has been served under sub-section (12) shall furnish the required information within fifteen working days of the date of service of such notice.

(14) Any person who fails to furnish the information required by the notice served under sub-section (12) shall, without prejudice to any action that may be taken under section 122, be liable to a penalty which may extend to twenty-five thousand rupees.

Explanation. —For the purposes of this section, the expression “concerned supplier” shall mean the supplier of goods or services or both making supplies through the operator.

Note: Press Release issued by the Government highlighting decisions of 22nd GST Council Meeting, reads that after assessing the readiness of the trade, industry and Government departments, it has been decided that registration and operationalization of TDS/TCS provisions shall be postponed till 31.03.2018.

52.1 Introduction

This Section provides for collection of tax at source in certain circumstances. The Section specifically lists out the tax collecting persons who are mandated by the Central Government to collect tax at source, the rate of tax collection and the procedure for remittance of the tax collected. The amount of tax collected is reflected in the Electronic Cash Ledger of the person from who tax collected.

Provisions which are common under CGST, UTGST and SGST Act have been analyzed herein.

52.2 Analysis

(i) Every E-Commerce Operator shall collect TCS at a rate not exceeding 1% on the net value of transaction in which he collects consideration of the supply. Please note that if there is returning of supplies to Suppliers, then the same shall be reduced from the gross value; TCS shall be worked on such net figure only (after such reduction). It is pertinent to note the following definitions here –

Section 2 (44), –

“electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network;

Section 2 (45), –

“electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce

(ii) The amount collected so shall be paid to the Central/State Government respectively within ten days after the end of the month in which such collection is made.

- (iii) In case the E-commerce operator fails to collect to tax under sub-section 1 of section 52 or collects an amount which is less than the amount required to be collected under said sub-section or where he fails to pay to the government the amount collected as tax under sub-section 3 of section 52, he shall be liable to penalty under clause (vi) of sub-section 1 of section 122 of the Act which may extend to twenty five thousand along with penalty under of i.e. ₹.10,000 or the amount of TCS involved, whichever is higher.
- (iv) E-Commerce operator shall furnish details of outward supplies of goods or services or both made through it, including the supplies returned through it and the amount collected by it in sub-section 1, in Form GSTR-8 within the 10 days after end of the month in which supplies are made.
- (v) The details of tax collected at source furnished by an E-commerce operator under section 52 in Form GSTR-8 shall be made available to the supplier in Part D of FORM GSTR - 2A electronically through the Common Portal and such taxable person may include the same in FORM GSTR-2."
- (vi) Section 52 (5) of CGST Act requires filing of Annual Statement by E-Commerce operator on or before 31st December following the year end (31st March of relevant year).
- (vii) The amount of tax collected is reflected in Electronic Cash Ledger of supplier since related monthly return is filed by E-Commerce Operator.
- (viii) Any mismatch between the data submitted by the E-Commerce operator in his monthly returns and that of suppliers making supplies through him shall cause due 'mismatch enquiry' from the proper officer; and either party may rectify the erroneous data. If rectification is not carried out by supplier his offence get confirmed. Short remittance, if any, identified thus will have to be paid by erring supplier (who under reported the turnover) with interest calculated as per Section 50.
- (ix) Any authority, in the rank of Deputy Commissioner or above it can issue a notice – during, or before a proceeding under this Act - to E Commerce Operator seeking information on –
 - (a) supplies of goods or services or both effected through such operator during any period; or
 - (b) stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.

This shall be a notice which need to be responded within 15 days from the date of receipt by the E Commerce Operator. Failure to submit the required details will cause penalty under Section 52 (14) of the Act which may extend to ₹. 25,000.

- (x) UTGST Act 2017, subject to its own provisions, adopts the provisions in CGST Act in respect of Tax Collection at Source *mutatis mutandis* (Ref: Sec 21 of UTGST Act).

52.3 FAQ

- Q1. Who are the 'persons' liable to make collection of tax under Section 52 of CGST Act?
- Ans. E Commerce operator (as defined in Section 2 (45)) is the person to collect the tax on net value of taxable supplies by him/her.
- Q2. What is a Net Value of Taxable Supplies for the purpose of TCS u/s 52 of the Act?
- Ans. The expression "net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified under sub-section (5) of section 9, made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the supplier during the said month.
- Q3. Which format of monthly return has to be filed by E Commerce Operator?
- Ans. E Commerce operator shall use form GSTR 8 to make statement of outward supplies made through him in that particular month.
- Q4. Whether an E Commerce operator file any annual return? What is the format thereof?
- Ans. Section 52 (5) of CGST Act requires filing of Annual return by E Commerce operator on or before 31st December following the year end (31st March of relevant year).
- Q5. What is the penalty if an E Commerce operator failed to respond as required in a notice issued by Deputy Commissioner or an officer of higher rank?
- Ans. Failure to submit the required details will cause penalty under Section 52 (14) of the Act upto ₹. 25,000. *In addition to this*, penalty under section 122 of the Act 'shall' also be there (₹. 10,000 or the amount of TCS involved, whichever is higher).

52.4 MCQ

- Q1. Tax Collection at Source under Section 52 of CGST Law shall be at the rate of:
- (a) 1%
 - (b) 2%
 - (c) 0.5%
 - (d) A percentage not exceeding 1%.
- Ans. (d) A percentage not exceeding 1%
- Q2. The amount of tax collected by the E Commerce Operator has to be paid to the credit of the appropriate Government within days after the end of the month in which such TCS is made:

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

Ans. (b) 10 days

Q3. E Commerce operators should file:

- (a) Monthly returns only
- (b) Annual return only
- (c) Quarterly return only
- (d) Monthly Returns as well as Annual Return

Ans. (d) Monthly Returns as well as Annual Return

Q4. A notice to E Commerce operators seeking information can be issued by:

- (a) Superintendent
- (b) Inspector
- (c) Assistant Commissioner
- (d) Deputy Commissioner

Ans. (d) Deputy Commissioner

Q5. E Commerce operator received notice which sought information as per Section 52 of the CGST Act but he failed to duly respond to the same. The penalty -

- (a) Shall not be there
- (b) Penalty U/s 52 shall be there
- (c) Penalty U/s 122 may be there
- (d) Both the penalty U/s 52 as well as 122 shall be there

Ans. (d) Both the penalty U/s 52 as well as 122 shall be there

Statutory provision

53. Transfer of input tax credit

53. On utilisation of input tax credit availed under this Act for payment of tax dues under the Integrated Goods and Services Tax Act in accordance with the provisions of sub-section (5) of section 49, as reflected in the valid return furnished under sub-section (1) of section 39, the amount collected as central tax shall stand reduced by an amount equal to such credit so

utilised and the Central Government shall transfer an amount equal to the amount so reduced from the central tax account to the integrated tax account in such manner and within such time as may be prescribed

53.1 Introduction

This Section provides simple but important modus operandi in respect of post CGST/SGST/UTGST utilisation towards IGST liability.

53.2 Analysis

U/s 49 (5) (b) (c) and (d) of the Act, SGST / CGST / UTGST credits can be utilised by a tax payer on priority basis to respective SGST / CGST / UTGST dues first. Then, in case of CGST, balance, if any, can be used pay towards IGST. If used so, there shall be reduction in central tax caused by Central Government and equal credit shall be ensured to IGST in the prescribed manner.

Such treatment shall be ensured by the Central Government for UTGST and SGST also in respective cases.

For better clarity, it may please be noted that equivalent provision is there vide Section 18 of Integrated Goods and Services Tax Act 2017.

53.3 FAQ

Q1. If CGST is utilised to pay towards dues of IGST how the Central Government shall ensure due credit to IGST?

Ans. There shall be reduction in CGST on such utilisation; the Central Government shall transfer equivalent amount to the credit of IGST account.

53.4 MCQ

Q1. Section 53 of CGST/SGST Act, 2017 provides for transfer of amount (equivalent to CGST credit utilised) by Central Government to:

- (a) CGST A/c
- (b) SGST A/c
- (c) UTGST A/c
- (d) IGST A/c

Ans. (d) IGST A/c

Chapter–XI

Refunds

- 54. Refund of tax
- 55. Refund in certain cases
- 56. Interest on delayed refunds
- 57. Consumer Welfare Fund
- 58. Utilisation of Fund

Statutory provision

54. Refund of tax

- (1) Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of two years from relevant date in such form and manner as may be prescribed:

Provided that a registered taxable person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions as per sub-section (6) of section 49 may claim such refund in return furnished under section 39 in such manner as may be prescribed.

- (2) A specialized agency of United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons as notified under section 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund, in such form and manner prescribed, before the expiry of six months from the last day of the quarter in which such supply was received

- (3) Subject to the provisions of sub-section (10), a registered person may claim refund of any unutilized input tax credit at the end of any tax period:

Provided that no refund of unutilized input tax credit shall be allowed in cases other than-

(i) zero rated supplies made without payment of tax

- (ii) where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies, other than nil rated or fully exempt supplies, except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council:

Provided Further that no refund of unutilized input tax credit shall be allowed in cases where the goods exported out of India are subjected to export duty.

Provided also that no refund of input tax credit shall be allowed if the supplier of goods or services or both avails of drawback in respect of central tax or claims refund of the integrated tax paid on such supplies .

- (4) *The application shall be accompanied by—*
- (a) *such documentary evidence as may be prescribed to establish that a refund is due to the applicant; and*
 - (b) *such documentary or other evidence (including the documents referred to in section 33) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person:*

Provided that where the amount claimed as refund is less than two lakh rupees, it shall not be necessary for the applicant to furnish any documentary and other evidences but, he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

- (5) *If, on receipt of any such application, the proper officer is satisfied that the whole or part of the amount claimed as refund is refundable, he may make an order accordingly and the amount so determined shall be credited to the Fund referred to in section 57.*
- (6) *Notwithstanding anything contained in sub-section (5), the proper officer may, in the case of any claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, refund on a provisional basis ninety percent of the total amount so claimed, excluding the amount of input tax credit provisionally accepted, in such manner and subject to such conditions, limitations and safeguards as may be prescribed and thereafter make an order under sub-section (5) for final settlement of the refund claim after due verification of documents furnished by the applicant.*
- (7) *The proper officer shall issue the order under sub-section (5) within sixty days from the date of receipt of application complete in all respects.*
- (8) *Notwithstanding anything contained in sub-section (5), the refundable amount shall, instead of being credited to the Fund, be paid to the applicant, if such amount is relatable to—*
- (a) *refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;*
 - (b) *refund of unutilized input tax credit under sub-section (3);*
 - (c) *refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;*

- (d) *refund of tax in pursuance of section 77;*
 - (e) *the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or*
 - (f) *the tax or interest borne by such other class of applicants as the Government may, on the recommendation of the Council, by notification, specify.*
- (9) *Notwithstanding anything to the contrary contained in any judgment, decree, order or direction of the Appellate Tribunal or any Court or in any other provisions of this Act or the rules made thereunder or in any other law for the time being in force, no refund shall be made except in accordance with the provisions of sub-section (8).*
- (10) *Where any refund is due under the said sub-section (3) to a registered person who has defaulted in furnishing any return or who is required to pay any tax, interest or penalty, which has not been stayed by any Court, Tribunal or Appellate Authority by the specified date, the proper officer may—*
- (a) *withhold payment of refund due until the said person has furnished the return or paid the tax, interest or penalty, as the case may be;*
 - (b) *deduct from the refund due, any tax, interest penalty, fee or any other amount which the taxable person is liable to pay but which remains unpaid under this Act or under the erstwhile law.*
- Explanation- For the purposes of this sub-section the expression “specified date” shall mean the last date for filing an appeal under this Act.*
- (11) *Where an order giving rise to a refund is the subject matter of an appeal or further proceedings or where any other proceedings under this Act is pending and the Commissioner is of the opinion that grant of such refund is likely to adversely affect the revenue in the said appeal or other proceeding on account of malfeasance or fraud committed, he may, after giving the taxable person an opportunity of being heard, withhold the refund till such time as he may determine.*
- (12) *Where a refund is withheld under sub-section (11), the taxable person shall notwithstanding anything contained in section 56, be entitled to interest at such rate not exceeding six per cent, as may be notified on the recommendations of the Council, if as a result of the appeal or further proceedings he becomes entitled to refund.*
- (13) *Notwithstanding anything to the contrary contained in this section, the amount of advance tax deposited by a casual taxable person or a non-resident taxable person under sub-section (2) of section 27 shall not be refunded unless such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39.*
- (14) *Notwithstanding anything contained in this section, no refund under sub-section (5) or sub-section (6) shall be paid to an applicant if the amount is less than one thousand rupees.*

Explanation. — For the purposes of this section -

1. *“refund” includes refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under sub-section (3).*
2. *“relevant date” means –*
 - (a) *in the case of goods exported out of India where a refund of tax paid is available in respect of the goods themselves or, as the case may be, the inputs or input services used in such goods, -*
 - (i) *if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or*
 - (ii) *if the goods are exported by land, the date on which such goods pass the frontier, or*
 - (iii) *if the goods are exported by post, the date of dispatch of goods by Post Office concerned to a place outside India;*
 - (b) *in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;*
 - (c) *in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of -*
 - (i) *receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or*
 - (ii) *issue of invoice, where payment for the service had been received in advance prior to the date of issue of the invoice;*
 - (d) *in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of Appellate Authority, Appellate Tribunal or any Court, the date of communication of such judgment, decree, order or direction;*
 - (e) *in the case of refund of unutilized input tax credit under sub-section (3), the end of the financial year in which such claim for refund arises;*
 - (f) *in the case where tax is paid provisionally under this Act or the rules made thereunder, the date of adjustment of tax after the final assessment thereof.*
 - (g) *in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and*
 - (h) *in any other case, the date of payment of tax.*

54.1 Introduction

This section deals with the legal and procedural aspects of claiming refund by any person in respect of -

- any tax (which was excess paid);
- interest paid on such tax; or
- any other amount paid (which was not required to be paid);
- input tax relating to goods and/or services that are exported out of India;
- tax on inputs or input services “used” in the goods and/or services exported out of India including zero rated supply;
- tax on the supply of goods regarded as deemed exports;
- unutilized input tax credit at the end of tax period in cases of:
 - exports, other than when
 - goods are subjected to export duty.
 - the supplier avails drawback of central tax or claims refund of integrated tax paid on such supplies.
 - input tax rate being higher than output tax rate, other than NIL rated or fully exempted.

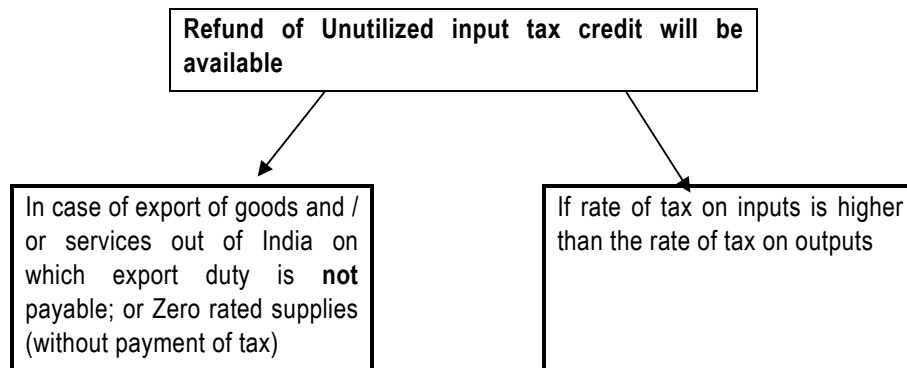
This section provides for conditions and procedures for claiming refund without specifying all the circumstances in which the refund will be eligible to an applicant.

Thus, it can be inferred that refund is possible only when tax, interest or any other amounts are physically paid in cash and in respect of exports / deemed exports in the form of input tax.

54.2 Analysis

- (i) This provision states that the application for refund shall be made before the expiry of two years from the relevant date;
- (ii) The time limit of two years will not apply where tax / interest / or any other amount has been paid under protest or otherwise.
- (iii) In case of taxable person claiming refund of any balance in the electronic cash ledger, it can be claimed in the return furnished under section 39.
- (iv) Following persons are entitled to a refund of tax paid by it on inward supplies of goods or services or both –
 - (a) A specialized agency of the United Nations Organization or
 - (b) Any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947,
 - (c) Consulate or Embassy of foreign countries or

- (d) any other person or class of persons as notified under section 55.
- (v) Such agencies may make an application for refund, in such specified form and manner as may be prescribed within six months from the end of the quarter in which such supply was received.
- (vi) Refund of the unutilized input tax credit can be claimed at the end of any tax period in the following cases:



However, refund is also not eligible in the following cases:

- (a) If the goods exported out of India are subject to export duty; or
If the goods supplied are exempted or nil rated;
- (b) If supplier claims refund of output tax paid under IGST Act.
- (c) If the supplier avails duty drawback or refund of IGST on such supplies.

In a business scenario, such a situation will not arise as once tax is paid on outward supply there will not be any balance left relating to such transaction in respect of which refund is possible.

- (vii) If the amount of refund claim is less than rupees 2 lakh, a self-declaration based on the documentary and other evidences available with the claimant, certifying that he has not passed on the incidence of such tax and interest would suffice to claim refund.
- (viii) The refund relating to an application if found in order, will be sanctioned within sixty days from the date of receipt of application.
- (ix) The refund will be sanctioned to the claimant, in the following cases –
 - refund of tax paid on zero-rated supply of goods or services or both
 - refund of tax on inputs or input services used in making zero-rated supply
 - refund of unutilized input tax credit as indicated supra;
 - the tax / interest / other amounts paid by the applicant, if he had not passed on the incidence of tax to any other person; or

- refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued or where a refund voucher has been issued
- refund of tax in pursuance of section 77 which means a registered person who has paid CGST/SGST/UTGST on a transaction considered by him as INTRA-STATE supply but held as INTER-STATE supply;

the tax or interest borne by notified class of applicants (done by Central/State Government on the recommendation of the council);

- (x) In all cases other than the one listed above, where the application is found to be in order, the refund amount, shall be credited to Consumer Welfare Fund within 60 days of receipt of the application. (refer section 57 for Consumer Welfare Fund)
- (xi) In case of refund claimed by persons other than notified registered person where refund is on account of export of goods and/or services, the proper officer may refund ninety percent of the total amount claimed (excluding input tax credit not yet finalized). This refund of 90% will be on a provisional basis, and will be subject to conditions, limitations and safeguards. Remaining ten percent may be refunded after due verification of documents furnished by the applicant.
- (xii) In case of claim of refund of accumulated input tax credit, the refund due will be either withheld or deducted in cases where –
 - A person defaults in furnishing any return;
 - A person is required to pay any tax, interest or penalty ordered, which is not stayed by Court or Appellate Authority within the last date for filing an appeal under this act.
- (xiii) The deduction from refund due may be tax, interest, penalty, fee or any other amount which remains unpaid under GST Act or erstwhile law. In cases where the refund is a consequence of an order and such order is in –
 - appeal; or
 - further proceeding; or
 - any other proceeding under this Act, and

If the Commissioner is of the opinion that grant of refund would affect the revenue adversely in the appeal or proceeding on account of malfeasance or fraud committed, the commissioner may withhold the refund till such time as it may be determined. This can be done only after affording the taxpayer an opportunity of being heard.

The Government vide Notification No. 13/2017- Central Tax dated 28-06-2017 has prescribed, on the recommendation of the Council, 6% as the rate of interest for a refund withheld under sub-section (11) of section 54.

Note: As per Rule 91, provisional refund shall be granted subject to the condition that the person claiming refund has, during any period of five years immediately preceding

the tax period to which the claim for refund relates, not been prosecuted for any offence under the Act or under an erstwhile law where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

The proper officer, after scrutiny of the claim and the evidence submitted in support thereof and on being prima facie satisfied that the amount claimed as refund is due to the applicant then he shall make an order in FORM GST RFD-04, sanctioning the amount of refund due to the said applicant on a provisional basis within a period not exceeding seven days from the date of the acknowledgement under sub-rule (1) or sub-rule (2) of rule 90 (refer para 54.8). Also, the proper officer shall issue a payment advice in FORM GST RFD-05 for the amount sanctioned and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration particulars and as specified in the application for refund.

- (xiv) The amount of advance tax deposited by a casual taxable person or a non-resident taxable person at the time of taking registration would be refunded only after furnishing all the returns required under section 39, of the entire period for which the certificate of registration granted to him had remained in force.
- (xv) No refund shall be granted or paid to an applicant, if the amount is less than rupees one thousand.

Relevant date: The relevant date is crucial to determine the time within which the refund claim has to be filed. If the refund claim is made after the relevant date, the refund claim would be rejected and there is no provision in the Act to condone the delay in filing refund claim and accept delayed refund claims.

The relevant date is identified as follows:

- Refund of tax paid on goods exported or tax paid on inputs/input service
 - If exported by sea or air ->date when the ship or the aircraft leaves India; or
 - If exported by land ->date when such goods pass the Customs frontier; or
 - If exported by post ->date of dispatch of goods by concerned Post Office to a place outside India.
- Deemed exports supply of goods->the date on which the return relating to such deemed exports is furnished.
- Refund of tax paid on such services exported itself or tax paid on inputs/input service
 - If supply of service is completed prior to the receipt of payment->date of receipt of payment in convertible foreign exchange;
 - If payment for the service received in advance prior to the date of issue of invoice -> date of issue of invoice.

- Refund of tax as a consequence of judgment, decree, order or direction of Appellate authority, Appellate Tribunal or any Court -> date of communication of such judgement/decreed/order/ direction.
- Refund of unutilized input tax credit accumulated due to exports including zero rated supplies - end of the financial year in which such claim for refund arises;
- Provisionally paid tax - the date of adjustment of tax after the final assessment.
- In the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
- In any other case, the date of payment of tax

Situation of Refund	2 years from the Relevant Date as under
On account of excess payment	Date of payment of tax
On account of Export of Goods	Date on which proper officer gives an order for export known as "LET EXPORT ORDER"
On account of Export of Services	Date of BRC
On account of finalization of provisional assessment	Date of the finalization order
In pursuance of an appellate authority's order in favour of the taxpayer	Date of communication of the appellate authority's order
On account of no/less liability arising at the time of finalization of investigation proceedings	Date of communication of adjudication order or order relating to completion of investigation
On account of accumulated credit of GST in case of a liability to pay service tax in partial reverse charge cases	Date of providing of service

54.3 Rule 89(1) facilitates a taxable person to claim refund in following manner under various circumstances

S.No.	Scenarios	Manner to claim refund
1	Refund of any tax, interest, penalty, fees or any other amount paid	File an application electronically in FORM GST RFD-01 through the common portal
2	Refund relating to balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49	Such a refund may be made through the return furnished for the relevant tax period in FORM GSTR-3 or FORM GSTR-4 or FORM GSTR-7

Note: In terms of Notification No. 55/2017 – Central Tax dated 15th November 2017, Rule 97A has been inserted in the Central Goods and Service Tax Rules, 2017.

In terms of Rule 97A, any reference to this Chapter (i.e., with respect to Refunds) any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

In other words, the refunds may be filed manually and the processing of refund with respect to any notice, reply or order, among others, can also be issued / filed manually.

54.4 As per Rule 89(2) the above application(s) shall be accompanied by following documentary evidences

S.No.	Scenarios	Documents
1	Pre-deposit as per sub-section (6) of section 107 and sub-section (8) of section 112	Reference number of the order and a copy of the order passed by the proper officer or an appellate authority or Appellate Tribunal or court resulting in such refund or reference number of the payment of the pre-deposit amount.
2	Refund on account of export of goods	A statement containing the number and date of shipping bills or bills of export and the number and the date of the relevant export invoices
3	Refund on account of export of services	A statement containing the number and date of invoices and the relevant Bank Realisation Certificates or Foreign Inward Remittance Certificates
4	Refund on account of supply of goods made to a Special Economic Zone unit or a Special Economic Zone developer	<p>A statement containing the number and date of invoices as provided in rule 46 along with the evidence regarding the endorsement by the specified officer of the Zone</p> <p>A declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer</p>

5	Refund on account of supply of Service made to a Special Economic Zone unit or a Special Economic Zone developer	<p>A statement containing the number and date of invoices, the evidence regarding the endorsement specified in the second proviso to sub-rule (1) and the details of payment, along with the proof thereof, made by the recipient to the supplier for authorised operations as defined under the Special Economic Zone Act, 2005, in a case where the refund is on account of supply of services made to a Special Economic Zone unit or a Special Economic Zone developer</p> <p>A declaration to the effect that the Special Economic Zone unit or the Special Economic Zone developer has not availed the input tax credit of the tax paid by the supplier of goods or services or both, in a case where the refund is on account of supply of goods or services made to a Special Economic Zone unit or a Special Economic Zone developer</p>						
6	Refund on account of deemed exports (where refund is claimed by the Supplier)	<p>A statement containing the number and date of invoices along with the following documents notified under Notification No. 49/2017 – Central Tax dated 18th October, 2017:</p> <p>(a) Proof of receipt of Goods by the Eligible Recipient:</p> <table><tr><th>In case of Supply to</th><th>Document required</th></tr><tr><td>Advance Authorisation Holder or EPCG Holder</td><td>Acknowledgment that Holder has received the goods should be obtained from the jurisdictional Tax officer having jurisdiction over the said Holder,</td></tr><tr><td>EOUs</td><td>Copy of the tax invoice under</td></tr></table>	In case of Supply to	Document required	Advance Authorisation Holder or EPCG Holder	Acknowledgment that Holder has received the goods should be obtained from the jurisdictional Tax officer having jurisdiction over the said Holder,	EOUs	Copy of the tax invoice under
In case of Supply to	Document required							
Advance Authorisation Holder or EPCG Holder	Acknowledgment that Holder has received the goods should be obtained from the jurisdictional Tax officer having jurisdiction over the said Holder,							
EOUs	Copy of the tax invoice under							

		<p>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</p> <p>(b) Undertaking from the Recipient of the Deemed Export that the Recipient has not taken Input Tax Credit of the GST paid by the Supplier</p> <p>Undertaking from the Recipient of the Deemed Export that they shall not claim the refund of the GST paid by the Supplier.</p>
7	Refund on account of deemed exports (where refund is claimed by the Recipient of Deemed Exports)	<p>A statement containing the number and date of invoices along with further documents as may be notified.</p> <p>However, no documents has been notified by the Government when the Recipient is claiming the Refund.</p> <p>It may be prudent for the Recipient to obtain an undertaking from the Supplier that Supplier has not claimed refund of the GST paid on the Deemed Exports</p>
8	Refund on account of the rate of tax on the inputs being higher than the rate of tax on output supplies, other than nil-rated or fully exempt supplies	A statement containing the number and the date of the invoices received and issued during a tax period in a case where the claim pertains to refund of any unutilised input tax credit under sub-section (3) of section 54
9	Refund arises on account of the finalisation of provisional assessment	The reference number of the final assessment order and a copy of the said order
10	Refund as per Section 77 (tax wrongly collected and paid to Central or state	A statement showing the details of transactions considered as intra-State supply but which is subsequently held to

	government)	be inter-State supply
11	Refund claimed does not exceed two lakh rupees (tax paid but the incidence has not been passed on to the other person)	A declaration to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person
12	Refund claimed exceed two lakh rupees (tax paid but the incidence has not been passed on to the other person)	A Certificate in Annexure 2 of FORM GST RFD-01 issued by a chartered accountant or a cost accountant to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person

54.5 As per Rule 89(3), where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed.

54.6 Formula for computation of refund as provided in Rule 89(5) is as under:

- (a) In the case of zero-rated supply of goods or services or both **without payment of tax under bond or letter of undertaking**, refund of input tax credit shall be granted as per the following formula (for the procedure, refer para 54.7) -

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

- (b) In the case of refund on account of **inverted duty structure**, refund of input tax credit shall be granted as per the following formula -

Maximum Refund Amount = {(Turnover of inverted rated supply of goods) x Net ITC ÷ Adjusted Total Turnover} - tax payable on such inverted rated supply of goods

- (c) In the case of zero-rated supply of goods or services or both **payment of IGST tax**, refund of entire amount of IGST shall be available (refer para 54.6)

Where, -

- (A) "Refund amount" means the maximum refund that is admissible;
- (B) "Net ITC" means input tax credit availed on inputs and input services during the relevant period;
- (C) "Turnover of zero-rated supply of goods" means the value of zero-rated supply of goods made during the relevant period without payment of tax under bond or letter of undertaking;
- (D) "Turnover of zero-rated supply of services" means the value of zero-rated supply of services made without payment of tax under bond or letter of undertaking, calculated in the following manner, namely: -

Zero-rated supply of services is the aggregate of the payments received during the relevant period for zero-rated supply of services and zero-rated supply of services where supply has been completed for which payment had been received in advance in any period prior to the relevant period reduced by advances received for zero-rated supply of services for which the supply of services has not been completed during the relevant period;

- (E) "Adjusted Total turnover" means the turnover in a State or a Union territory, as defined under sub-section (112) of section 2, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period;
- (F) "Relevant period" means the period for which the claim has been filed.

54.7 Rule 96 provides for Refund of integrated tax paid on goods exported out of India-

- The shipping bill filed by an exporter shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India
- Such application shall be deemed to have been filed only when: -
 - ✓ the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export; and
 - ✓ the applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR- 3B, as the case may be;

The details of the relevant export invoices contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

Provided that where the due date for furnishing of the details of outward supplies in FORM GSTR-1 for a tax period has been extended, then in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the details of information relating to exports as specified in Table 6A of FORM GSTR-1 separately. That is, only the Export Details in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:

Provided further that the information in Table 6A forming part of Form GSTR-1. (*Refer proviso to Rule 96(2) inserted vide Notification No. 51/2017 – Central Tax dated 28th October 2017*)

Note that the Table 6A has to be furnished only after filing of Form GSTR-3B under the respective tax period

As and when the Form auto-drafted in FORM GSTR-1 are furnished for the said tax period, then details of exports will be auto-drafted from the Table 6A referred above. So, the procedure is:

Steps

- a. File GSTR-3B for a Tax Period
- b. Fill Table 6A of Form GSTR-1 available in the Common Portal. Refund will be processed based on this Table 6A
- c. As and when Form GSTR-1 is filed, the data relating to exports will be auto-populated from the above Table 6A

Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3 or FORM GSTR-3B with Table 6A of Form GSTR-1, as the case may be, from the common portal, the system designated by the Customs shall process the claim for refund and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

Refund Withheld

- The claim for refund shall be withheld where, -
 - ✓ a request has been received from the jurisdictional Commissioner of central tax, State tax or Union territory tax to withhold the payment of refund due to the person claiming refund in accordance with the provisions of sub-section (10) or sub-section (11) of section 54; or the proper officer of Customs determines that the goods were exported in violation of the provisions of the Customs Act, 1962
 - the proper officer of integrated tax at the Customs station shall intimate the applicant and the jurisdictional Commissioner of central tax, State tax or Union territory tax, as the case may be, and a copy of such intimation shall be transmitted to the common portal
 - the proper officer of central tax or State tax or Union territory tax, as the case may be, shall pass an order in Part B of FORM GST RFD-07
 - Where the applicant becomes entitled to refund of the amount withheld, the concerned jurisdictional officer of central tax, State tax or Union territory tax, as the case may be, shall proceed to refund the amount after passing an order in FORM GST RFD-06

54.8 Rule 96A provides for Refund of integrated tax paid on export of goods or services under bond or Letter of Undertaking

- ✓ Any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish, prior to export, a bond or a Letter of Undertaking in **FORM GST RFD-11** to the jurisdictional Commissioner (vide circular no 2/2/2017-GST the power has been delegated to Deputy/Assistant Commissioner).
- ✓ The registered person shall bind himself to pay the tax due along with the interest specified under sub-section (1) of section 50 (18%) within a period of —

- (a) fifteen days after the expiry of three months, [or such further period as may be allowed by the Commissioner,] from the date of issue of the invoice for export, if the goods are not exported out of India; or
 - (b) fifteen days after the expiry of one year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the payment of such services is not received by the exporter in convertible foreign exchange
- ✓ The details of the export invoices contained in FORM GSTR-1 furnished on the common portal shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.
- Provided that where the due date for furnishing the details of outward supplies in FORM GSTR-1 for a tax period has been extended in exercise of the powers conferred under section 37 of the Act, the supplier shall furnish the information relating to exports as specified in Table 6A of FORM GSTR-1 after the return in FORM GSTR-3B has been furnished and the same shall be transmitted electronically by the common portal to the system designated by the Customs:
- Provided further that the information in Table 6A furnished under the first proviso shall be auto-drafted in FORM GSTR-1 for the said tax period.
- Note that the Table 6A has to be furnished only after filing of Form GSTR-3B for the respective tax period.
- ✓ In the event, goods are not exported within the time specified above and the registered person fails to pay the IGST amount, the export as allowed under bond or Letter of Undertaking shall be withdrawn forthwith and the said amount shall be recovered from the registered person in accordance with the provisions of section 79.
- ✓ The export as allowed under bond or Letter of Undertaking withdrawn shall be restored immediately when the registered person pays the amount due.
- The provisions of sub rule (1) shall apply, mutatis mutandis, in respect of zero-rated supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit without payment of integrated tax."

Note: The Government vide Notification No. 16/2017 – Central Tax dated 7th July, 2017 has specified following conditions for a registered person to be eligible for submission of Letter of Undertaking in place of a bond.

- (a) a status holder as specified in paragraph 5 of the Foreign Trade Policy 2015-2020; or
- (b) who has received the due foreign inward remittances amounting to a minimum of 10% of the export turnover, which should not be less than one crore rupees, in the preceding financial year.

Further, the registered person has not been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or under any of the erstwhile laws in case where the amount of tax evaded exceeds two hundred and fifty lakh rupees.

However, the above requirement **has been relaxed with effect from 04th October, 2017**

The Government vide Notification No. 37/2017 – Central Tax dated 04th October, 2017 has extended the facility of Letter of Undertaking for all registered tax payers.

Only tax payer who is not eligible for the LUT facility is tax payer who has been prosecuted for any offence under the CGST Act, SGST Act, IGST Act or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees

A self-declaration by the exporter that he has not been prosecuted is sufficient for the purposes of Notification No. 37/2017- Central Tax dated 4th October, 2017. Department may verify the claim after acceptance of the LUT, unless Department has any specific information otherwise regarding the prosecution. (Circular No. 8/8/2017-GST dated 04th October 2017)

Further, any person who is prosecuted for an evasion more than Rs.2,50,000 shall execute a Bond. The Bond shall be accompanied by Bank Guarantee for 15% of the Bond amount. (Circular No. 8/8/2017-GST dated 04th October 2017)

The LUT facility is also extended to Supplies made to SEZ.

54.9 Refund in case of Deemed Exports

Deemed Exports are defined as “Supplies” as may be notified under Section 147 of the CGST Act.

The Central Government vide Notification No. 48/2017 – Central Tax dated 18th October, 2017 has notified the following items as “Deemed Exports”

- ✓ Supply of goods by a registered person against Advance Authorisation
- ✓ Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation (EPCG)
- ✓ Supply of goods by a registered person to Export Oriented Unit (EOU). EOU refers to
 - Export Oriented Unit (EOU)
 - Electronic Hardware Technology Park Unit (EHTP) or
 - Software Technology Park Unit (STP) or
 - Bio-Technology Park Unit (BTP).
- ✓ Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.

Analysis

The Foreign Trade Policy (2015-2020) in terms of Para 7.02 has provided a list of Supply which are Deemed Supplies under the FTP.

However, only the aforesaid four supplies have been covered under Deemed Export under GST. Therefore, other Deemed Export under FTP but not covered above are liable for GST. However, the recipient is eligible to take Input Tax Credit of the tax paid by the Supplier

subject to restrictions / blocking of credits as Section 16, 17 of the CGST Act and rules thereunder.

Person claiming refund

The Application of refund may be filed by the Recipient of the Goods.

However, the Supplier may also file the refund application if the Supplier furnishes a declaration from the Recipient that he has not availed Input Tax Credit of the tax paid.

Special Procedures with Respect to Supply of Goods to EOUs

The Government vide Circular No. 14/14 /2017 – GST dated 06th November 2017 has issued detailed guidelines on the procedure to be adopted for Supply of goods to EOU, EHTP, STP and BTP (hereinafter collectively referred to as “EOU”)

Procedure to be adopted by the EOU

Steps	Particulars	Form No, if any / Due Date	Explanation
Step 1	Issuance of Prior Intimation	Form-A	The EOU shall give Prior Intimation of Goods to be procured from the Supplier in Form-A. The Intimation must be serially number and must prepared in Triplicate and sent to: (1) the Registered Supplier undertaking the Supply (2) the jurisdictional GST Officer in charge of the Supplier (3) the jurisdictional GST Officer in charge of the EOU
Step 2	Supply of goods by the Supplier		The registered supplier thereafter will supply goods under tax invoice to the recipient EOU / EHTP / STP / BTP unit.
Step 3	Endorsement of Invoice by EOU on receipt of goods		On receipt of such supplies, the EOU, the Unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to – (1) the Registered Supplier undertaking the Supply (2) the jurisdictional GST Officer in charge of the Supplier. (3) the jurisdictional GST Officer in charge of the EOU.

			Such endorsement is the Proof of Deemed Export Supplies by a registered person to the EOU
Step 4	EOU shall maintain records for receipt, use and removal of Goods	Form-B	EOU shall maintain the record of Receipt, use and Removal of Goods in Form-B The data is required to be maintained in Digital form. The Record must be updated immediately and accurately and open for Verification by the Proper office
Step 5	Monthly submission of Form-B to the GST Officer	Due date - 10th of the Following month	A digital copy of Form – B containing transactions for the month, shall be provided to the jurisdictional GST officer, each month in a CD or Pen drive, as convenient to the said unit.

54.10 Rule 90 of the CGST Rules 2017 provides for Acknowledgement and Deficiency memo

- (a) **The application relates to a claim for refund from the electronic cash ledger-** on receipt of the application for refund, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period 60 days for passing an order by proper officer shall be counted from such date of filing.
- (b) **The application for refund, other than claim for refund from electronic cash ledger-** such applications shall be forwarded to the proper officer who shall, within a period of fifteen days of filing of the said application shall scrutinize the application for its completeness and where the application is found to be complete, an acknowledgement in FORM GST RFD-02 shall be made available to the applicant through the common portal electronically, clearly indicating the date of filing of the claim for refund and the time period 60 days for passing an order by proper officer shall be counted from such date of filing.
- (c) Where any deficiencies are noticed, the proper officer shall communicate the deficiencies to the applicant in FORM GST RFD-03 through the common portal electronically, requiring him to file a fresh refund application after rectification of such deficiencies.
- (d) If deficiencies have been communicated in FORM GST RFD-03 under the State Goods and Service Tax Rules, 2017, the same shall also deemed to have been communicated under CGST Act also.

54.11 Note: Refer Notification No. 55/2017 – Central Tax dated 15th November 2017, mentioned above.

54.12 Rule 92 provides for Order sanctioning refund-

Rule No	Scenarios	Procedures
92(1)	When entire refund is payable	➤ Where, upon examination of the application, the proper officer is satisfied that a refund under sub-section (5) of section 54 is due and payable to the applicant, he shall make an order in FORM GST RFD-06 sanctioning the amount of refund to which the applicant is entitled, mentioning therein the amount, if any, refunded to him on a provisional basis under sub-section (6) of section 54
Proviso to 92(1)	In cases where the amount of refund is completely adjusted against any outstanding demand under the Act or under any erstwhile law	➤ the proper officer shall pass an order giving details of the adjustment, which shall be issued in Part A of FORM GST RFD-07.
92(2)	Where the proper officer or the Commissioner is of the opinion that the amount of refund is liable to be withheld under ➤ the provisions of sub-section (10) [when the applicant is required to pay tax, interest or penalty which has not been stayed by any court] or, ➤ sub-section (11) of section 54 [when any matter of appeal is pending and refund shall affect the revenue	➤ the proper officer shall pass an order in Part B of FORM GST RFD-07 informing him the reasons for withholding of such refund
92(3)	Where the proper officer is satisfied that the whole or any part of the amount claimed as refund is not admissible or is not payable to the applicant	➤ the proper officer shall issue a notice in FORM GST RFD-08 to the applicant; ➤ the Applicant shall furnish a reply in FORM GST RFD-09 within a period of fifteen days of the receipt of such notice and ➤ after considering the reply, the proper officer

		<p>shall make an order in FORM GST RFD-06 sanctioning the amount of refund in whole or part, or rejecting the said refund claim and the said order shall be made available to the applicant electronically</p> <p>➤ Provided that no application for refund shall be rejected without giving the applicant an opportunity of being heard.</p>
92(4)	Refund credited to the account of applicant	<p>➤ Where the proper officer is satisfied that the amount is payable to the applicant he shall make an order in FORM GST RFD-06 then he shall issue a payment advice in FORM GST RFD-05 for refund and the same shall be electronically credited to any of the bank accounts of the applicant mentioned in his registration and as specified in the application for refund.</p>
92(5)	Refund credited to Consumer Welfare Fund	<p>➤ Where the proper officer is satisfied that the amount refundable is not payable to the applicant under sub-section (8) of section 54, he shall make an order in FORM GST RFD-06 and issue an advice in FORM GST RFD-05, for the amount of refund to be credited to the Consumer Welfare Fund</p>

Note: Refer Notification No. 55/2017–Central Tax dated 15th November 2017, mentioned above.

54.13 Rule 93 provides for the Credit of the amount of rejected refund claim

Where any amount claimed as refund is rejected under rule 92 i.e. a refund shall be deemed to be rejected, if the appeal is finally rejected or if the claimant gives an undertaking in writing to the proper officer that he shall not file an appeal and the amount debited then to the extent of rejection, shall be re-credited to the electronic credit ledger by an order made in FORM GST PMT-03. Also, where any deficiencies have been communicated under sub-rule (3) of rule 90, the amount debited under sub-rule (3) of rule 89 shall be re-credited to the electronic credit ledger.

54.14 Comparative review

These provisions are broadly similar to the provisions contained in erstwhile Central Indirect Tax law. However, they are restrictive when compared to the refund mechanism under earlier State Value Added Tax law. The GST Law provides refund of unutilised credit in certain

specified circumstances where the State VAT Laws provide for refund of unutilised credit under any circumstances.

54.15 Related provisions

Section	Description	Remarks
Section 33	Amount of tax to be indicated in tax invoice and other documents.	Invoice or other documents referred to in Section 30 has to be enclosed along with refund application.
Section 57	Consumer Welfare Fund.	Where the claimant is unable to establish the fact that incidence of duty is not passed on, the amount of refund claimed will be credited to Consumer Welfare Fund.

54.16 FAQs

Q1. Whether there is any time limit to file refund claim?

Ans. Generally, Yes. The refund claim has to be filed within two years from the relevant date. However, if the tax or interest thereon or amount claimed as refund is paid under protest, the time limit is not applicable.

Q2. Whether there is any provision for condonation of delay in filing refund claim beyond two years from the relevant date (where tax/interest/amount is not paid under protest)?

Ans. No. There is no provision to condone the delay and the refund claim will be rejected without getting into merits of the refund claim.

Q3. Whether there is any procedure to pay tax/interest/amount under protest?

Ans. There is no mechanism or procedure set out in the GST Act or. As per the practice prevailing under the erstwhile central indirect tax laws, a letter expressing the fact that the tax/interest/amount is being paid under protest setting out the reason may be sufficient to consider that the payment is made under protest.

Q4. What would be the time limit for sanctioning refund?

Ans. The refund has to be sanctioned within 60 days from the receipt of duly completed application containing all the prescribed information/documents.

Q5. What happens in case the incidence of duty/tax has been passed on by the person claiming the refund?

Ans. The refund claimed and eligible will be credited to Consumer Welfare Fund.

Q6. Is there a minimum amount specified below which no refund can be claimed?

Ans. Yes. The minimum amount of refund payable should be ₹ 1000/- or more.

Q7. Whether refund of unutilized credit at the end of tax period can be claimed by supplier who does not have any exports.

Ans. Yes. It is available in cases where the accumulation of credit is for the reason of tax rate on inputs being higher than the rate of tax on outputs other than NIL rated or fully exempted outward supply that is in inverted duty structure but such provision is applicable for inputs and not for input services.

MCQ

Q1. In case of refund claim on account of export of goods and/or services made by such category of registered taxable persons as may be notified in this behalf, what percent would be granted as refund on a provisional basis?

- (a) 70%
- (b) 65%
- (c) 80%
- (d) 90%

Ans. (d) 90%

Q2. What is the relevant date in case of refund on account of excess payment of GST due to mistake or inadvertence?

- (a) Date of payment of GST
- (b) Last day of the financial year
- (c) Date of providing of service
- (d) None of the above

Ans. (a) Date of payment of GST

Q3. Refund of accumulated input tax of inputs credit at the end of any tax period is eligible in cases of?

- (a) Due to purchase of huge stocks
- (b) Credit cannot be used for any reason.
- (c) Due to Exports and input tax rate of inputs being higher than output tax rate
- (d) Due to Exports only.

Ans. (c) Due to Exports and input tax rate of inputs being higher than output tax rate

Q4. Relevant date for computing time limit to claim refund in case of deemed exports supply of goods is –

- (a) Date of filing returns relating to such deemed exports;
- (b) Date of goods leaving India;
- (c) Date of payment of Tax;

(d) Date of receipt of consideration in Foreign Exchange;

Ans. (a) Date of filing returns relating to such deemed exports\

Statutory Provision

55. Refund in certain cases

The Government may, on the recommendation of the Council, by notification, specify any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other person or class of persons as may be specified in this behalf, who shall, subject to such conditions and restrictions as may be prescribed, be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

55.1 Introduction

This section deals with refund of taxes paid on notified supplies of goods or services or both received by certain specified agencies notified by the Government on the recommendation of the Council.

55.2 Analysis

This section provides that –

- (i) The Government, is vested with powers to notify certain agencies on the recommendation of the Council, to be entitled to claim refund.
- (ii) The agencies that can be notified are –
 - (a) any specialized agency of the United Nations Organization or
 - (b) any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947,
 - (c) any other person or class of persons as may be specified.
- (iii) In addition to the above, Consulate or Embassy of foreign countries would also be eligible for refund.
- (iv) The agencies mentioned above would be entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them. The refund claim is subject to such conditions and restrictions as may be prescribed,

55.3 Procedure for refund of tax

Rule 95 provides for following procedure for refunds under Section 55

- (a) Any person eligible to claim refund of tax paid by him on his inward supplies as per notification issued under section 55 shall apply for refund in FORM GST RFD-10 once in every quarter, electronically on the common portal, either directly or through a

Facilitation Centre notified by the Commissioner, along with a statement of the inward supplies of goods or services or both in FORM GSTR-11, prepared on the basis of the statement of the outward supplies furnished by the corresponding suppliers in FORM GSTR-1.

- (b) An acknowledgement for the receipt of the application for refund shall be issued in FORM GST RFD-02.
- (c) The refund of tax paid by the applicant shall be available if-
 - the inward supplies of goods or services or both were received from a registered person against a tax invoice and the price of the supply covered under a single tax invoice exceeds five thousand rupees, excluding tax paid, if any;
 - Name and Goods and Services Tax Identification Number or Unique Identity Number of the applicant is mentioned in the tax invoice; and
 - such other restrictions or conditions as may be specified in the notification are satisfied.
- (d) The provisions of rule 92 shall, mutatis mutandis, apply for the sanction and payment of refund under this rule.
- (e) Where an express provision in a treaty or other international agreement, to which the President or the Government of India is a party, is inconsistent with the provisions of this Chapter, such treaty or international agreement shall prevail.

Note: In terms of Notification No. 55/2017 – Central Tax dated 15th November 2017, Rule 97A has been inserted in the Central Goods and Service Tax Rules, 2017.

In terms of Rule 97A, any reference to this Chapter (i.e., with respect to Refunds) any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to these rules.

In other words, the Refunds may be permitted to be filed manually and the processing of refund with respect to any notice, reply or order, among others, can also be issued / filed manually.

55.4 Related provision

Section	Description
Section 54	Refunds

55.5 FAQs

1. Name the agencies that can be notified to be eligible to claim refund of taxes under Section 55 of the CGST Act?

Ans. Any specialized agency of the United Nations Organization or any Multilateral Financial Institution and Organization notified under the United Nations (Privileges and Immunities) Act, 1947 and any other person or class of persons as may be specified in this behalf, are the agencies that can be notified.

2. What refund are the agencies specified above entitled to claim under this section?

Ans. The agencies specified above are entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

55.6 MCQs

Q1. Who is empowered to notify the agencies that are entitled to claim refund under this section?

- (a) Government
- (b) Board
- (c) GST Council
- (d) None of the above

Ans. (a) Government

Statutory Provision

56. Interest on delayed refunds

If any tax ordered to be refunded under sub-section (5) of section 54 to any applicant is not refunded within sixty days from the date of receipt of application under sub-section (1) of that section, interest at such rate not exceeding six per cent as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of an application under the said sub-section till the date of refund of such tax.

Provided that where any claim of refund arises from an order passed by an adjudicating authority or Appellate Authority or Appellate Tribunal or court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent. as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund.

Explanation.- For the purpose of this section, where any order of refund is made by an Appellate Authority, Tribunal or any Court against an order of the proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or, by the Court shall be deemed to be an order passed under the said sub-section (5).

56.1 Introduction

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

56.2 Analysis

- (i) The section provides that interest is payable if –
 - Tax paid becomes refundable under section 54(5) to the applicant; and
 - It is not refunded within 60 days from the date of receipt of application for refund of tax under Section 54(1)
- (ii) Interest is liable to be paid from the due date for payment of refund till the date of sanction or grant of refund.
- (iii) For the above delay, the Government has specified 6% as the rate of interest vide Notification No. 13 /2017 – Central Tax dated June 28, 2017.

Illustration:

A Ltd has filed a refund claim of excess tax paid with all the documents and records on 19.08.2017. The department sanctioned the refund on 30.11.2017. In such a case, interest has to be paid for the period from 19.10.2017 to 30.11.2017.

- (iv) Explanation to section provides that in cases where the orders of Appellate Authority / Tribunal / Court sanctions refund in an appeal, against the order of refund sanctioning authority, the order of Appellate Authority / Tribunal / Court will be considered as orders passed by refund sanctioning authority. In other words, by virtue of such order, the refund has become due and the interest will then be computed from the date of completion of 60 days from the date of original refund claim made. For all such claims the Government has specified 9% as the rate of interest vide notification no. Notification No. 13 /2017 – Central Tax dated June 28, 2017.

Illustration:

A Ltd has filed a refund claim of excess tax paid with all the documents and records on 19.08.2017. It was rejected by refund sanctioning authority. On Appeal the Appellate Authority passed the order for refund based on which the department sanctioned the refund on 30.09.2018. In such case, interest has to be paid for the period from 18.10.2017 to 30.09.2018.

- (v) **As per Rule 94 which provides for Order sanctioning interest on delayed refunds-** where any interest is due and payable to the applicant under section 56, the proper officer shall make an order along with a payment advice in FORM GST RFD-05, specifying the following:
 - (a) Amount of refund which is delayed,
 - (b) the period of delay for which interest is payable and

- (c) the amount of interest payable,
and such amount of interest shall be electronically credited to any of the bank accounts of the applicant.

56.3 Comparative review

The refund provisions under the GST regime are in line with the refund provisions envisaged in the erstwhile regime under Central Excise law under section 11BB of the Central Excise Act, 1944.

56.4 Related provisions

Section/Rule/Form	Description	Remarks
Section 54	Refunds	Provision providing for refund of tax.

56.5 FAQ

- Q1. Whether interest is payable on delayed sanction of refund of tax only?
Ans. Yes. The provision for payment of interest is only with respect to delayed payment of refund of tax only and not interest or any other amount sanctioned as refund.
- Q2. What would be the rate of interest on delay of sanctioning refund?
Ans. The government has specified 6% as the rate of interest for delay in refund under Section 54(5) and 9% for the delay of refund arising from an order passed by an adjudicating authority vide notification no. Notification No. 13 /2017 – Central Tax dated June 28, 2017.
- Q3. Whether interest is payable on delayed refund of unutilized input tax credit.
Ans. The provision only refers to refund claim under Section 48(1) relating to tax paid and not Section 54(3). Therefore, there is no provision for payment of interest on delayed refund of unutilized input tax credit.

56.6 MCQ

- Q1. Interest U/s 56 is applicable on delayed payment of refunds issued under?
(a) Section 54
(b) Section 44
(c) Section 41
(d) Section 45
Ans. (b) Section 54
- Q2. Interest U/s56 has to be paid for delayed refunds, if the refund is not granted within
.....

- (a) 90 days
- (b) 3 months
- (c) 60 days
- (d) None of the above

Ans. (c) 60 days

Statutory Provision:

57. Consumer Welfare Fund

The Government shall constitute a Fund, to be called the Consumer Welfare Fund and there shall be credited to the Fund, —

- (a) the amount referred to in sub-section (5) of section 54;*
 - (b) any income from investment of the amount credited to the Fund; and*
 - (c) such other monies received by it,*
- in such manner as may be prescribed.*

57.1 Introduction

If the applicant is unable to prove that the incidence was not actually passed onto any other person then the refund amount is credited to the Consumer Welfare Fund.

The overall objective of the Consumer Welfare Fund is to provide financial assistance to promote and protect the welfare of the consumers and strengthen the consumer movement in the country.

57.2 Analysis

The following amounts will be credited to the Fund, in such manner as may be prescribed, -

- the amount of refund referred to in sub-section (5) or sub-section (6) of section 54; and
- any income earned from investment of the amount credited to the Fund and
- such other monies received by it from the Government.

57.3 Constitution of the Committee

Rule 97 of the CGST Rules provides that The Government shall constitute a Standing Committee with a Chairman, a Vice-Chairman, a Member Secretary and such other Members as it may deem fit and the Committee shall make recommendations for proper utilisation of the money credited to the Consumer Welfare Fund for welfare of the consumers. The Committee shall meet as and when necessary, but not less than once in three months.

57.4 Utilisation of funds by the Committee

Rule 97 of the CGST Rules also provides that Any utilisation of amount from the Consumer

Welfare Fund under sub-section (1) of section 58 shall be made by debiting the Consumer Welfare Fund account and crediting the account to which the amount is transferred for utilisation.

Any agency or organisation engaged in consumer welfare activities for a period of three years registered under the provisions of the Companies Act, 2013 (18 of 2013) or under any other law for the time being in force, including village or Mandal or samite level co-operatives of consumers especially Women, Scheduled Castes and Scheduled Tribes, or any industry as defined in the Industrial Disputes Act, 1947 (14 of 1947) recommended by the Bureau of Indian Standards to be engaged for a period of five years in viable and useful research activity which has made, or is likely to make, significant contribution in formulation of standard mark of the products of mass consumption, the Central Government or the State Government may make an application for a grant from the Consumer Welfare Fund. provided that a consumer may make application for reimbursement of legal expenses incurred by him as a complainant in a consumer dispute, after its final adjudication.

All applications for grant from the Consumer Welfare Fund shall be made by the applicant Member Secretary, but the Committee shall not consider an application, unless it has been inquired into in material details and recommended for consideration accordingly, by the Member Secretary.

57.5 Powers of the Committee

According to Rule 97(8) of the CGST Rules, the Committee shall have powers -

- (a) to require any applicant to produce before it, or before a duly authorised Officer of the Government such books, accounts, documents, instruments, or commodities in custody and control of the applicant, as may be necessary for proper evaluation of the application;
- (b) to require any applicant to allow entry and inspection of any premises, from which activities claimed to be for the welfare of consumers are stated to be carried on, to a duly authorised officer of the Central Government or, as the case may be, State Government;
- (c) to get the accounts of the applicants audited, for ensuring proper utilisation of the grant;
- (d) to require any applicant, in case of any default, or suppression of material information on his part, to refund in lump-sum, the sanctioned grant to the Committee, and to be subject to prosecution under the Act;
- (e) to recover any sum due from any applicant in accordance with the provisions of the Act;
- (f) to require any applicant, or class of applicants to submit a periodical report, indicating proper utilisation of the grant;

- (g) to reject an application placed before it on account of factual inconsistency, or inaccuracy in material particulars;
- (h) to recommend minimum financial assistance, by way of grant to an applicant, having regard to his financial status, and importance and utility of nature of activity under pursuit, after ensuring that the financial assistance provided shall not be mutualised;
- (i) to identify beneficial and safe sectors, where investments out of Consumer Welfare Fund may be made and make recommendations, accordingly;
- (j) to relax the conditions required for the period of engagement in consumer welfare activities of an applicant;
- (k) to make guidelines for the management, administration and audit of the Consumer Welfare Fund.

57.6 Comparative review

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

57.7 Related provisions

Section	Description
Section 54	Provision for claiming refund of tax
Section 58	Provisions relating to the manner of utilization of the fund.

57.8 FAQs

Q1. Which are the amounts credited to Consumer Welfare Fund?

Ans. The following amounts will be credited to the Fund, in such manner as may be prescribed-

- the amount of refund referred to under sub-section (5) or sub-section (6) of section 54; and
- any income earned from investment of the amount credited to the Fund and
- such other monies received.

57.9 MCQ

Q1. In cases where the application of refund is found to be in order, the refund amount shall be credited to Fund.

- (a) Investor Protection and Education Fund
- (b) Consumer Protection Fund

- (c) Consumer Welfare Fund
- (d) Refund Claim Fund

Ans. (c) Consumer Welfare Fund

Q2. The overall objective of the Consumer Welfare Fund is

- (a) To facilitate a simplified refund mechanism.
- (b) to promote and protect the welfare of the consumers and strengthen the consumer movement in the country.
- (c) To boost the overall growth of the economy
- (d) Both (a) and (c)

Ans. (b) to promote and protect the welfare of the consumers and strengthen the consumer movement in the country

Statutory Provision

58. Utilization of the Fund

- (1) *All sums credited to the Fund shall be utilised by the Government for the welfare of the consumers in such manner as may be prescribed.*
- (2) *The Government or the authority specified by it shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India.*

58.1 Introduction

The monies credited to the Consumer Welfare Fund are meant to provide financial assistance to promote and protect the welfare of the consumers and strengthen the consumer movement in the country.

58.2 Analysis

- (i) It should be ensured that the monies credited to the fund shall be utilized to provide assistance to protect the welfare of consumers as per the rules made by the Government
- (ii) The Government shall maintain proper and separate records in relation to the Fund in consultation with the Comptroller and Auditor-General of India.
- (iii) As per Rule 97(9) of the CGST Rules, the Central Consumer Protection Council and the Bureau of Indian Standards shall recommend to the Goods and Service Tax

Council, the broad guidelines for considering the projects or proposals for the purpose of incurring expenditure from the Consumer Welfare Fund.

58.3 Comparative review

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

58.4 Related provisions

Section	Description
Section 54	Provision for claiming refund of tax
Section 57	Provisions relating to the amounts to be credited to Consumer Welfare Fund.

58.5 FAQ

Q1. How can it be traced whether the amount in the fund is utilised for the welfare of the consumers?

Ans. The Government shall maintain proper and separate account and other relevant records in relation to the Fund and prepare an annual statement of accounts in such form as may be prescribed in consultation with the Comptroller and Auditor-General of India. From these records, it can be ascertained if the amount in the fund were utilised for the welfare of the consumers.

58.6 MCQ

Q1. Proper and separate account and other relevant records in relation to the Fund in prescribed form in consultation with the Comptroller and Auditor-General of India shall be maintained by

- (a) the Government
- (b) the authority specified by the Government
- (c) the assessee who is claiming refund
- (d) (a) or (b)

Ans. (d) (a) or (b)

Chapter XII

Assessment

- 59. Self-assessment
- 60. Provisional assessment
- 61. Scrutiny of returns
- 62. Assessment of non-filers of returns
- 63. Assessment of unregistered persons
- 64. Summary assessment in certain special cases

Statutory Provision

59. Self-assessment

Every registered taxable person shall self assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39.

59.1 Introduction

In terms of Section 2(11) of the Act, “assessment” means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgement assessment.

Assessment is done by proper officer. Section.2(91) of the CGST Act defines proper officer as follows “proper officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;

The CGST Act contemplates the following types of Assessments:

- Self-assessment (Section 59)
- Provisional Assessment (Section 60)
- Scrutiny of returns filed by registered taxable persons (Section 61)
- Assessment of non-filers of returns (Section 62)
- Assessment of unregistered persons (Section 63)
- Summary Assessment in certain special cases (Section 64)

Section 59 refers to the assessment made by registered person himself/ itself while all other assessments are undertaken by tax authorities.

Provisional Assessment under Section 60 is an Assessment undertaken at the instance of the assessee. Provisional Assessment is followed by a final Assessment.

Scrutiny Assessment under section 61 is a form of re-assessment since the self-assessment made by the assessee, which is intimated through returns is scrutinised by the proper officer.

Assessment of non-filers u/s 62 and Assessment of un-registered person u/s 63 are in the nature of best judgement assessments.

Scrutiny Assessment under Section 64 is a form of protective assessment based on information gathered from intelligence wing of the tax authorities in a particular case.

59.2 Analysis:

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

59.3 Comparative Review:

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

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

59.4 Related provisions

Section / Rule / Form	Description
Self-Assessment by Regular Assessee and Casual Taxable Person u/s 39(1)	Form GSTR 3
Self-Assessment by Composition Dealer u/s 39(2)	Form GSTR 4
Self-Assessment by Non-Resident Taxable Person u/s 39(5)	Form GSTR 5
Self-Assessment of OIDARS provided by person located outside India to non-taxable person in India u/s 39(1)	Form GSTR 5A
Self-Assessment by ISD u/s 39(4)	Form GSTR 6
Self-Assessment of Tax Deducted At Source u/s 39(3)	Form GSTR 7
Self-Assessment of Tax Collected At Source u/s 52(4)	Form GSTR 8
Self-Assessment for purpose of Refund by persons having UIN u/s 39(1)	Form GSTR 11

59.5 FAQ

Q1. Who is the person responsible to make assessment of taxes payable under the Act?

Ans. Every registered person shall self-assess the taxes payable under this Act and furnish a return for each tax period as specified under Section 39.

Statutory Provision

60. Provisional Assessment

- (1) *Subject to provision of sub-section (2), where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis and the proper officer shall pass an order within a period not later than ninety days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.*
- (2) *The payment of tax on provisional basis may be allowed, if the taxable person executes a bond in such form as may be prescribed, and with such surety or security as the proper officer may deem fit, binding the taxable person for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed.*
- (3) *The proper officer shall, within a period not exceeding six months from the date of the communication of the order issued under sub-Section (1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment.*
Provided that the period specified in this sub-section may, on sufficient cause being shown and for reasons to be recorded in writing, be extended by the Joint/Additional Commissioner for a further period not exceeding six months and by the Commissioner for such further period not exceeding four years.
- (4) *The registered person shall be liable to pay interest on any tax payable on the supply of goods or services or both under provisional assessment but not paid on the due date specified under subsection (7) of section 39 or the rules made thereunder at the rate specified under sub-Section (1) of Section 50, or both from the first day after the due date of payment of tax in respect of the said supply of goods and/or services till the date of actual payment, whether such amount is paid before or after the issue of order for final assessment.*
- (5) *Where the registered person is entitled to a refund consequent to the order for final assessment under sub-Section (3), subject to sub-Section (8) of Section 54, interest shall be paid on such refund as provided in Section 56.*

60.1 Analysis

Provisional assessment can be resorted to in the following situations:

- (i) Value of supply cannot be determined by the taxable person, viz, there is a difficulty in ascertaining:

- Transaction value to be adopted for determination of tax payable;
 - Inclusion or exclusion of any amounts in the value of supply
 - Existence of any circumstance causing failure of transaction value declared
- (ii) Rate of tax applicable on the supply cannot be determined by the taxable person, viz there is difficulty in ascertaining:
- Classification of the goods and / or services under the relevant Schedule;
 - Eligibility to any exemption notification or compliance with conditions associated with such exemption.

The facility of provisional assessment is available only in the cases of Valuation and Classification. It is not available for determination of any other subject matter. For example, there may be uncertainty about the kind of tax (IGST or CGST-SGST) applicable, time of supply, supplies to be treated as “supply of goods” or “supply of services”, whether the supply is to be treated as composite supply or mixed supply etc. In the aforesaid kind of cases, recourse is not available to provisional assessment.

Once it is determined that this section is applicable, then the following conditions are to be fulfilled:

- Taxable person must initiate a request to the proper officer in writing giving reasons seeking provisional assessment as per para 5 of Form GST ASMT 01;
- Proper officer is to pass Provisional Assessment order within 90 days of receipt of request allowing payment of taxes on provisional basis subject to execution of bond by the registered person with surety or security for any differential tax that may be eventually assessed.

As per Rule 98(1), provisional assessment can be made by furnishing an application, along with supporting documents by the registered person in **FORM GST ASMT-01**, electronically through common portal. The provisional assessment cannot be resorted to by the proper officer on *suo-motu* basis.

The proper officer may, as per rule 98(2), issue a notice in **FORM GST ASMT-02** requiring the registered person to furnish additional information or documents in support of his request for provisional assessment. The applicant shall file a reply to the notice in **FORM GST ASMT – 03** and may have to appear in person before the proper officer if he so desires.

After considering the reply filed, the proper officer as per Rule 98(3), shall issue an order in **FORM GST ASMT-04**, allowing payment of tax on provisional basis, indicating the value or rate or both on the basis of which assessment is allowed on a provisional basis. The proper officer cannot pass an order rejecting the application of provisional assessment. Since section 60(1) employs the term ‘shall’ pass order ‘allowing’ payment of tax provisionally. Since “shall” is used, officer has to compulsorily allow provisional assessment. Further even Form GST ASMT 04 also does not have ‘template’ for rejection

The order so passed should also indicate the amount for which bond has to be executed by the applicant.. Security has to be furnished in the form of bank guarantee not exceeding 25% of the bond 'amount'

As per explanation to Rule 98(4), 'amount' shall include IGST, CGST, SGST or UTGST and cess payable in respect of the transaction

On passing of such provisional assessment order by the proper officer, the registered person in accordance with the provision of Rule 98(4) has to execute a bond in **FORM GST ASMT-05** along with a security in the form of a bank guarantee. A bond furnished to the proper officer under State Goods and Services Tax Act or Integrated Goods and Services Tax Act shall be deemed to be a bond furnished under the provisions of Central Goods and Service Tax Act and the rules made thereunder.

The proper officer shall issue a notice in **FORM GST ASMT-06**, calling for information and records required for finalization of assessment, under Rule 98(5). Thereafter a final assessment order shall be passed by the proper officer in **FORM GST ASMT-07**, shall be passed specifying the amount payable or refundable to the registered person.

The final assessment order has to be passed, within a period of 6 months from the date of communication of provisional assessment order. However, on sufficient cause being shown and for reasons to be recorded in writing, this period can be extended by Joint / Additional Commissioner or by the Commissioner for such further period as mentioned below:

Additional / Joint Commissioner	Maximum of 6 months
Commissioner	Maximum of 4 years

It may be noted that, in the statement of outward supply to be furnished by a registered person under section 37(1) i.e. in Form GSTR-1, the invoices in respect of which tax is paid under provisional assessment is required to be mentioned.

If the amount of tax determined to be payable under final assessment order, is more than tax which is already paid along with return under section 39, the registered person shall be liable to pay interest on the shortfall, at the rates specified in Section 50(1) of the Act, from the first day after due date of payment of tax in respect of the said goods and /or services or both, till the date of actual payment, irrespective of whether such shortfall is paid before or after the issuance of order for final assessment¹. Likewise, when the registered person is entitled to refund consequent upon the order for final assessment, interest shall be paid on such refund at the rates specified in Section 56. As such, the registered person must avail this opportunity of provisional assessment after much thought and careful consideration.

Any claim for refund of taxes paid in excess under this section would be processed in accordance with Section 54 (refund provision), and is subject to unjust enrichment. Except for authorizing refund, this section does not by itself permit grant of refund.

¹ To overcome the decision of Ceat Limited V. CCE, 2015 (317) ELT 192 (Bom), maintained by the Supreme Court in Commissioner V. Ceat Ltd., 2016 (342) ELT A181 (SC)

After issue of final assessment order, under Rule 98(5), the applicant may file an application under Rule 98(6) in **FORM GST ASMT- 08** for release of security furnished . On receipt of such application, the proper officer in accordance with Rule 98(7), has to release the security furnished, after ensuring the payment of the amount specified in the final assessment order and issue an order in **FORM GST ASMT-09**. This order has to be issued within a period of 7 working days from the date of receipt of the application for release of security.

60.2 Comparison with equivalent provisions under other laws:

Section 60 of the CGST Act, is broadly drafted on the lines of the erstwhile provisions of Central Excise and Service Tax law. A provisional assessment is permitted under Central Excise Act and also under the Finance Act 1994, and is governed by the procedure contained in Rule 7 of the Central Excise Rules or as the case may be, Rule 6(4)/(4A)/(4B)/(5) of Service Tax Rules. Under both these Acts, provisional assessment is carried out only at the instance of the assessee.

Under the State VAT Acts, the concept of provisional assessment “at the instance of assessee”, is not prevalent. Some State Acts have used this term to cover the cases of best-judgment assessment done by the tax authorities, in the absence of returns or records. For example, refer Section 32 of Gujarat Value Added Tax Act or Section 40 of the Orissa Value Added Tax Act.

60.3 Related Provisions:

Section / Rule / Form	Description
Rule 98	Machinery provision for provisional assessment
Section 50	Interest on delayed payment of tax
Section 54	Refund of tax

60.4 FAQ

Q1. When is a taxable person permitted to pay tax on a provisional basis?

Ans. Tax payments can be made on a provisional basis only when a proper officer passes an order for permitting the same. For this purpose, the registered person has to make a written request to the proper officer, giving reasons for payment of tax on a provisional basis. The reasons for this purpose may be a case where the registered person is unable to determine the value of goods and/ or services or determine the applicable tax rate, etc. Further, the registered person may also be required to execute a bond in the prescribed form, and with such surety or security as the proper officer may deem fit.

Q2. What is the latest time by which final assessment is required to be made?

Ans. It is the responsibility of the proper officer to pass the final assessment order after taking into account such information as may be required for finalizing the assessment, within six months from the date of the communication of the order for provisional assessment. However, on sufficient cause being shown and for reasons to be recorded in writing, the timelines may be extended by the Joint/Additional Commissioner for a

further period not exceeding six months and by the Commissioner for such further period not exceeding 4 years as he may deem fit.

60.5 MCQs

Q1. Where the tax liability as per the final assessment is higher than tax paid at the time of filing of return u/s 39 the registered person shall_____.

- (a) not be liable to interest, provided he proves that his actions were bonafide
- (b) be liable to pay interest from due date till the date of actual payment
- (c) be liable to pay interest from date of the final assessment till the date of actual payment
- (d) be liable to pay interest from due date till the date of the final assessment

Ans. (b) be liable to pay interest from due date till the date of actual payment

Q2. Provisional assessment under the GST law is permitted to be:

- (a) At the instance of the taxable person
- (b) At the instance of the tax authorities on a best judgment basis in absence of adequate details or response from registered person
- (c) Either of (a) and (b)
- (d) Available only to certain notified persons

Ans. (a) At the instance of the taxable person

Q3. On the grounds of sufficient reasons being provided by proper officer the time period for passing final assessment order can be extended by Joint/ Additional Commissioner for further period of not exceeding

- (a) 2 months
- (b) 4 months
- (c) 6 months
- (d) No time limit.

Ans. (c) 6 months

Q4. On the grounds of sufficient reasons being provided by proper officer the time period for passing final assessment order can be extended by Commissioner for further period of

- (a) 2 months
- (b) 4 years
- (c) 6 months
- (d) No time limit.

Ans. (b) 4 years

Statutory Provision**61 Scrutiny of Returns**

- (1) *The proper officer may scrutinize the return and related particulars furnished by the registered person to verify the correctness of the return and inform him of the discrepancies noticed, if any in such manner as may be prescribed and seek his explanation thereto.*
- (2) *In case the explanation is found acceptable, the registered person shall be informed accordingly and no further action shall be taken in this regard.*
- (3) *In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the taxable person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under Section 65, 66 or Section 67, or proceed to determine the tax and other dues under section 73 or Section 74.*

61.1 Analysis

Section 61 deals with a discretionary power to a proper officer to scrutinize returns filed by registered persons to verify the correctness of the return. It is a pre-adjudication process. The process of adjudication is provided in Sections 73 to 75 of the Act.

When a return furnished by a registered person is selected for scrutiny, then the proper officer scrutinizes the same with reference to the information available with him, and in case of any discrepancy, he shall issue a notice to the said person in FORM GST ASMT-10, under Rule 99(1), informing him of such discrepancy and seeking his explanation thereto. The proper officer shall quantify the amount of tax, interest and any other amount payable in relation to such discrepancy, wherever possible.

An explanation shall be given by the registered person, in reply to the aforesaid notice, within a maximum of thirty days from the date of service of the notice or such further period as may be permitted by the proper officer.

The registered person may accept the discrepancy mentioned in the notice issued under Rule 99(1), and pay the tax, interest and any other amount arising from such discrepancy and inform the same OR furnish an explanation for the discrepancy in FORM GST ASMT- 11 to the proper officer.

Where the explanation furnished by the registered person or the information submitted under Rule 99(2) is found to be acceptable, the proper officer shall inform the registered period in FORM GST ASMT-12.

In case, explanation is not furnished OR explanation furnished is not satisfactory, OR after accepting discrepancies, the registered person fails to take corrective measures, in his return for the month in which the discrepancy is accepted by him, the proper officer, may, take

recourse to any of the following provisions:

- Initiate departmental audit as per section 65 of the Act; or
- Initiate Special Audit as per section 66
- Initiate inspection, search and seizure as per section 67 of the Act
- Issue show cause notice u/s 73 & 74 of the CGST Act.

The first stage in return scrutiny denotes a *prima facie* scrutiny, in order to ascertain whether the information furnished by the assessee in returns is prima facie valid and not inadequate or internally inconsistent. The second stage appears to be a detailed assessment calling for records and determination of tax liability under sections 73 to 75.

In doing so, the proper officer, is also entitled to exercise his power under section 67 of the Act, which deals with power of inspection, search and seizure.

From the language employed in section 67, it appears that, these powers are required to be exercised not in routine manner but only under circumstances when there is reasonable belief regarding probable suppression or intention to evade tax.

It's important to note that, section 61(3) empathetically provides that, in case the explanation given by the tax payer in response to discrepancies informed by the proper officer, is found acceptable, the registered person shall be informed accordingly in **FORM GST ASMT-12** and no further action shall be taken in this regard.

61.2 Comparative Review

The provisions as to scrutiny of returns were also present in Service Tax / Central Excise and State VAT laws. For example, Rule 12 of Central Excise Rules. Rule 12(3) provided that, the 'Proper Officer' may on the basis of information contained in the return filed by the assessee under rule 12(1), and after such further enquiry as he may consider necessary, scrutinize the correctness of the duty assessed by the assessee on the goods removed, in the manner to be prescribed by the Board. CBEC has issued guidelines for detailed scrutiny of Central Excise Returns vide Circular No. 1004/11/2015-CX, dated 21-7-2015.

61.3 Related Provisions

Section / Rule / Form	Description
Section 65	Audit by tax authorities
Section 66	Special Audit by CA and CWA
Section 67	Power of inspection, search and seizure
Section 73 & 74	Determination of tax not paid, short paid, erroneously refunded

61.4 FAQ

- Q1. Describe the recourse that may be taken by the officer in case proper explanation is not furnished for the discrepancy in the return.

Ans. In case, satisfactory explanation is not obtained or after accepting discrepancies, registered person fails to take corrective measures, in his return for the month in which the discrepancy is accepted by him, the Proper Officer may take recourse to any of the following provisions:

- (a) Conduct audit at the place of business of registered person in a manner provided in Section 65 of the Act, or;
- (b) Direct such registered person by notice in writing to provide his records including audited books of account examined and audited by a Chartered Accountant or Cost Accountant under Section 66 of the Act or ;
- (c) Undertake procedures of inspection, search and seizure under Section 67 of the Act; and
- (d) Issue notice under Sections 73 to 75 of the Act.

Q2. What does Section 61 deal with?

Ans. Section 61 deals with scrutiny of returns filed by registered persons to verify the correctness of such returns.

Q3. What is the proper officer required to do, if the information obtained from assessee u/s 61 is found satisfactory?

Ans. In case the explanation is found acceptable, the registered person shall be informed accordingly in Form GST ASMT-12 and no further action shall be taken in this regard.

61.5 MCQ

Q1. Where the tax authorities notice a discrepancy in the details during the scrutiny of returns, the registered person:

- (a) would be liable for interest if he is unable to prove that the discrepancy did not arise on his account and it was a fault of another person
- (b) is required to provide satisfactory/ acceptable explanation for the same within 30 days or any extended timelines as may be permitted
- (c) must prepare documents to cover up the discrepancy.
- (d) Both (a) and (b)

Ans. (b) is required to provide satisfactory/ acceptable explanation for the same within 30 days or any extended timelines as may be permitted

Q2. If the information obtained from taxable person is not found satisfactory by the proper officer, he can pass assessment order u/s 61 raising demand of disputed tax demand.

- (a) True
- (b) False

Ans. (b) False

Q3. What is the time limit after which action under section 61 cannot be taken?

- (a) 30 days from filing of return or such further period as may be decided by proper officer.
- (b) No time Limit
- (c) Time limit mentioned in Section 73 or 75 of the Act.

Ans. (c) Time limit mentioned in Section 73 or 75 of the Act.

Q.4 What is the time limit, within which the registered person should take corrective measures after accepting the discrepancies communicated to him by proper officer?

- (a) reasonable time
- (b) 30 days from the date of communication of discrepancy.
- (c) 30 days from date of acceptance of the discrepancy
- (d) date of filing of return for the month in which the discrepancy is accepted

Ans: (d) date of filing of return for the month in which the discrepancy is accepted.

Statutory Provision

62. Assessment of non-filers of returns

- (1) *Notwithstanding anything to the contrary contained in section 73 or section 74, where a registered taxable person fails to furnish the return required under Section 39 or Section 45, even after the service of a notice under Section 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within the period of five years limit from the date specified of Section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.*
- (2) *Where the registered person furnishes a valid return within thirty days of the service of the assessment order under sub-Section (1), the said assessment order shall be deemed to have been withdrawn. But the liability for payment of interest under sub-section (1) of section 50 or for the payment of late fee under section 47 shall continue.*

62.1 Introduction

Section 62 of the Act can be invoked only in case of registered taxable persons who have failed to file returns, as required, under section 39 or as the case may be, or final return on cancellation of registration under section 45 of the Act. Issuing notice under section 46 appears to be a pre-condition for initiating proceedings under Section 62 of the Act.

62.2 Analysis of Provisions

Non-compliance with the notice under Section 46 paves the way for initiating the proceedings under this section. If the assessee fails to furnish the return within 15 days of issue of notice

under section 46 then the Proper Officer may assess the tax liability in accordance with the provisions of Rule 100 to the best of his judgment, taking into account all the relevant material available on record, and issue an assessment order. This is also known as 'best judgment assessment'. It can be completed without giving notice of hearing to the assessee.

The order under section 62 must be issued within a period of five years from the date specified under section 44 for furnishing annual return for the financial year to which the tax not paid relates. Section 44(1) states that date for furnishing the annual return is on or before 31st December following the end of such financial year to which such annual return pertains.

Non-issuance of notice under Section 46 closes the door on invoking Section 62 although other provisions are available to recover the tax dues. If, however, a registered person furnishes a 'valid return' within 30 days of the service of assessment order, the said assessment order shall be deemed to be withdrawn. 'Valid return' is defined in Section 2(117) to mean a return filed under Section 39(1) of the Act on which self-assessed tax has been paid in full.

Section 62 starts with the words '*notwithstanding anything contrary to section 73 and 74*'. Section 73 and 74 mandates issue of SCN and providing opportunity of being heard before passing order demanding tax. Further tax can be demand for a period of five years only if the existence of omissions and commissions mentioned u/s 74 are proved. The pre-condition of issuing SCN, providing opportunity of being heard and demanding tax for a five year period only in the presence of omissions and commissions listed u/s 74 is sought to be overcome by the non-obstante clause u/s 62. Consequence of late fee under Section 47 and interest under Section 50 will both be applicable in cases of conclusion of best judgement assessment made under this Section.

An order passed under this section shall be communicated to the registered person in **FORM GST ASMT 13**

62.3 Comparison with equivalent provisions in other laws

It appears that section 62 of the CGST Act is incorporated predominantly on the basis of provisions contained in the erstwhile State VAT Acts.

Section 72 of the Finance Act, 1994 provides for assessment of persons liable to pay service tax, but who has failed to furnish return under section 70. However, procedure contained in section 72 requires that every such person shall be given a reasonable opportunity of being heard before the order is passed.

62.4 Related Provisions

Section / Rule / Form	Description
Section 2(117)	Valid return
Section 39	Returns
Section 45	Final return
Section 46	Notice to return defaulters
Section 47	Late fee

Section 50

Interest

62.5 FAQ's

Q1. Whether Proper Officer is required to give any notice to taxable person before completing assessment u/s 62?

Ans. The assessment u/s 62 can be initiated only after the service of notice under section 46 i.e. notice to return defaulters.

Q2. If a registered person files a return after receipt of notice u/s 46 but fails to make the payment disclosed by him in the return, can assessment order u/s 62 be passed in this case?

Ans. An assessment order u/s 62 is deemed to have been withdrawn if the registered person furnishes a valid return (including payment of taxes).

62.6 MCQ's

Q2. The proper officer can complete assessment under section 62 without issuing any notice to the registered taxable person before passing assessment order.

- (a) True
- (b) False

Ans. (b) False

Q3. What is the time limit for issuing order under section 62?

- (a) 9 months from the end of financial year.
- (b) 3 years for cases covered U/s 73 or 5 years for cases covered under 74
- (c) 5 years for cases covered U/s 73 or 3 years for cases covered under 74
- (d) 5 years from the due date of filing annual return.

Ans. (d) 5 years from the due date of filing annual return

Q4. The assessment order u/s 62 shall be deemed to be cancelled if:

- (a) Where the registered person furnishes a valid return within 30 days of the service of the assessment order.
- (b) Where the registered person within 90 days of the service of the assessment order.
- (c) Assessment order under section 46 cannot be cancelled.
- (d) Where assessee intimates to the Proper Officer that he has filed the valid return.

Ans. (a) Where the registered person furnishes a valid return within 30 days of the service of the assessment order.

Q5. After serving of notice u/s 46, the proper officer is not required to give notice of hearing to the registered tax person before passing assessment order.

- (a) True
- (b) False

Ans. (a) True.

Statutory Provision

63. Assessment of unregistered persons

Notwithstanding anything to the contrary contained in section 73 or section 74, where a taxable person fails to obtain registration even though liable to do so, or whose registration has been cancelled under sub section (2) of section 29 but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgement for the relevant tax periods and issue an assessment order within a period of five years from the date specified under section 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

Provided that no such assessment order shall be passed without giving the person an opportunity of being heard

63.1 Introduction

This Section is applicable to unregistered persons i.e., persons who are liable to obtain registration under Section 22 and have failed to obtain registration will come within scope of operation of this Section. This provision also covers cases where registration was cancelled as under section 29 (2). Section 29(2) of the Act covers 5 instances where registration may be cancelled by proper officer:

- (a) A person who contravenes the provisions of this Act or Rules made thereunder;
- (b) A composition person who fails to furnish returns for 3 consecutive tax periods.
- (c) A person other than composition person who fails to furnish returns for 6 consecutive months.
- (d) A person who has sought voluntary registration but has failed to commence business within 6 months.
- (e) Where registration has been obtained by way of fraud, willful misstatement or suppression of facts.

63.2 Analysis

This Section is applicable to unregistered taxable persons. In such cases, the proper officer is required to give a reasonable opportunity of being heard to such persons before proceeding to assess such person. The section begins with the phrase "Notwithstanding anything to the contrary contained in section 73 or section 74". It therefore appears that, assessment under section 63 can be completed independent of section 73 and Section 74, however, procedures contained in section 73 or 74 to the extent they are not inconsistent with section 63 need to be followed, while completing the assessment on principles governing best judgment assessment. Even though no return would have actually been filed in such cases, the authority to pass such assessment order is extinguished on the expiry of 5 years from due date

applicable for filing annual return for the year to which tax not paid relates.

For assessment under this section, notice has to be issued as per Rule 100(2) in **FORM GST ASMT-14** by the proper officer. The notice would contain the grounds on which the assessment is proposed to be made on best judgment basis. The registered person is allowed a time of 15 days to furnish his reply, if any. After considering the said explanation, the order has to be passed in **FORM GST ASMT- 15**.

63.3 Comparison with equivalent provisions in other laws:

Section 23(4) of the MVAT Act contains similar provision as that in Section 63 of the GST Act.

63.4 Related Provisions

Section	Description
Section 22	Person liable for Registration
Section 24	Compulsory Registration
Section 29(2)	Cancellation of Registration
Section 73 & 74	Determination of tax not paid, short paid, erroneously refunded

63.5 FAQs

Q1. What is the time limit for passing order u/s 63?

Ans. The proper officer has to pass an assessment order u/s 63 within a period of five years from the due date for filing the annual return for the year to which such tax unpaid relates to.

Q2. Can an assessment order be passed without affording an opportunity of being heard to the person liable to be registered?

Ans. No, an assessment order cannot be passed without giving him an opportunity of being heard.

63.6 MCQs

Q1. What is the time limit for passing order u/s 63?

- (a) 5 years from the date due date for filing of the annual return for the year to which tax not paid relates.
- (b) 5 years from the end of financial year in which tax not paid relates to
- (c) No time limit

Ans. (a) 5 years from the date due date for filing of the annual return for the year to which tax not paid relates

Q2. No Notice is required to be given before passing assessment order under section 63?

- (a) True
- (b) False

Ans. (b) False

Q3. Section 63 deals with

- (a) Assessment of taxable persons who have failed to file the returns.
- (b) Assessment of registered taxable person who have filed returns as per the law.
- (c) Assessment of unregistered taxable persons.
- (d) Assessment of any taxable person, whether registered or unregistered.

Ans. (c) Assessment of unregistered taxable persons

Statutory Provision

64. Summary assessment in certain special cases

- (1) *The proper officer may, on any evidence showing a tax liability of a person coming to his notice, with the previous permission of Additional/Joint Commissioner, proceed to assess the tax liability of such person to protect the interest of revenue and issue an assessment order, if he has sufficient grounds to believe that any delay in doing so will adversely affect the interest of revenue:*

Provided that where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax and any other amount due under this section.

- (2) *On any application made by the taxable person within thirty days from the date of receipt of order passed under sub-Section (1) or on his own motion, if the Additional/Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in Section 73 or section 74.*

64.1 Analysis

The word “summary assessment” is generally used in a tax legislation to denote ‘fast track assessment’ based on return filed by the assessee. It allows the Tax Officer to make prima facie adjustments based on errors or factors based on the available information without an occasion for calling for further information from an assessee or inspecting his records. In the GST Act, it is used to denote those assessments which are completed ex-parte and on priority basis when there is reason to believe that there will be loss of tax revenue, if such assessment is delayed. This provision is only the first step in invoking the machinery provided to enforce recovery of dues from potential defaulters, and this requires an assessment of the tax liability. Such amounts are commonly known as protective assessments which in a sense protects Government revenue. This section presupposes the fact that the proper officer be in possession of sufficient grounds to believe that any delay will adversely affect revenue.

The summary assessment can be undertaken in case all of the following conditions are satisfied:

- The Proper Officer must have evidence that there may be a tax liability.
- The Proper Officer has obtained prior permission of Additional / Joint Commissioner to assess the tax liability summarily. The proper officer must have sufficient ground to believe that any delay in passing assessment order would result in loss of revenue.

Summary assessment under this Section of the CGST Act can therefore be construed in some sense as a 'protective assessment' carried out in special circumstances, where there are sufficient grounds to believe that taxable person will fail to make payment of any tax, penalty or interest, if the assessment is not completed immediately. Such failure to pay tax, penalty or interest must be due to reasons attributable to the tax payer (ex: insolvency, instances of defaulting, absconding etc). Hence, summary assessment under this Section is not a substitute for assessment getting time barred. Further, mere possibility of non-payment cannot be a grounds for resorting to summary assessment, unless there are factors indicating that such non-payment pertains to admitted or undisputed tax liability. However, it is important to note that upon grant of permission by the Additional / Joint Commissioner, it appears that the evidence available with the proper officer or his apprehension of possible loss of revenue, cannot be called into question. As per the provision of Rule 100(3) The summary assessment order should be in **FORM GST ASMT-16**.

The section allows the person who is assessed and is served the order so passed, to come forward and make an application in accordance with Rule 100(4) in **FORM GST ASMT-17** to the Additional / Joint Commissioner, which will then be examined and if the Additional/ Joint Commissioner is satisfied, the summary assessment order will be withdrawn. As regards the contents of this application, it may be understood that the applicant may attempt to challenge the facts or reasons for the belief about risk of revenue loss and further accept to be available to respond, if proceedings under Section 73/74 were to be undertaken. Besides, the Additional / Joint Commissioner may, on his own motion, withdraw such order and follow the procedure laid down in Section 73 or as the case may be Section 74 for determination of taxes not paid or short paid or erroneously refunded, if he considers that such order is erroneous.

From the above, it appears that every summary assessment order so withdrawn under sub-Section (2), must be followed by a notice under Section 73 or as the case may be 74.

On receipt of application the proper officer has to pass the order of withdrawal or, rejection of the application in accordance with Rule 100(5) in **FORM GST ASMT-18**.

Many times, summary assessments are undertaken in circumstances, when a taxable person to whom liability pertains is not ascertainable. In such cases, the law provides that, if the liability pertains to supply of goods, then person in charge of such goods shall be deemed to be the taxable person liable to be assessed and pay tax and amount due on completion of summary assessment. There is no deeming provision when unpaid tax liability relates to supply of services.

64.2 Related Provisions

Section / Rule / Form	Description
Section 73 & 74	Determination of tax not paid, short paid, erroneously refunded

64.3 FAQ

Q1. When can Summary Assessment be initiated?

Ans. Summary Assessments can be initiated by a proper officer on seeking permission from the Additional Commissioner / Joint Commissioner and proving that the taxable person is liable to pay tax

64.4 MCQ

Q1. What is the time period within which a person can apply to the Additional/ Joint Commissioner for withdrawal of such order under this Section?

- (a) 30 days
- (b) 45 days
- (c) 60 days
- (d) No time limit.

Ans. (a) 30 days

Chapter–XIII

Audit

65. Audit by tax authorities

66. Special audit

Statutory provision

65. Audit by tax authorities

- (1) *The Commissioner or any officer authorised by him, by way of a general or a specific order, may undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.*
- (2) *The officers referred to in sub-Section (1) may conduct audit at the place of business of the registered person and/or in their office.*
- (3) *The registered person shall be informed, by way of a notice, not less than fifteen working days, prior to the conduct of audit in such manner as may be prescribed.*
- (4) *The audit under sub-Section (1) shall be completed within a period of three months from the date of commencement of audit:*

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

Explanation.- For the purposes of this sub-Section, 'commencement of audit' shall mean the date on which the records and other documents, called for by the tax authorities, are made available by the registered person or the actual institution of audit at the place of business, whichever is later.

- (5) *During the course of audit, the authorised officer may require the registered person,*
 - (i) *to afford him the necessary facility to verify the books of account or other documents as he may require,*
 - (ii) *to furnish such information as he may require and render assistance for timely completion of audit.*
- (6) *On conclusion of audit, the proper officer shall within thirty days, inform the registered person, whose records are audited, about such findings, his rights and obligations and the reasons for the findings.*
- (7) *Where the audit conducted under sub-Section (1) results in detection of tax not paid or such short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under Section 73 or 74.*

65.1 Introduction

- (a) Audit of records of tax payers is the bed rock for the proper functioning of a self-assessment based tax system. This provision provides for audit of the business transactions of any registered person. It is an important tool in the tax administration to ensure compliance of law and prevent revenue leakage.

65.2 Analysis

- (a) Section 65 authorizes conduct of audit by the Commissioner or any other officer authorised by him of the transactions of the registered persons only. The Commissioner may issue a general order or a specific order, to authorize officers to conduct such audit. As per Rule 101(1) the period of audit under sub-section (1) of Section 65 shall be a financial year or multiples thereof. The frequency and manner for conducting such audit are yet to be prescribed. It is important to note that the said order of Commissioner must be specific to the auditee and the tax period selected for audit. Absence, error and deficiency in such orders aborts any preparatory step taken by the audit officer and preparation to respond taken by the auditee.

- (b) The audit will be conducted at the place of business of the registered person or office of tax authorities. Intimation of audit is to be issued to the taxable person at least 15 days in advance in accordance with Rule 101(2) in **Form GST ADT-01** and the audit is to be completed within 3 months from the date of commencement of audit, which may be extended by the Commissioner, where required, by a further period not exceeding 6 months.

The Commissioner needs to record reasons in writing for grant of any such extension.

- (c) During the course of audit, the authorized officer may require the registered person to afford him the necessary facility to verify the books of account and also to furnish the required information and render assistance for timely completion of the audit..
- (d) As per Rule 101(3), the proper officer authorised to conduct audit of the 'records' and the 'books of account' of the registered person shall, with the assistance of the team of officers and officials accompanying him, verify:
 - (a) the documents on the basis of which the books of account are maintained
 - (b) the returns and statements furnished under the provisions of the Act
 - (c) the correctness of the turnover, exemptions and deductions claimed
 - (d) the correctness of rate of tax applied in respect of the supply of goods or services or both
 - (e) the correctness of input tax credit availed and utilised,
 - (f) the correctness of refund claimed
 - (g) other relevant issues and

- (h) record the observations in his audit notes
- (e) The provisions of section 65(5) casts an obligation on the registered person to afford necessary facility for verification of books and records, render assistance for timely completion of audit and furnish information and statements.
- (f) Some of the best practices to be adopted for GST audit among others could be:
The evaluation of the internal control *viz-a-viz* GST would indicate the area to be focused. This could be done by verifying:
 - (a) The Statutory Audit report which has specific disclosure needs in regard to maintenance of record, stock and fixed assets.
 - (b) The Information System Audit report and the internal audit report.
 - (c) Internal Control questionnaire designed for GST compliance.
 - (i) The use of generalised audit software to aid the GST audit would ensure modern practice of risk based audit are adopted.
 - (ii) The reconciliation of the books of account or reports from the ERP's to the return is imperative.
 - (iii) The review of the gross trial balance for detecting any incomes being set off with expenses.
 - (iv) Review of purchases/expenses to examine applicability of reverse charge applicable to goods/services. The foreign exchange outgo reconciliation would also be necessary for identifying the liability of import of services.
 - (v) Quantitative reconciliation of stock transfer within the State or for supplies to job workers under exemption.
 - (vi) Ratio analysis could provide vital clues on areas of non-compliance.
- (g) On audit completion, information is required to be provided to the registered person including the findings during the audit as per section 65(6) read with Rule 101(5) in **FORM GST ADT-02** within thirty days of conclusion of the audit. In cases where tax liability is identified during the audit or input tax credit wrongly availed or utilized by the auditee, the procedure laid down under Section 73 or 74 is to be followed. Audit cannot conclude automatically resulting in a demand. Independent application of mind is necessary for a valid demand to be raised.

65.3 Comparative Review

1. The Central Excise law empowers the Central Government to make provision for verification of records of assessee. However, the GST Act itself specifically provides for audit of the registered person. In EA 2000, the Director General of Audit supervises the audit functions. Separate Audit Commissionerate have been constituted with effect from 15.10.2014 which will plan, delegate and administer the audit. The audit of the

assessee is carried out through visits by 'audit groups' which consist of Superintendents and Inspectors.

2. The audit groups shall prepare the assessee master file, collect the relevant information and documents. Desk review shall be done before forming the audit plan. As planned, audit will be conducted and corrections and improvements shall be suggested to the assessee.
3. The draft audit report would be discussed and communicated to the assessee and with the details of spot recoveries and willingness of the assessee to accept the demand etc. the same shall be placed before monitoring committee. If the assessee does not accept the audit para, adjudication process will be initiated by the Jurisdictional GST Officer.

65.4 Related Provisions

Section	Description
Section 73	Determination of tax not paid, short paid, erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts
Section 74	Determination of tax not paid, short paid, erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts

65.5 FAQ

- Q1. Whether audit is mandatory in case of every registered person?
- Ans. No, it is not mandatory. It will be applicable only in cases where the appropriate authorities authorize the same by issue of general / specific orders.
- Q2. Whether any prior intimation is required before conducting the audit?
- Ans. Yes, prior intimation is required and the taxable person should be informed at least 15 days prior to conduct of audit in FORM GST ADT-01.
- Q3. What is the period within which the audit is to be completed?
- Ans. The audit is required to be completed within 3 months from the date of commencement of audit or within the extended period of 6 months in cases where the Commissioner is satisfied for reasons to be recorded in writing that the audit cannot be completed in 3 months.
- Q4. What is meant by commencement of audit?
- Ans. It means the date on which the records and documents requisitioned by the tax authorities are made available by the registered person or the actual institution of audit at the place of business whichever is later
- Q5. What are the obligations of the taxable person when he receives the notice of audit?

Ans. The taxable person should afford necessary facility / information / assistance / documents for smooth conduct of audit and its timely completion.

Q6. What would be the action by the proper officer upon conclusion of the audit?

Ans. The proper officer must within 30 days inform the registered person (i.e. the auditee) about his findings, reasons for findings and his rights and obligations in respect of such findings.

65.6 Case Study 1:

A notice for audit was served to M/s. ABC Ltd, on 20.02.2020. Required information was given by M/s. ABC Ltd, on 25.05.2020. The audit officers visited the place of business on 26.06.2020. What is the last date within which the audit is to be completed?

It will be 3 months from 25.05.2020, viz., 24.08.2020 or within an extended period of 6 months. The extended period would be 24.02.2021.

Statutory provision

66. Special Audit

- (1) *If at any stage of scrutiny, enquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner having regard to the nature and complexity of the case and interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such taxable person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.*
- (2) *The chartered accountant or cost accountant so nominated shall, within the period of ninety days, submit a report of such audit duly signed and certified by him to the said Assistant Commissioner mentioning therein such other particulars as may be specified:
Provided that the Assistant Commissioner may, on an application made to him in this behalf by the registered person or the chartered accountant or cost accountant or for any material and sufficient reason, extend the said period by a further period of ninety days.*
- (3) *The provision of sub-Section (1) shall have effect notwithstanding that the accounts of the registered person have been audited under any other provision of this Act or any other law for the time being in force.*
- (4) *The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit under sub-Section (1) which is proposed to be used in any proceedings under this Act or rules made thereunder.*
- (5) *The expenses of the examination and audit of records under sub-Section (1), including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner and such determination shall be final.*

- (6) *Where the special audit conducted under sub-Section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under Section 73 or 74.*

66.1 Introduction

Availing the services of experts is an age old practice of due process of law. These experts have done yeoman service to the process of delivering justice. One such facility extended by the Act is in Section 66 where an officer not below the rank of Assistant Commissioner, duly approved, may avail the services of a Chartered Accountant or Cost Accountant to conduct a detailed examination of specific areas of operations of a registered person.

66.2 Analysis

- (a) Availing the services of the expert be it a Chartered Accountant or Cost Accountant is permitted by this section only when the officer considering the nature & complexity of the business and in the interest of revenue is of the opinion that:
- Value has not been correctly declared; or
 - Credit availed is not within the normal limits.

It would be interesting to know how these 'subjective' conclusions will be drawn and how the proper officers determines what is the normal limit of input credit availed.

- (b) An Assistant Commissioner who nurses an opinion on the above two aspects, after commencement and before completion of any scrutiny, enquiry, investigation or any other proceedings under the Act, may direct a registered person to get his books of accounts audited by an expert. Such direction is to be issued in accordance with the provision of Rule 102 (1) **FORM GST ADT-03**
- (c) The Assistant Commissioner needs to obtain prior permission of the Commissioner to issue such direction to the taxable person
- (d) Identifying the expert is not left to the registered person whose audit is to be conducted but the expert is to be nominated by the Commissioner.
- (e) The Chartered Accountant or the Cost Accountant so appointed shall submit the audit report, mentioning the specified particulars therein, within a period of 90 days, to the Assistant Commissioner in accordance with provision of Rule 102(2) **FORM GST ADT-04**.
- (f) In the event of an application to the Assistant Commissioner by Chartered Accountant or the Cost Accountant or the registered person seeking an extension, or for any material or sufficient reason, the due date of submission of audit report may be extended by another 90 days.
- (g) Section 66(3) states that special audit may be initiated notwithstanding that the accounts of the registered person have been audited under any other provisions of this Act or any other law for the time being in force. While the report in respect of the special

audit under this section is to be submitted directly to the Assistant Commissioner, the registered person is to be provided an opportunity of being heard in respect of any material gathered in the special audit which is proposed to be used in any proceedings under this Act. This provision does not appear to clearly state whether the registered person is entitled to receive a copy of the entire audit report or only extracts or merely inferences from the audit. However, the observance of the principles of natural justice in the proceedings arising from this audit would not fail the taxable person on this aspect.

- (h) The remuneration to the expert is to be paid by the Commissioner whose decision will be final.
- (i) As in the case of audit under section 65, no demand of tax, even *ad interim*, is permitted on completion of the special audit under this section. In case any possible tax liability is identified during the audit, procedure under section 73 or 74 as the case may be is to be followed.

66.3 Comparative Review

Law relating to Central Excise

- (a) Similar provision existed under the Central Excise law. Unduly large proportion of credit availment considering the industry is a reason for audit. This could also be a reason for special audit under GST also. The availing or utilization of CENVAT credit by reason of fraud, collusion or any willful mis-statement or suppression of facts can also be the reason for issuing notice for special audit. Under GST law, no special audit will be directed for wrong utilization of the credit, but wrong availment alone without any reason of fraud, collusion or any willful mis-statement or suppression of facts is sufficient to issue notice for special audit.
- (b) Under Central Excise law, the permission is given by the Principal Chief Commissioner or the Chief Commissioner of Central Excise. Under GST Act, the said permission is to be given by the Commissioner.
- (c) Under Central Excise law, the period within which the Chartered Accountant or the Cost Accountant should submit the audit report is not specified but the maximum extended period within which the audit report should be submitted remains to be 180 days. Under CGST Act, the audit report shall normally be submitted within 90 days and the maximum further extension could be another 90 days.

Law relating to Service Tax

- (a) The authority to direct the special audit rests with the Principal Commissioner or the Commissioner.
- (b) The special audit may be initiated where person liable to pay service tax;
 - (i) has failed to declare or determine the value of taxable service correctly; or
 - (ii) has availed and utilized the CENVAT credit which is not within the normal limits or by means of fraud, collusion or any willful mis-statement or suppression of facts; or

- (iii) has operations at multiple locations and true and complete picture of his accounts are not possible to get at his registered premises.
- (c) The special audit report shall be submitted within the period as may be specified by the Commissioner. The time limit of maximum 180 days is not applicable.
- (d) No provision exists regarding remuneration payable for the special audit, however, the same shall be paid by the Central Government

66.4 Related Provisions

Section	Description	Remarks
Section 65	Audit by tax authorities	The audit under Section 66 is a special audit to be conducted by a Chartered Accountant or Cost Accountant nominated by the Commissioner whereas the audit under Section 65 is a routine audit by the tax office.

66.5 FAQ

- Q1. Who can serve the notice for special audit?
- Ans. An officer not below the rank of an Assistant Commissioner with prior approval of the Commissioner may serve notice for special audit, having regard to the nature and complexity of the case and the interest of revenue.
- Q2. Under what circumstances notice for special audit shall be issued?
- Ans. If the proper officer (not below the rank of Assistant Commissioner) is of the opinion that the value has not been correctly declared or credit availed is not within the normal limits, a special audit may be ordered.
- Q3. Who will conduct the special audit?
- Ans. A Chartered Accountant or a Cost Accountant as may be nominated by the Commissioner may undertake the audit.
- Q4. What is the time limit to submit the audit report?
- Ans. The auditor will have to submit the report within 90 days or the further extended period of 90 days.
- Q5. Who will bear the cost of special audit?
- Ans. The expenses for examination and audit including the remuneration payable to the auditor will be determined and borne by the Commissioner.
- Q6. What action the tax authorities may take after the special audit?
- Ans. Based on the findings / observations of the special audit, action can be initiated under Section 73 or 74 as the case may be of the CGST Act.

Chapter– XIV

Inspection, Search, Seizure and Arrest

- 67. Power of inspection, search and seizure
- 68. Inspection of goods in movement
- 69. Power to arrest
- 70. Power to summon persons to give evidence and produce documents
- 71. Access to business premises
- 72. Officers to assist proper officers

Statutory Provision

- 67. Power of inspection, search and seizure**
- (1) Where the proper officer, not below the rank of Joint Commissioner, has reasons to believe that –
- (a) a taxable person has suppressed any transaction relating to supply of goods or services or both or the stock of goods in hand, or has claimed input tax credit in excess of his entitlement under the Act or has indulged in contravention of any of the provisions of this Act or rules made thereunder to evade tax under this Act; or
- (b) any person engaged in the business of transporting goods or an owner or operator of a warehouse or a godown or any other place is keeping goods which have escaped payment of tax or has kept his accounts or goods in such a manner as is likely to cause evasion of tax payable under this Act,
- he may authorise in writing any other officer of central tax to inspect any places of business of the taxable person or the persons engaged in the business of transporting goods or the owner or the operator of warehouse or godown or any other place.
- (2) Where the proper officer, not below the rank of Joint Commissioner, either pursuant to an inspection carried out under sub-section (1) or otherwise, has reasons to believe that any goods liable to confiscation or any documents or books or things, which in his opinion shall be useful for or relevant to any proceedings under this Act, are secreted in any place, he may authorise in writing any other officer of central tax to search and seize or may himself search and seize such goods, documents, books or things:
- Provided that where it is not practicable to seize any such goods, the proper officer, or any office authorized by him, may serve on the owner or the custodian of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer:
- Provided further that the documents or books or things so seized shall be retained by such officer only for so long as may be necessary for their examination and for any inquiry or proceedings under this Act.

- (3) *The documents, books or things referred to in sub-section (2) or any other documents, books or things produced by a taxable person or any other person, which have not been relied upon for the issue of notice under this Act or the rules made thereunder, shall be returned to such person within a period not exceeding thirty days of the issue of the said notice.*
- (4) *The officer authorized under sub-section (2) shall have the power to seal or break open the door of any premises or to break open any almirah, electronic devices, box, receptacle in which any goods, accounts, registers or documents of the person are suspected to be concealed, where access to such premises, almirah, electronic devices, box or receptacle is denied.*
- (5) *The person from whose custody any documents are seized under sub-section (2) shall be entitled to make copies thereof or take extracts therefrom in the presence of an authorized officer at such place and time as such officer may indicate in this behalf except where making such copies or taking such extracts may, in the opinion of the proper officer, prejudicially affect the investigation.*
- (6) *The goods so seized under sub-section (2) shall be released, on a provisional basis, upon execution of a bond and furnishing of a security, in such manner and of such quantum, respectively, as may be prescribed or on payment of applicable tax, interest and penalty payable, as the case may be.*
- (7) *Where any goods are seized under sub-section (2) and no notice in respect thereof is given within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized:
Provided that the period of six months may, on sufficient cause being shown, be extended by the proper officer for a further period not exceeding six months*
- (8) *The Government may, having regard to the perishable or hazardous nature of any goods, depreciation in the value of the goods with the passage of time, constraints of storage space for the goods or any other relevant considerations, by notification, specify the goods or class of goods which shall, as soon as may be after its seizure under sub-section (2), be disposed of by the proper officer in such manner as may be prescribed.*
- (9) *Where any goods, being goods specified under sub-section (8), have been seized by a proper officer, or any officer authorized by him under sub-section (2), he shall prepare an inventory of such goods in such manner as may be prescribed.*
- (10) *The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), relating to search and seizure, shall, so far as may be, apply to search and seizure under this section subject to the modification that sub-section (5) of section 165 of the said Code shall have effect as if for the word "Magistrate", wherever it occurs, the word "Commissioner" were substituted.*
- (11) *Where the proper officer has reasons to believe that any person has evaded or is attempting to evade the payment of any tax, he may, for reasons to be recorded in writing, seize the accounts, registers or documents of such person produced before him and shall grant a receipt for the same, and shall retain the same for so long as may be*

necessary in connection with any proceedings under this Act or the rules made thereunder for prosecution.

- (12) *The Commissioner or an officer authorised by him may cause purchase of any goods or services or both by any person authorised by him from the business premises of any taxable person, to check the issue of tax invoices or bills of supply by such taxable person, and on return of goods so purchased by such officer, such taxable person or any person in charge of the business premises shall refund the amount so paid towards the goods after cancelling any tax invoice or bill of supply issued earlier.*

67.1 Analysis

- (i) When the proper officer not below the rank of Joint Commissioner 'has reasons to believe' that the taxable person has suppressed any transaction of supply of goods or services or both or information relating to stock in hand or claimed excess input tax credit or has contravened any of the statutory provisions of this Act, with an intent to evade taxes he shall issue an authorisation in FORM GST INS-01 authorising any other officer subordinate to him to conduct the inspection or search.

The phrase 'reasons to believe' has been interpreted by various courts distinguishing it from 'reason to suspect'. In the case of *Crompton Greaves Ltd. vs. State of Gujarat*, 120 STC 510 the Court observed that, *"these words suggest that belief must be that of honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence not on mere suspicion, gossip or rumor. The powers under the present section are wide but not plenary; the words of the section are 'reason to believe' and not 'reason to suspect'."*

- (ii) The power can also be exercised when there is a reason to believe that any person engaged in the business of transportation of goods or an owner or operator of a warehouse or godown or any other place is storing goods, which have escaped tax payment or has kept his accounts or goods in a manner likely to cause tax evasion.
- (iii) Under such circumstances, he may authorize another officer in writing to:
- Inspect any place of business of the taxable person who has evaded tax or of the transporter who transported such tax evading goods or godown/warehouse in which such tax evaded goods or accounts relating thereto have been stored.
 - Search and seize the goods or any documents or books or things which are liable for confiscation including anything concealed and which will be useful or relevant in the proceedings under this Act.
 - Seal or break open the door of any premises, storage, box, electronic device or receptacle where goods, books of accounts etc. are suspected to be concealed and when access to the same is denied to the officer.
 - If it is not practicable to seize the goods, then the Officer may serve an order on owner or custodian of the goods for not removing, part or deal with the goods without his prior permission.

- (e) The said officer shall return the documents, books or things seized or produced by a taxable or any other person on which no reliance has been placed for issuing notice, within a period of 30 days from the issue of notice. However, the documents books or things relied upon while issuing the notice will be retained.
- (f) The person from whose custody documents are seized is entitled to take photocopy or extract of such documents in the presence of an authorized GST officer at the place and time as predetermined. Copies or extracts may be denied if he is of the opinion that such an act will prejudicially affect the investigation.
- (g) The goods so seized can be released on a provisional basis, upon execution of Bond in Form GST INS -04 and furnish security in form of Bank Guarantee equal to amount of tax, interest and penalty
- (h) If no notice has been issued within 6 months or an extended period of another 6 months, the seized goods/exhibits ought to be returned.
- (i) The officer can dispose of certain notified goods immediately after the seizure, if those goods are of perishable or hazardous nature, or would depreciate in value by passage of time or there are constraints of storage space or any other relevant considerations as may be prescribed.
- (j) The officer who seizes the goods is liable to maintain the inventory of the said goods.
- (k) The provisions of Code of Criminal Procedure, 1973 relating to search and seizure shall be applicable to the GST Laws and in section 165(5) thereof, the word 'Magistrate' should be read as 'Commissioner'.
- (l) The officer can even seize accounts, registers or documents of any person; in case he has reasons to believe that the said person has evaded or is attempting to evade the taxes. However, he has to record the reasons in writing and also shall grant receipt of such seizure. There is no time limit prescribed for such retention by the officer. Further, where any goods, documents, book or things are liable for seizure then proper officer shall make an order of seizure in Form GST INS-02 or where it is not practically possible to seize goods then an order of prohibition in Form INS -03 shall be issued with a condition that goods shall not be removed without permission of such officer.
- (m) The Commissioner or officer authorized by him can authorize any person for purchase of any goods / services to check issue of tax invoices / bills of supply. The goods so purchased by such appointed person, if returned, the taxable person from whom the goods were purchased shall refund the amount so paid and cancel the tax invoice or any bills of supply. There is no time limit prescribed for return of the goods. It should be noted that this provision deals only with return of goods so purchased and there is no provision of return of services so purchased.
- (n) The seized goods may be released on a provisional basis upon execution of a bond for the value of the goods in FORM GST INS-04 and furnishing of a security in the form of a bank guarantee equivalent to the amount of applicable tax, interest and penalty payable.

Then the Proper Officer can:

Inspect: any place of business of the assessee who has evaded the tax or is attempting to evade the tax or of the transporter who transported such tax evading goods or godown/warehouse operator in which such tax evading goods or accounts relating thereto has been stored

Search & seizure: the goods or any documents or books or things which are liable for confiscation and which will be instrumental in the proceedings under this act during the enquiry period.

Seal or Break: open the door of any premises, storage, box or receptacle where goods, books of accounts etc. are suspected to be concealed and when access to the same is denied to the said officer.

Electronic device

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

For initiating the proceedings Joint Commissioner or any superior officer should have a 'reason to believe' that the assessee has done any of the following:

Suppressed any transaction of supply of goods or services	Stock in hand	Claim of excess input tax credit	Has contravened any of the statutory provisions of this Act or Rules made thereunder
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Please consider the comparative understanding of seizure and confiscation to appreciate the areas of similarity and difference so as not to regard them to be synonymous.

Criteria	Seizure	Confiscation
Applicability	Any goods, documents and things	Only offending goods
Manner	Actual custody or constructive custody	Actual custody
Authority	Held in trust, no change of ownership	Held in trust, no change of ownership unless adjudication completed
Duration of holding	6 months, extended for further 6 months by Commissioner to issue notice for adjudication	Until issue of notice for adjudication and office opportunity to pay penalty-in-lieu of confiscation
Conclusion	Return articles that are not 'offending articles'	Title to pass and vest with Central Government as per order of adjudication

67.2. Comparative review

- (i) Similar powers relating to inspection, search and seizure is present in all the erstwhile indirect tax laws viz., Finance Act, 1994 (Service Tax), Central Excise Act, 1944 and in most of the State VAT laws.
- (ii) Interestingly, under the CE Act, provision has been made to safeguard the interest of the assessee against harassment by way of irregular search and seizure by the tax officers. Section 22 of the CE Act prescribes fine upto ₹ 2,000/- on an officer who conducts vexatious search, inspection etc. This provision is conspicuously absent in the CGST Act.

67.3. FAQs

Q1. Under what circumstances there can be inspection, search or seizure operations?

Ans. Initiation of action under this section is when the proper officer not below rank of Joint Commissioner 'has reason to believe' that

- (a) the taxable person has suppressed any transaction of supply of goods or services or stock in hand or claimed excess input tax credit or has contravened any of the statutory provisions.
- (b) any person engaged in the business of transportation of goods or an owner or operator of a warehouse or godown or any other place where goods are stored, which have escaped tax payment or has kept his accounts or goods in a manner likely to cause tax evasion.

Q2. What is the meaning of the phrase 'reason to believe'?

Ans. The phrase 'reason to believe' has been interpreted by various courts distinguishing it from 'reason to suspect'. In the case of *Crompton Greaves Ltd. vs. State of Gujarat*, 120 STC 510 the Court observed that, *"these words suggest that belief must be that of honest and reasonable person based upon reasonable grounds, and that the Commissioner may act under this section on direct or circumstantial evidence not on mere suspicion, gossip or rumor. The powers under the present section are wide but not plenary; the words of the section are 'reason to believe' and not 'reason to suspect'."*

Q3. Whether goods so seized can be released on provisional basis?

Ans. The goods so seized can be released on provisional basis if bond and security as may be prescribed is furnished or upon payment of applicable tax, interest and penalty.

67.4. MCQs

Q1. Initiation of action under this section is by proper officer not below the rank of

- (a) Superintendent
- (b) Inspector
- (c) Joint Commissioner
- (d) Commissioner

Ans. (c) Joint Commissioner

Q2. In how many days, the officer shall return the seized goods / documents which are not relied upon while issuing notice?

- (a) 15 days
- (b) 30 days
- (c) 60 days
- (d) 90 days

Ans. (b) 30 days

Statutory provision

68. Inspection of goods in movement

The Government may require the person in charge of a conveyance carrying any consignment of goods of value exceeding such amount as may be specified to carry with him such documents and such devices as may be prescribed.

The details of documents required to be carried under sub-section (1) shall be validated in such manner as may be prescribed.

Where any conveyance referred to in sub-section (1) is intercepted by the proper officer at any place, he may require the person in charge of the said conveyance to produce the documents prescribed under the said sub-section and devices for verification, and the said person shall be liable to produce the documents and devices and also allow the inspection of goods.

E-Way Rules

[138. Information to be furnished prior to commencement of movement of goods and generation of e-way bill. -

(1) Every registered person who causes movement of goods of consignment value exceeding fifty thousand rupees—

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

shall, before commencement of such movement, furnish information relating to the said goods in Part A of FORM GST EWB-01, electronically, on the common portal.

[Provided that where goods are sent by a principal located in one State to a job-worker located in any other State, the e-way bill shall be generated by the principal irrespective of the value of the consignment:

Provided further that where handicraft goods are transported from one State to another by a person who has been exempted from the requirement of obtaining registration under clauses (i) and (ii) of section 24, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

Explanation. – For the purposes of this rule, the expression “handicraft goods” has the

meaning as assigned to it in the Government of India, Ministry of Finance, notification No. 32/ 2017-Central Tax dated 15.09.2017 published in the Gazette vide number G.S.R 1158 (E)]

- (2) Where the goods are transported by the registered person as a consignor or the recipient of supply as the consignee, whether in his own conveyance or a hired one or by railways or by air or by vessel, the said person or the recipient may generate the e-way bill in FORM GST EWB-01 electronically on the common portal after furnishing information in Part B of FORM GST EWB-01.
- (3) Where the e-way bill is not generated under sub-rule (2) and the goods are handed over to a transporter for transportation by road, the registered person shall furnish the information relating to the transporter in Part B of FORM GST EWB-01 on the common portal and the e-way bill shall be generated by the transporter on the said portal on the basis of the information furnished by the registered person in Part A of FORM GST EWB-01:

Provided that the registered person or, as the case may be, the transporter may, at his option, generate and carry the e-way bill even if the value of the consignment is less than fifty thousand rupees:

Provided further that where the movement is caused by an unregistered person either in his own conveyance or a hired one or through a transporter, he or the transporter may, at their option, generate the e-way bill in FORM GST EWB-01 on the common portal in the manner specified in this rule:

Provided also that where the goods are transported for a distance of less than ten kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the transporter may not furnish the details of conveyance in Part B of FORM GST EWB-01.

Explanation 1. – For the purposes of this sub-rule, where the goods are supplied by an unregistered supplier to a recipient who is registered, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.

Explanation 2.-The information in Part A of FORM GST EWB-01 shall be furnished by the consignor or the recipient of the supply as consignee where the goods are transported by railways or by air or by vessel.

- (4) Upon generation of the e-way bill on the common portal, a unique e-way bill number (EBN) shall be made available to the supplier, the recipient and the transporter on the common portal.
- (5) Any transporter transferring goods from one conveyance to another in the course of transit shall, before such transfer and further movement of goods, update the details of conveyance in the e-way bill on the common portal in FORM GST EWB-01:

Provided that where the goods are transported for a distance of less than ten kilometers within the State or Union territory from the place of business of the transporter finally to the place of business of the consignee, the details of conveyance may not be updated

in the e-way bill.

- (6) After e-way bill has been generated in accordance with the provisions of sub-rule (1), where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 may be generated by him on the said common portal prior to the movement of goods.
- (7) Where the consignor or the consignee has not generated FORM GST EWB-01 in accordance with the provisions of sub-rule (1) and the value of goods carried in the conveyance is more than fifty thousand rupees, the transporter shall generate FORM GST EWB-01 on the basis of invoice or bill of supply or delivery challan, as the case may be, and may also generate a consolidated e-way bill in FORM GST EWB-02 on the common portal prior to the movement of goods.
- (8) The information furnished in Part A of FORM GST EWB-01 shall be made available to the registered supplier on the common portal who may utilize the same for furnishing details in FORM GSTR-1:
Provided that when the information has been furnished by an unregistered supplier in FORM GST EWB-01, he shall be informed electronically, if the mobile number or the email is available.
- (9) Where an e-way bill has been generated under this rule, but goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within 24 hours of generation of the e-way bill:
Provided that an e-way bill cannot be cancelled if it has been verified in transit in accordance with the provisions of rule 138B.
- (10) An e-way bill or a consolidated e-way bill generated under this rule shall be valid for the period as mentioned in column (3) of the Table below from the relevant date, for the distance the goods have to be transported, as mentioned in column (2) of the said Table:

Table

Sr. no.	Distance	Validity Period
(1)	(2)	(3)
1.	Upto 100 km	One day
2.	For every 100 km or part thereof thereafter	One additional day

Provided that the Commissioner may, by notification, extend the validity period of e-way bill for certain categories of goods as may be specified therein:

Provided further that where, under circumstances of an exceptional nature, the goods cannot be transported within the validity period of the e-way bill, the transporter may generate another e-way bill after updating the details in Part B of FORM GST EWB-01.

Explanation. —For the purposes of this rule, the “relevant date” shall mean the date on which the e-way bill has been generated and the period of validity shall be counted from the time at which the e-way bill has been generated and each day shall be counted as twenty-four hours.

- (11) The details of e-way bill generated under sub-rule (1) shall be made available to the recipient, if registered, on the common portal, who shall communicate his acceptance or rejection of the consignment covered by the e-way bill.
- (12) Where the recipient referred to in sub-rule (11) does not communicate his acceptance or rejection within seventy two hours of the details being made available to him on the common portal, it shall be deemed that he has accepted the said details.
- (13) The e-way bill generated under this rule or under rule 138 of the Goods and Services Tax Rules of any State shall be valid in every State and Union territory.
- (14) Notwithstanding anything contained in this rule, no e-way bill is required to be generated—
 - (a) where the goods being transported are specified in Annexure;
 - (b) where the goods are being transported by a non-motorised conveyance;
 - (c) where the goods are being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs; and
 - (d) in respect of movement of goods within such areas as are notified under clause (d) of sub-rule (14) of rule 138 of the Goods and Services Tax Rules of the concerned State.

Explanation. - The facility of generation and cancellation of e-way bill may also be made available through SMS.

138A. Documents and devices to be carried by a person-in-charge of a conveyance. -

- (1) The person in charge of a conveyance shall carry—
 - (a) the invoice or bill of supply or delivery challan, as the case may be; and
 - (b) a copy of the e-way bill or the e-way bill number, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance in such manner as may be notified by the Commissioner.
- (2) A registered person may obtain an Invoice Reference Number from the common portal by uploading, on the said portal, a tax invoice issued by him in FORM GST INV-1 and produce the same for verification by the proper officer in lieu of the tax invoice and such number shall be valid for a period of thirty days from the date of uploading.
- (3) Where the registered person uploads the invoice under sub-rule (2), the information in Part A of FORM GST EWB-01 shall be auto-populated by the common portal on the basis of the information furnished in FORM GST INV-1.
- (4) The Commissioner may, by notification, require a class of transporters to obtain a

unique Radio Frequency Identification Device and get the said device embedded on to the conveyance and map the e-way bill to the Radio Frequency Identification Device prior to the movement of goods.

- (5) *Notwithstanding anything contained clause (b) of sub-rule (1), where circumstances so warrant, the Commissioner may, by notification, require the person-in-charge of the conveyance to carry the following documents instead of the e-way bill-*

- (a) *tax invoice or bill of supply or bill of entry; or*
- (b) *a delivery challan, where the goods are transported for reasons other than by way of supply.*

138B. Verification of documents and conveyances. -

- (1) *The Commissioner or an officer empowered by him in this behalf may authorise the proper officer to intercept any conveyance to verify the e-way bill or the e-way bill number in physical form for all inter-State and intra-State movement of goods.*
- (2) *The Commissioner shall get Radio Frequency Identification Device readers installed at places where the verification of movement of goods is required to be carried out and verification of movement of vehicles shall be done through such device readers where the e-way bill has been mapped with the said device.*
- (3) *The physical verification of conveyances shall be carried out by the proper officer as authorised by the Commissioner or an officer empowered by him in this behalf:*
If on receipt of specific information on evasion of tax, physical verification of a specific conveyance can also be carried out by any officer after obtaining necessary approval of the Commissioner or an officer authorised by him in this behalf.

138C. Inspection and verification of goods. -

- (1) *A summary report of every inspection of goods in transit shall be recorded online by the proper officer in Part A of FORM GST EWB-03 within twenty four hours of inspection and the final report in Part B of FORM GST EWB-03 shall be recorded within three days of such inspection.*
- (2) *Where the physical verification of goods being transported on any conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the said conveyance shall be carried out again in the State, unless a specific information relating to evasion of tax is made available subsequently.*

138D. Facility for uploading information regarding detention of vehicle. -

Where a vehicle has been intercepted and detained for a period exceeding thirty minutes, the transporter may upload the said information in FORM GST EWB-04 on the common portal.]

68.1. Introduction

This section prescribes the mechanism of creating an audit trail on the common portal for movement of goods about a certain monetary value. The trail can be created by the supplier participated or even the transporter, in certain circumstances. Use of e-way bill is not a substitute for tax invoice. Details of the procedure applicable is discussed below.

68.2. Analysis

Object of e-way bill

E-way bill is required only in the case of goods. It has already been discussed that understanding of transactions involving goods are treated as a supply of services. The e-way bill is required not only when the supply is treated as a supply of goods but even when the supply is treated as a supply of services but involves “movement of goods”. It may be kept in mind that e-way bill is required in all cases where goods – inventory, capital goods or inputs for job work or any other business asset – are involved in movement. There is no difference whether the movement is pursuant to a supply arrangement or an innocent relocation of goods within the State itself. The utility of generating audit trail contemporaneously is invaluable for verification and validation at a later point in time.

Date of implementation

The Central Government vide Notification no.74/2017 dated 29th December, 2017 has notified 1st day of February, 2018, as the date from which the provisions of E-way bill system as notified in Notification No. 27/2017 – Central Tax dated 30th August, 2017 shall come into force.

Further, as per CBEC press release, following decisions were taken by the GST council in the 24th GST Council meeting for implementation of nationwide e-way Bill system :

- (i) The nationwide e-way Bill system will be ready to be rolled out on a trial basis latest by 16th January, 2018. Trade and transporters can start using this system on a voluntary basis from 16th January, 2018.
- (ii) The Rules for implementation of nationwide e-way Bill system for Inter-State movement of goods on a compulsory basis will be notified with effect from 1st February, 2018. This will bring uniformity across the States for seamless inter-State movement of goods.
- (iii) While the System for both inter-State and intra-State e-way Bill generation will be ready by 16th January, 2018, the States may choose their own timings for implementation of e-way Bill for intra-State movement of goods on any date before 1st June, 2018. There are certain States which are already having system of e-way Bill for intra-State as well as inter-State movement and some of those States can be early adopters of national e-way Bill system for intra-State movement also. But in any case, the Uniform System of e-way Bill for inter-State as well as intra-State movement will be implemented across the country by 1st June, 2018.

Data Requirement

The data required for generating e-way bill is very simple and limited. The supplier or recipient or even the transporter, where permitted, would be in a position to submit the information on the common portal.

Part A of Form GST EWB-01

On a quick perusal of the information required in Part A, it can be noticed that very limited information is required, namely:

- identity of the parties
- identity of the goods with value
- identity of the place of delivery (not place of supply)
- identity of occasion for transportation
- identity of document for transportation

Part B of Form GST EWB-01

- identity of vehicle

Excluded Goods

Rule 138 lists goods and circumstances of movement, in respect of which requirement to generate e-way bill is excluded, namely:

- goods listed in Annexure comprising of 154 entries in respect of which any movement of goods within the State or outside the State can be freely undertaken without the requirement of generating e-way bill;
- goods being transported through non-motorized conveyance also do not require e-way bill;
- goods being transported from port, airport, air cargo complex and land custom station to an inland container depot or a container freight station for customs clearance
- any other goods that may be notified by the respective State as being eligible for such exclusion from the requirement of e-way bill.

Use Cases

E-way bill is required to be generated when the supply involves the following:

Movement of Goods	Value Limit	E-Way Bill
Outward supply	More than ₹50,000	By any person (supplier, recipient, transporter)
Any other outward movement	More than ₹50,000	By any person (supplier, recipient, transporter)
Inward supply from un-registered supplier, if recipient(registered) is known at the time of commencement of movement of goods	More than ₹50,000	By Registered Recipient
Inward supply from un-registered supplier, if recipient is not known	No limit	Un-registered supplier or Transporter
Inputs or capital goods sent by principal to job worker outside the State	No limit	By Principal only

Handicrafts transported from one State to another	No limit	Handicrafts supplier
All movement	Less than ₹50,000	Option to generate by Registered supplier or transporter
All movement from consignor to transporter or from transporter to consignee within State distance less than 10 km	No limit	Part B of Form EWB-01 not required

Steps Involved

The following steps are involved in e-way bill compliance:

Activity	Responsibility	Result Obtained
Submit Part A	Supplier or Recipient	Get EBN—unique e-way bill number
Submit Part B	Transporter	Get GST EWB-01
Submit Part A	Transporter (where supplier is unregistered)	Get GST EWB-01
Update Part B	Transporter (change of vehicle)	Get GST EWB-01
Update e-way bill number	Transporter (multiple consignments in one conveyance)	Get GST EWB-02

Shelf-life and Confirmation

E-way bill generated has a prescribed shelf life of one day for a distance of up to 100 kilometres and one additional day for multiples thereof. If the goods are not transported or are not transported as per the details furnished in e-way bill after generation of e-way bill, the bill may be cancelled within 24 hours. E-way bill generated against the GSTIN of the recipient will be available for viewing by the recipient on the Common Portal. Recipient is required to accept or reject every e-way bill generated on the Common Portal. If there is no positive action by the recipient – acceptance or rejection – the e-way bill generated will be deemed to be accepted after 72 hours.

Documents for Movement

Every movement shall be accompanied by both of the following documents, namely:

- principal document – tax invoice or bill of supply or other challan; and
- e-way bill or EBN reference, either physically or mapped to a Radio Frequency Identification Device embedded on to the conveyance.

All information required in our tax invoice may be uploaded on the Common Portal in Form GST INV-01 and an Invoice Reference Number (IRN) may be generated. Commissioner is empowered to relax the requirement of carrying e-way bill and may require the person in charge to carry tax invoice, bill of supply, bill of entry or delivery challan.

Commissioner may notify the class of transporter to obtain unique Radio Frequency Identification Device and to get the device embedded on the conveyance.

Verification During Movement

Movement interception, by the Commissioner or proper officer authorised by the Commissioner, is allowed and an online verification report is to be filed within 24 hours. Proof of stoppage for verification is required in Part A of Form GST EWB-03 and final report in Part B of Form GST EWB-03 within three days of inspection.

Where physical verification of conveyance has been done during transit at one place within the State or in any other State, no further physical verification of the conveyance shall be carried in the State out again unless any information relating to tax evasion is made available.

In order to monitor stoppage during movement or detained vehicle, transporter may upload instances of stoppage for a duration exceeding 30 minutes by uploading information on the Common Portal in Form GST EWB-04.

Statutory provision**69. Power to arrest**

- (1) *Where the Commissioner has reasons to believe that a person has committed any offence specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) of section 132 which is punishable under clause (i) or (ii) of sub-section (1), or under sub-section (2) of the said section, he may, by order, authorise any officer of the central tax to arrest such person.*
- (2) *Where a person is arrested under sub-section (1) for an offence specified under sub-section (5) of section 132, the officer authorise to arrest the person shall inform such person of the grounds of arrest and produce him before a magistrate within twenty-four hours.*
- (3) *Subject to the provisions of the Code of Criminal Procedure, 1973, —*
 - (a) *where a person is arrested under sub-section (1) for any offence specified under sub-section (4) of section 132, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate;*
 - (b) *in the case of a non-cognizable and bailable offence, the Deputy Commissioner or the Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.*

69.1. Introduction

This section deals with power of arrest when one commits any of the following offences which is punishable under clause (i) or (ii) of sub-section (1), or under sub-section (2) of sec 132 of CGST Act.

- (a) Supplies any goods or services or both without issue of invoice with the intention to evade tax
- (b) Issues any invoice or bill without supplies leading to wrongful availment or utilisation of input tax credit or refund of tax
- (c) Avails input tax credit using invoice or bill referred to in b) above

- (d) Collects any amount as tax but fails to pay the same beyond the period of 3 months from the date on which payment becomes due.

69.2. Analysis

The Commissioner is vested with the power to authorise, by an order, any Officer to arrest a person, where there is a reason to believe that such person has committed the specified offences.

The person committing any offence under clauses (a) or (b) or (c) or (d) u/s 132(1) cited supra and punishable under Section 132(1)(i) or 132(1)(ii) or 132(2) can be arrested by the authorised officer.

Section 132(1) clause (i) tax evasion above Rs 500 Lakhs attracting imprisonment for a term upto 5 years and fine, or clause (ii) tax evasion above Rs 200 Lakhs attracting imprisonment upto 3 years and fine or offence or section 132(2) [repeated offence – second and subsequent offence attracting imprisonment upto 5 years with fine]

Such person is required to be informed about the grounds of arrest and be produced before the Magistrate within 24 hours in case of cognizable offences and in case of non-cognizable and bailable offences the Assistant/Deputy Commissioner can grant the bail and is conferred powers of an officer-in-charge of a police station subject to the provisions of Code of Criminal Procedure, 1973.

All arrests should be made as per the provisions of Code of Criminal Procedure, 1973.

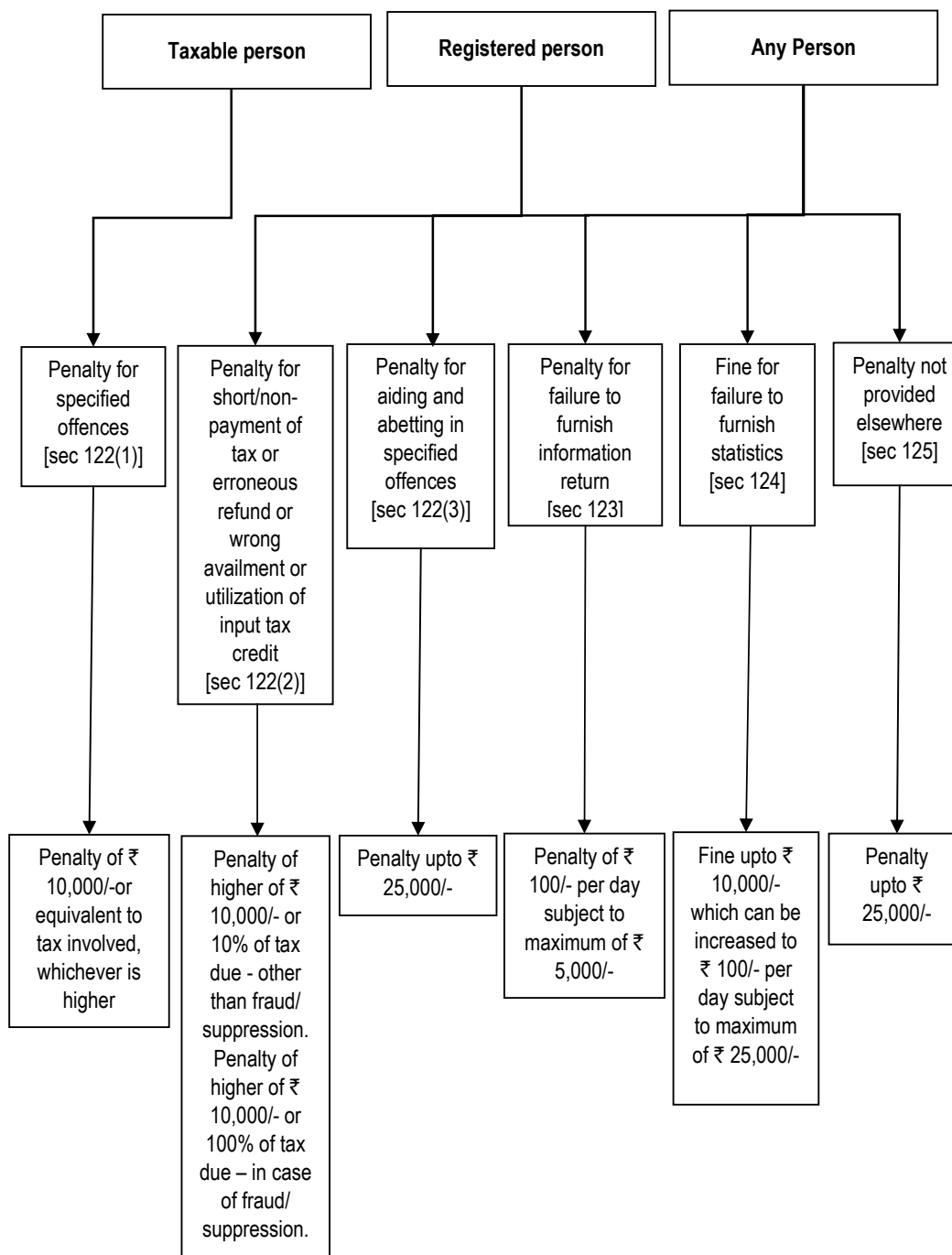
69.3. Comparative review

Similar power of arrest of tax evaders by officer is present in most of the indirect tax legislations.

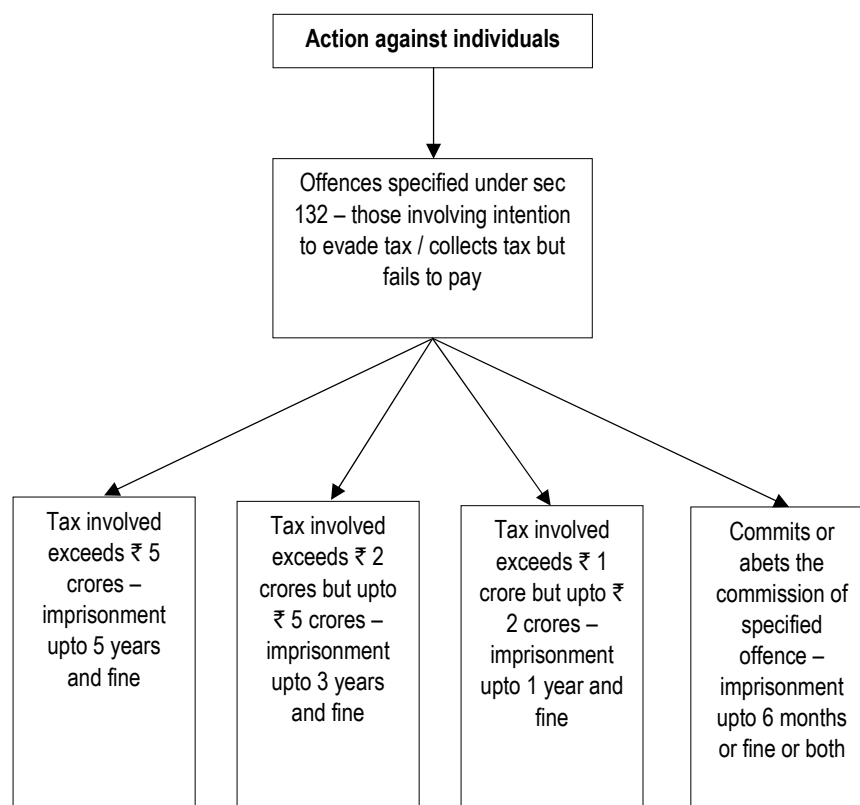
However, under the Finance Act, 1994 the power to arrest can be exercised only in cases where taxes collected and not deposited for an amount exceeding ₹ 200 lakhs.

69.4. Gist of Related provisions of Section 132 for ready reference for which person can be arrested

Section	Description
132(1)(a)	Whoever supplies any goods or services or both without issue of invoice with the intention to evade tax
132(1)(b)	Whoever issues any invoice or bill without supplies leading to wrongful availment or utilisation of input tax credit or refund of tax
132(1)(c)	whoever avails input tax credit using invoice or bill referred to in b) above
132(1)(d)	whoever collects any amount as tax but fails to pay the same beyond the period of 3 months from the due date
132(1)(i)	Prosecution where tax evaded exceeds Rs 500 lakhs. Imprisonment upto 5 years with fine
132(1)(ii)	Prosecution where tax evaded exceeds Rs 200 lakhs. Imprisonment upto 3 years with fine
132(2)	Second or subsequent offence. Imprisonment upto 5 years with fine



Also, reference may be had to actions that may be taken against an individual:



69.5. FAQs

Q1. Power of arrest could be exercised by whom?

Ans. The Commissioner can authorise (by an order) any officer to arrest a person, who has committed specified offences. The Commissioner should have reason to believe that such person has committed the specified offences.

Q2. Who can be arrested?

Ans. The person committing an offence (tax evasion) as specified in –

Section 132(1) clause (i) tax evasion above Rs 500 Lakhs attracting imprisonment for a term upto 5 years and fine, or clause (ii) tax evasion above Rs 200 Lakhs attracting imprisonment upto 3 years and fine or offence or section 132(2) [repeated offence – second and subsequent offence attracting imprisonment upto 5 years with fine] can be arrested by authorised officer.

Q3. What is the procedure to be followed for arrest?

Ans. (i) The person arrested should be informed about the grounds of arrest and be produced before the Magistrate within 24 hours in case of cognizable offences

- (ii) In case of non-cognizable and bailable offences the Assistant/Deputy Commissioner can grant the bail and is conferred powers of an officer-in-charge of a police station subject to the provisions of Code of Criminal Procedure, 1973.
- (iii) All arrests should be made as per the provisions of Code of Criminal Procedure, 1973.

69.6. MCQs

- Q1. All arrests should be made as per the provisions of _____
- (a) Code of Criminal Procedure, 1973
 - (b) Civil Procedure Code
 - (c) Foreign Exchange Management Act
 - (d) Indian Penal Code

Ans. (a) Code of Criminal Procedure, 1973

Statutory provision

- 70. Power to summon persons to give evidence and produce documents**
- (1) *The proper officer under this Act shall have power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908.*
 - (2) *Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code.*

70.1. Introduction

This provision deals with exercise of powers to issue summons for giving evidence and for production of documents

70.2. Analysis

In any inquiry which such officer is making for any of the purposes of this Act, the Proper officer shall have power to summon any person, whose attendance is considered necessary, either to give evidence or to produce a document or any other thing.

Every such inquiry referred to in sub-section (1) shall be deemed to be a "judicial proceeding" within the meaning of section 193 and section 228 of the Indian Penal Code

It would be helpful to read and be familiar with the exact nature of responsibility of acceptance of service of summons and of making statements in response to a summons. Reference may be had to Chapter X and XI of Indian Penal Code. At the same time, Article 20(3) of our Constitution prohibits from a person being made to witness against himself. Therefore, avoidance of service of summons is unlawful but abstinence from making statements is not. Understanding the legality of these matters will assume significance in attending to such matters of inquiry before a judicial officer.

Scope of word “Summon” under Sec 70 is for “Any Inquiry”. Authorised Officer is not empowered under Sec 70 to retain the documents for which summon were issued. It has been held by in T.T.V Dinkaran v. Enforcement Officer 1995 (80) E.L.T. 745 that where summon did not mention the nature of investigation therein, it will be valid since mentioning the details about investigation may alter the person concerned to manipulate his record.

70.3. Comparative review

Name of Statute	Central Excise Act 1944	Finance Act 1994	Custom Act 1962	State Vat Laws
Section Reference	Sec 14	Sec 14 of Central Excise Act read with Sec 83 of Finance Act 1994	Sec 108	Similar powers are conferred under the State Vat laws.

70.4. FAQs

Q1. Who can issue summons and for what purpose?

Ans. Proper officer under this Act can summon to any person whose attendance is considered necessary either to give evidence or to produce a document or any other thing in any inquiry which such officer is making for any of the purposes of the GST Law.

Statutory provision

71. Access to business premises

- (1) Any officer under this Act, authorised by the proper officer not below the rank of Joint Commissioner, shall have access to any place of business of a registered person to inspect books of account, documents, computers, computer programs, computer software whether installed in a computer or otherwise and such other things as he may require and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.
- (2) Every person in charge of place referred to in sub-section (1) shall, on demand, make available to the officer authorised under sub-section (1) or the audit party deputed by the proper officer or a cost accountant or chartered accountant nominated under section 66—
 - (i) such records as prepared or maintained by the registered person and declared to the proper officer in such manner as may be prescribed;
 - (ii) trial balance or its equivalent;
 - (iii) statements of annual financial accounts, duly audited, wherever required;
 - (iv) cost audit report, if any, under section 148 of the Companies Act, 2013 (18 of 2013);
 - (v) the income-tax audit report, if any, under section 44AB of the Income-tax Act, 1961 (43 of 1961); and

(vi) *any other relevant record, for the scrutiny by the officer or audit party or the chartered accountant or cost accountant within a period not exceeding fifteen working days from the day when such demand is made, or such further period as may be allowed by the said officer or the audit party or the chartered accountant or cost accountant.*

71.1. Introduction

This provision empowers any officer authorised by the officer not below the rank of Joint Commissioner to have access to any place of business of a registered person to inspect books of account, documents, computers, computer programmes, computer software and such other things as may be required and which may be available at such place, for the purposes of carrying out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

71.2. Analysis

For this purpose, the officer should be authorized by the officer not below the rank of Joint Commissioner. Experts are apprehensive of far reaching consequences of this section which is potentially capable of misuse. Strong understanding of the legal remedies available will equip in attending to these inspections.

Such an authorized officer shall have access to any place of business of registered person to inspect books of account, documents, computers, computer programs, computer software (whether installed in a computer or otherwise) and such other things as he may require as available at such premises.

The object is to carry out any audit, scrutiny, verification and checks as may be necessary to safeguard the interest of revenue.

The person in charge of the premises should make available the following:

1. Records maintained by the registered person and declared to proper officer;
2. Trial balance;
3. Audited financial statements wherever required;
4. Cost audit report, if any;
5. Income Tax audit report, if any;
6. Other relevant records.

The documents/records should be made available within 15 working days or such extended period as may be allowed.

The documents/records can be called for by the Audit officer or Chartered Accountant or Cost Accountant nominated by the department.

71.3. Comparative review

In the erstwhile indirect tax laws, and even in various State VAT laws similar provisions exist.

71.4. Related provisions

Section	Description	Remarks
Section 65	Audit by tax authorities	For such purpose access to business premises is permitted under section 71
Section 66	Special Audit	-do-

71.5. FAQs

Q1. What are the documents or records that a person in charge of a place of business shall make available in terms of Provisions of section 71?

Ans. The person in charge of a place of business shall, on demand, make available:

- Records maintained by the registered person and declared to proper officer;
- Trial balance;
- Audited financial statements wherever required;
- Cost audit report, if any;
- Income Tax audit report, if any
- Other relevant records

Q2. Who are the persons empowered to call for documents/records for audit, verification, checks and scrutiny?

Ans. Audit Party deputed by the Proper Officer or a Chartered Accountant or a Cost Accountant nominated u/s 66 by the department for conducting the audit are the persons empowered to call for documents/records for audit, verification, checks and scrutiny.

71.6. MCQs

Q1. The documents called for should be provided within _____

- (a) 20 working days
- (b) 15 working days
- (c) 60 days
- (d) 30 days

Ans. (b) 15 working days

Q2. Who is liable to furnish information to empowered officers?

- (a) Director
- (b) Accountant
- (c) CEO
- (d) Person in charge of Place of Business

Ans. (d) Person in charge of Place of Business

Q3. What empowered officers can do with the information furnished to them?

- (a) Audit
- (b) Scrutiny
- (c) Verification and Checks
- (d) All of the above

Ans. (d) All of the Above

Statutory provision:

72. Officers to assist Proper Officers

- (1) *All officers of Police, Railways, Customs, and those officers engaged in the collection of land revenue, including village officers, officers of State tax and officers of Union territory tax shall assist the proper officers in the implementation of this Act*
- (2) *The Government may, by notification, empower and require any other class of officers to assist the proper officers in the implementation of this Act when called upon to do so by the Commissioner.*

72.1. Introduction

The provision requires all officers of Police, Railways, Customs and those officers engaged in the collection of land revenue including village officers, officers of state and union territory tax to assist the proper officers in the implementation of this Act.

72.2. Analysis

Below officers are empowered and required when called upon, to assist the proper officer in execution of this act:

- All officers of Police,
- Railway Officer,
- Customs Officer
- Officer of State & Union Territory tax.
- Officers engaged in the collection of land revenue including village officers,

Even the Government may issue notification empowering and requiring any other class of officer to assist the proper officers, if required by the Commissioner.

72.3. Comparative review

Name of Statute	Central Excise Act 1944	Finance Act 1944
Section Reference	Sec 15	Sec 14 of Central Excise Act read with Sec 83 of Finance Act 1944

72.4. FAQs

Q1. Which are the officers empowered under an obligation to assist the CGST officers in the implementation of the Act?

Ans. All officers of Police, Railway, Custom, State/Central officer engaged in collection of GST and Land Revenue, Village officers, are empowered and are required to assist the proper officers to carry out the provisions of the Act.

Q2. Can the Commissioner call upon any other officer for assistance?

Ans. In terms of section 72(2) of the Act, the Government may issue notification empowering or requiring any other class of officer to assist the proper officers under this act, if required by the Commissioner.

72.5. MCQs

Q1. The _____ officer is empowered to assist the proper officer.

- (a) Registrar of Companies
- (b) Health
- (c) CBI
- (d) Railway

Ans. (d) Railway

Q2. _____ Officer is not empowered to assist the proper officer u/s 72(1) of the Act.

- (a) Police
- (b) Custom
- (c) State Excise
- (d) Railway

Ans. (c) State Excise

Chapter– XV

Demands and Recovery

- 73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts
- 74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts
- 75. General provisions relating to determination of tax
- 76. Tax collected but not paid to Government
- 77. Tax wrongfully collected and paid to Central Government or State Government
- 78. Initiation of recovery proceedings
- 79. Recovery of tax
- 80. Payment of tax and other amount in instalments
- 81. Transfer of property to be void in certain cases
- 82. Tax to be first charge on property
- 83. Provisional attachment to protect revenue in certain cases
- 84. Continuation and validation of certain recovery proceedings

Statutory Provision

73. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for any reason other than fraud or any wilful misstatement or suppression of facts.

- (1) *Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder.*
- (2) *The proper officer shall issue the notice under sub-section (1) at least three months prior to the time limit specified in sub-section (10) for issuance of order.*
- (3) *Where a notice has been issued for any period under sub-section (1), the proper officer*

may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

- (4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.
- (5) The person chargeable with tax may, before service of notice under sub-section (1) or, as the case may be, the statement under sub-section (3), pay the amount of tax along with interest payable thereon under section 50 on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.
- (6) The proper officer, on receipt of such information, shall not serve any notice under sub-section (1) or, as the case may be, the statement under sub-section (3), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.
- (7) Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.
- (8) Where any person chargeable with tax under sub-section (1) or sub-section (3) pays the said tax along with interest payable under section 50 within thirty days of issue of show cause notice, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.
- (9) The proper officer shall, after considering the representation, if any, made by person chargeable with tax, determine the amount of tax, interest and a penalty equivalent to ten per cent. of tax or ten thousand rupees, whichever is higher, due from such person and issue an order.
- (10) The proper officer shall issue the order under sub-section (9) within three years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within three years from the date of erroneous refund.
- (11) Notwithstanding anything contained in sub-section (6) or sub-section (8), penalty under sub-section (9) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

73.1 Introduction

1. Section 73 deals with determination of tax
 - not paid; or
 - short paid; or

- tax erroneously refunded; or
- input tax credit wrongly availed or utilised.

This section covers determination under circumstances of cases **not** involving fraud, wilful misstatement or suppression of facts;

2. This section also covers the time limit within which the proper officer shall issue the Notice and Order for the determination/ recovery of tax payment defaulted by the taxable person. As per the table below, the time limit for issuance of Notice and Order is provided herewith:

Particulars	Time limit for issuing show cause notice.	Time limit for issuing order.
Cases involving other than fraud, wilful misstatement or suppression of facts	At least 3 months prior to the time limit specified under Section 73(10) for issuance of order.	3 years from the due date of furnishing annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or 3 years from the date of erroneous refund.

Section 73 also applies for recovery of interest payable which is not paid or partly paid or interest erroneously refunded.

73.2 Analysis

Section 73 is applicable under the cases other than fraud, or wilful misstatement or suppression of facts with an intention to evade payment of tax.

1. The provision provides for –
 - (a) Service of notice by proper officer¹;
 - (b) Notice shall be served on the person who is chargeable with tax, who has –
 - Not paid or short paid the tax;
 - Received the erroneous refund;
 - Wrongly availed or utilized input tax credit;
 - (c) Such amounts as mentioned above shall be required to be determined along with the applicable interest as per Section 50 and penalty leviable under the provisions of this Act or the rules made thereunder.
 - (d) The notice has to be issued at least three months prior to the time limit of three years for issuance of order

¹ In terms of section 2(91) of CGST Act "Proper Officer" in relation to any function to be performed under this Act, means the Commissioner or the officer of the Central tax who is assigned that function by the Commissioner in the Board;

- (e) The proper officer shall along with Notice shall provide a summary in **Form GST DRC-01** specifying therein the details of the amount payable
2. **Where no notice is required to be issued for demand:** In case proper officer has already issued a notice on the person for the period specified under section 73(1), subsequently if such officer finds similar issue for any subsequent period, then in such case instead of issuing a detailed notice for such subsequent period, proper officer may serve a statement containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under section 73(1), on the person chargeable with tax. Service of such statement shall be deemed to be service of notice as per Section 73 (1) on the condition that the grounds relied upon are the same as are mentioned in the earlier notice issued for previous period. The proper officer shall along with statement shall provide a summary in **Form GST DRC-02**, specifying therein the details of amount payable
 3. **Voluntary payment of tax and interest before issue of notice/statement:** Voluntary payment of tax and interest as per Section 50 before issue of notice/statement can be done either
 - As per the own ascertainment of such tax or;
 - As per the ascertainment of the proper officer;

and the same shall be intimated to the proper officer in **Form GST DRC-03** and the proper officer shall issue an acknowledgement, accepting the payment made, in **FORM GST DRC-04**. Thereafter, the proper officer shall not serve any notice / statement to the extent of such payment. There can be no further proceedings with regard to tax and penalty so paid.
 4. When the amount paid as per the ascertainment of the assessee falls short, the proper officer shall issue a notice for the amount of shortfall.
 5. Where the assessee makes the payment of tax along with interest within 30 days of issuance of Notice / Statement and intimate the proper officer of such payment in **FORM GST DRC-03**. Thereafter, the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice and subsequently no penalty shall be payable.
 6. After considering the representation, if any, made by person chargeable to tax in **FORM GST DRC-06**, the proper officer shall issue an order consisting the amount of tax, interest and penalty (i.e. tax + interest + penalty). The amount of penalty shall be higher of 10% of tax or ₹ 10,000/-, whichever higher. And such order shall be treated as the notice for recovery.

Further, a summary of such order shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.
 7. The proper officer shall pass an order within a period of 3 years from the

- due date for filing of Annual return for the year to which the short payment or non-payment or input tax credit wrongly availed or utilised relates
- date of erroneous refund

73.3 MCQ

- The officer can issue the order under Sec 73 with a maximum demand up to?
 - Amount of tax + interest + penalty 10% of tax
 - amount of tax + interest + penalty 10% of tax or ₹10,000/- whichever higher
 - ₹ 10,000/-
 - tax + interest+ 25% penalty

Ans. (b) amount of tax + interest + penalty 10% of tax or 10,000/- whichever higher

Penalty implications, in summary

If tax, interest and penalty (as indicated in the table below) is paid, it is provided that further proceedings should not be continued to that extent:

Pay tax plus interest	Amount of penalty
Before issuance of show cause notice	No penalty
Within 30 days after the issuance of show cause notice	No penalty
In any other case	10% of the tax or ₹ 10,000 whichever is higher.

Statutory Provision

74. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised by reason of fraud or any wilful misstatement or suppression of facts.

- Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty equivalent to the tax specified in the notice.
- The proper officer shall issue the notice under sub-section (1) at least six months prior to the time limit specified in sub-section (10) for issuance of order.
- Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

- (4) *The service of statement under sub-section (3) shall be deemed to be service of notice under sub-section (1) of section 73, subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.*
- (5) *The person chargeable with tax may, before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment.*
- (6) *The proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.*
- (7) *Where the proper officer is of the opinion that the amount paid under sub-section (5) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.*
- (8) *Where any person chargeable with tax under sub-section (1) pays the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within thirty days of issue of the notice, all proceedings in respect of the said notice shall be deemed to be concluded.*
- (9) *The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.*
- (10) *The proper officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.*
- (11) *Where any person served with an order issued under sub-section (9) pays the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within thirty days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded.*

Explanation 1. — For the purposes of section 73 and this section, —

- (i) *the expression “all proceedings in respect of the said notice” shall not include proceedings under section 132;*
- (ii) *where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under section 73 or section 74, the proceedings against all the persons liable to pay penalty under sections 122, 125, 129 and 130 are deemed to be concluded.*

Explanation 2. —For the purposes of this Act, the expression “suppression” shall mean non-declaration of facts or information which a taxable person is required to

declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Section 74.1 Analysis

The section covers determination of tax in cases of fraud, or any kind of wilful mis-statement or suppression of facts to evade payment of tax.

1. Whenever the tax is
 - not paid or
 - short paid or
 - credit wrongly availed or utilized or
 - erroneously refunded

On account of the following to evade tax,

- Fraud;
- Willful misstatement;
- Suppression of facts;

the Proper Officer shall issue a notice for such amount along with interest as per Section 50 and penalty which shall be equivalent to amount of tax specified in notice. The Proper Officer shall along with Notice shall provide a summary in **Form GST DRC-01** specifying therein the details of the amount payable.

2. This section covers the time limit within which the proper officer shall issue the Notice and Order for the determination/ recovery of tax payment defaulted by the taxable person. As per the table below, the time limit for issuance of Notice and Order is provided herewith:

Particulars	Time limit for issuing show cause notice	Time limit for issuing order.
Cases involving fraud, wilful mis-statement or suppression of facts to evade tax	At least 6 months prior to the time limit specified under Section 74(10) for issuance of order.	5 years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or 5 years from the date of erroneous refund.

3. **Where no notice is required to be issued:** Similar to the provisions under 73 explained earlier, this section also provides that a statement containing the details of

tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered section 74(1), on the person chargeable with tax along with a summary in **FORM GST DRC-02**, instead of a detailed notice for the period other than the ones covered in the notice issued as per Sec 74(1). Further, service of such statement shall be deemed to be service of notice under section 73(1), subject to the condition that the grounds relied upon in the said statement, except the ground of fraud, or any wilful-misstatement or suppression of facts to evade tax, for periods other than those covered under section 74(1) are the same as are mentioned in the earlier notice.

4. The proper officer shall not serve any notice on the assessee in case of voluntary payment of tax and interest along with penalty @ 15% of tax either

- As per the own ascertainment of the tax or;
- As per the ascertainment of the proper officer;

Assessee shall intimate the same to the proper officer in **FORM GST DRC-03** and proper officer will provide acknowledgment in **FORM GST DRC-04**.

The proper officer, on receipt of such information, shall not serve any notice, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder.

5. In case there exists some shortfall between the amount paid by assessee on his own ascertainment and the actual amount liable to be paid, the Proper Office shall issue a notice for the tax that remains unpaid.
6. Where the assessee makes the payment of tax and interest along with penalty @ 25 % of tax within 30 days of issuance of Notice / Statement and shall intimate the proper officer of such payment in **FORM GST DRC-03**. Thereafter, the proper officer shall issue an order in **FORM GST DRC-05** concluding the proceedings in respect of the said notice.
7. The proper officer shall issue an order after considering the representation in **FORM GST DRC-06**, if any, made by the person chargeable with tax and the amount determined shall comprise of tax along with interest and penalty as stated above. And such order shall be treated as the notice for recovery.

Further, a summary of such order shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

8. The proper officer shall pass an order within a period of 5 years from the due date for filing of annual return for the financial year to which the short payment or non-payment or input tax credit wrongly availed or utilised relates or date of erroneous refund.
9. Where the assessee makes the payment of tax and interest along with penalty @ 50 % of tax within 30 days of communication of order, then in such case it shall be deemed that all the proceedings have been concluded.

10. The proper officer shall pass an order within a period of 5 years from the
- due date for filing of annual return for the year to which the short payment or non-payment or input tax credit wrongly availed or utilised relates
 - date of erroneous refund
11. The term “suppression” is specifically explained to mean:
- non-declaration of facts or information which a taxable person is statutorily required to declare in the return, statement, report or any other document furnished under the Act or the rules made thereunder, or
 - failure to furnish any information on being asked for, in writing, by the proper officer

Penalty implications, in summary:

If tax, interest and penalty as indicated in the table below is paid, it is provided that further proceedings should not be continued to that extent.

Payment of Tax, Interest & Penalty	Amount of Penalty
Before issuance of show cause notice	15% of the tax amount
Within 30 days after the issuance of show cause notice	25% of the tax amount
Within 30 days from the communication of order	50% of the tax amount
In any other case	100% of the tax amount (equivalent to tax)

Statutory Provision

75. General provisions relating to determination of tax

- (1) *Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74, as the case may be.*
- (2) *Where any Appellate Authority or Appellate Tribunal or court concludes that the notice issued under sub-section (1) of section 74 is not sustainable for the reason that the charges of fraud or any wilful-misstatement or suppression of facts to evade tax has not been established against the person to whom the notice was issued, the proper officer shall determine the tax payable by such person, deeming as if the notice were issued under sub-section (1) of section 73.*
- (3) *Where any order is required to be issued in pursuance of the direction of the Appellate Authority or Appellate Tribunal or a court, such order shall be issued within two years from the date of communication of the said direction.*

- (4) *An opportunity of hearing shall be granted where a request is received in writing from the person chargeable with tax or penalty, or where any adverse decision is contemplated against such person.*
- (5) *The proper officer shall, if sufficient cause is shown by the person chargeable with tax, grant time to the said person and adjourn the hearing for reasons to be recorded in writing:
Provided that no such adjournment shall be granted for more than three times to a person during the proceedings.*
- (6) *The proper officer, in his order, shall set out the relevant facts and the basis of his decision.*
- (7) *The amount of tax, interest and penalty demanded in the order shall not be in excess of the amount specified in the notice and no demand shall be confirmed on the grounds other than the grounds specified in the notice.*
- (8) *Where the Appellate Authority or Appellate Tribunal or court modifies the amount of tax determined by the proper officer, the amount of interest and penalty shall stand modified accordingly, taking into account the amount of tax so modified.*
- (9) *The interest on the tax short paid or not paid shall be payable whether or not specified in the order determining the tax liability.*
- (10) *The adjudication proceedings shall be deemed to be concluded, if the order is not issued within three years as provided for in sub-section (10) of section 73 or within five years as provided for in sub-section (10) of section 74.*
- (11) *An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of section 73 or sub-section (10) of section 74 where proceedings are initiated by way of issue of a show cause notice under the said sections.*
- (12) *Notwithstanding anything contained in section 73 or section 74, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of section 79.*
- (13) *Where any penalty is imposed under section 73 or section 74, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.*

75.1 Analysis

These provisions are general provisions for determination of tax and are applicable irrespective of whether the notice invokes the extended period or not

1. If an order of court or Appellate Tribunal stays the service of notice or issuance of order then, the period of such stay will get excluded from the period of issuance of order i.e. 3 years or 5 years as the case may be.
2. When a notice has been issued considering the case to be for fraud or for willful representation or for suppression of facts, and whereas the charges of fraud, suppression and misstatement of facts were not sustainable or not established by an order of Appellate Authority or Appellate Tribunal, then in such case the officer shall determine the tax as if the notice is issued for the normal period of 3 years.
3. An order required to be issued in pursuance of the direction of the Tribunal or a Court shall be issued within two years from the date of communication of the said direction.
4. Opportunity of personal hearing has to be granted when requested for in writing by the person chargeable with tax or where any adverse decision is proposed to be taken against the person.
5. Personal hearing can be adjourned when sufficient cause is shown in writing. However, such adjournment can be granted for a maximum of 3 times.
6. The relevant facts and basis of the decision shall be set out in the order, which means a speaking order needs to be placed.
7. The amount of tax along with interest and penalty should not exceed the amount mentioned in the notice and the grounds shall not go beyond what is mentioned in the notice.
8. When the decision of Tribunal/ Court/ Appellate authority modifies the amount of tax, correspondingly interest and penalty shall also be modified to that extent by the proper officer.
9. Interest shall be payable in all cases whether specifically mentioned or not.
10. If the order is not issued within the time limits as prescribed in sub-section (10) of section 73 or (10) of section 74, i.e., 5 years in case of fraud, misstatement or suppression and 3 years in any other case, the adjudication proceedings shall be deemed to be concluded.
11. An issue on which a first appellate authority or Tribunal or High Court has given its decision which is prejudicial to the interest of the revenue and an appeal to the Appellate Tribunal or High Court or Supreme Court against such decision is pending, then the period spent between the two dates of decision shall be excluded in computing the period of 3 years or 5 years respectively, for issue of order.
12. Any amount of self-assessed tax or intent payable, whether wholly or in part in accordance with a return furnished under section 39 shall be recovered under the provisions of section 79.

13. It is also provided that when the penalty is imposed under Section 73 & 74 that no penalties shall be imposed under any other provisions of this Act for the same act or omission.

75.2 Comparative Review

These provisions of Section 73, 74, and 75 are much broader than the provisions contained in erstwhile Central Indirect Tax laws.

Earlier in Central Excise and Service Tax laws, the demand of tax can be made up to a maximum of 5 years. The normal period for which the notice could be issued is 2 years in Central Excise Law and 30 months in Service Tax Law. The VAT law seems to be quite different from the central excise and service tax provisions.

However, the conditions for such extended period are the same as in the erstwhile Indirect Tax Laws. The meanings of fraud, misstatement or suppression are still to be understood in the same way as in the erstwhile law i.e., deliberate intent to avoid tax requires to be established and sustained.

Unlike the erstwhile law, the time limit of 3 years and 5 years from the issue of orders and not for serving of show cause notice.

75.3 Related Provisions

Section	Description
Section 50	Interest
Section 21	Manner of recovery of credit distributed in excess
Section 61	Scrutiny of returns
Section 62	Assessment of non-filers of returns
Section 83	Provisional attachment to protect revenue in certain cases

75.4 FAQ's

Q1. Who has the power to issue a notice/ order?

Ans. "Proper officer" as defined under Sec 2(91) of the Act.

Q2. When can proceedings be initiated under Section 73/74/75?

Ans. The proceedings can be initiated when there is

- Short payment of tax
- Non-payment of tax
- Wrong input credit availed
- Wrong input credit utilized
- Erroneous refund

Q3. Is notice for a period of 5 years valid even if charge of suppression, fraud and misstatement are not sustained?

Ans. No, when the allegations of fraud, suppression or misstatement are not established, the notice issued under section 74 would get covered under section 73 and 3 years' time would be applicable for date of issue of order.

Q4. What is the condition for giving a repeat notice for a different period?

Ans. The condition is that the grounds relied upon should be exactly the same thing as in the notice issued previously. In such cases, it is not essential to issue a detailed notice. It would suffice, if a statement giving the details of alleged amounts is issued.

Q5. Whether there is any time limit to issue notice?

Ans. The time limit to issue notice is at least 3 months/ 6 months (in case of extended period) prior to the last day to pass the order i.e. 3 years or 5 years as the case may be.

Q6. Is interest applicable in all cases, even if not specifically mentioned?

Yes, interest is applicable whenever the tax is payable whether or not it is specifically mentioned..

Q7. Can the assessee pay tax after the issue of notice or/ and order? What is the benefit from such voluntary payments under different cases?

Ans. Yes. The assessee is given the benefit to pay the tax before issue of notice/order as follows:

In cases other than fraud, misstatement and suppression	
When the assessee pays the amount payable after the issue of notice but within 30 days from the issue of SCN	Tax+ interest to be paid in full and complete waiver of penalty
In cases of fraud, misstatement and suppression	
When the assessee pays the amount payable after the issue of notice but within 30 days from the issue of SCN	Tax and+ interest to be paid in full+ along with penalty @ 25% of tax
When the assessee pays the amount payable after the issue of notice but within 30 days from the issue of order	Tax and interest to be paid in full along with penalty @ 50% of tax

75.5 MCQ

Q1. What is the time limit for issue of order in case of fraud, misstatement or suppression?

- (a) 30 months
- (b) 18 months
- (c) 5 years
- (d) 3 years

Ans. (c) 5 years

Q2. What is the time limit for issue of order in case of other than fraud, misstatement or suppression?

- (a) 30 months
- (b) 18 months
- (c) 5 years
- (d) 3 years

Ans. (d) 3 years

Q3. The maximum number of times the hearing can be adjourned?

- (a) 1
- (b) 3
- (c) 5
- (d) None

Ans. (b) 3

Statutory provision:

76. Tax collected but not paid to the Government

- (1) *Notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or court or in any other provisions of this Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.*
- (2) *Where any amount is required to be paid to the Government under sub-section (1), and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.*
- (3) *The proper officer shall, after considering the representation, if any, made by the person on whom the notice is served under sub-section (2), determine the amount due from such person and thereupon such person shall pay the amount so determined.*
- (4) *The person referred to in sub-section (1) shall in addition to paying the amount referred to in sub-section (1) or sub-section (3) also be liable to pay interest thereon at the rate specified under section 50 from the date such amount was collected by him to the date such amount is paid by him to the Government.*
- (5) *An opportunity of hearing shall be granted where a request is received in writing from the person to whom the notice was issued to show cause.*

- (6) *The proper officer shall issue an order within one year from the date of issue of the notice.*
- (7) *Where the issuance of order is stayed by an order of the court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of one year.*
- (8) *The proper officer, in his order, shall set out the relevant facts and the basis of his decision.*
- (9) *The amount paid to the Government under sub-section (1) or sub-section (3) shall be adjusted against the tax payable, if any, by the person in relation to the supplies referred to in sub-section (1).*
- (10) *Where any surplus is left after the adjustment under sub-section (9), the amount of such surplus shall either be credited to the Fund or refunded to the person who has borne the incidence of such amount.*
- (11) *The person who has borne the incidence of the amount, may apply for the refund of the same in accordance with the provisions of section 54.*

76.0 Introduction

This provision deals with payment of any amount collected as tax but not remitted to the Central/State Government or Union Territory. This section requires him to make the payment forthwith regardless of whether the related supplies are taxable or not.

76.1 Analysis

- (i) This section makes it obligatory on every person who has collected from any other person any amount representing "tax under this Act", to pay the said amount to the credit of the Central or a State Government regardless of whether the supplies in respect of which the amount was collected are taxable or not.
- (ii) Before effecting recovery the Proper Officer has to serve a notice along with a summary in **FORM GST DRC-01**, on to any person who has collected any amount representing as tax requiring to show cause as to why –
 - the said amount should not be paid by him to the Government;
 - penalty equivalent to such amount specified in the notice should not be imposed on him.
- (iii) The person is permitted to make representation in **FORM GST DRC-06**, against the notice served on to him. The person ought to be given an opportunity of being heard where a request is made by such person in writing.
- (iv) After considering such representation made by the person, the Proper Officer shall determine the amount due from the person and pass an order within one year from the date of issue of notice. Where the service of notice is stayed by order of the Court or Tribunal, the period covered by the stay shall stand excluded for the purpose of computing the time limit.

Further, a summary of such order shall be uploaded electronically in **FORM GST DRC-07**, specifying therein the amount of tax, interest and penalty payable by the person chargeable with tax.

- (v) The Proper Officer must pass a speaking order.
- (vi) Upon such determination, the Person has to pay such amount determined.
- (vii) Interest at the rate specified under section 50 shall be paid on the amount collected as representing tax (either paid voluntarily or on determination by the Proper Officer). Interest shall be calculated from the date of collection of amount till the date of deposit of amount.
- (viii) The amount paid by such person to the credit of the Central Government or a State Government shall be adjusted against the tax payable by the person.
- (ix) If any surplus is left after adjustment against the tax liability, it will be
 - Credited to consumer welfare fund; or
 - Refunded to the person who has borne the incidence of such amount.
- (x) The person claiming such refund shall follow the conditions and procedure contained in section 54 of CGST Act.
- (xi) There appears to be no time limit to commence proceedings under this section.

It is important to note that in the context of Central Excise, where input credit was to be reversed on account of Customer being entitled to exemption from payment of duties, the Larger Bench of the Tribunal held in *Unison Metals v. CCE*, Ahd 204 ELT 323 that recovery of 'Cenvat Loss' would not attract the mischief of section 11D as it was not 'duty of excise' collected liable to be paid to the Government. GST too denies credit under section 17(2) of CGST Act where supplies made are exempt

76.2 Comparative analysis

Under the erstwhile tax laws, similar provision exists in Central Excise Law², Customs Law³ as well as Service Tax Law⁴.

Also, similar provision also exists in all most all the State VAT laws as well.

76.3 Related provisions

Section	Description	Remarks
Section 50	Interest on delayed payment of tax.	Prescribes the provisions relating to the payment of interest not exceeding 18% in case of delay in payment of tax
Section 54	Refund of tax.	Provision for claiming refund of tax

² Section 11D of Central Excise Act, 1944

³ Section 28B of Customs Act, 1962

76.4 FAQ

Q1. What is the interest rate applicable on delayed payment of amount collected representing it as tax?

Ans. According to Section 50, the rate of interest cannot exceed 18%. The rate of interest has been specified @ 18% per annum by Notification No. 13/2017 – Central Tax dated 28th June, 2017.

Q2. How is the amount of surplus left after adjustment with tax payable dealt with?

Ans. Where any surplus is left after the adjustment against the tax payable, the amount of such surplus shall either be credited to the Consumer Welfare Fund or, as the case may be, refunded to the person who has borne the incidence of such amount.

Q3. What is the procedure to be followed by the person on receipt of determination of demand of tax collected but not deposited with the Central or a State Government from the proper officer?

Ans. The person will be given an opportunity of being heard and after that if any demand arises, then tax, interest and penalty has to be paid accordingly.

76.5 MCQ

1 Any amount of tax collected shall be deposited to the credit of the Central or a State Government,

- (a) Only when the supplies are taxable
- (b) Regardless of whether the supplies in respect of which such amount was collected are taxable or not.
- (c) Only when the supplies are not taxable
- (d) None of the above.

Ans. (b) Regardless of whether the supplies in respect of which such amount was collected are taxable or not.

2 Within how many years should the proper office issue an order from the date of notice?

- (a) 1 year
- (b) 2 years
- (c) 3 years
- (d) 4 years

Ans. (a) 1 year

Statutory Provision**77. Tax wrongfully collected and paid to Central or State Government**

- (1) *A registered person who has paid the Central tax and State tax or, as the case may be, the Central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.*
- (2) *A registered person who has paid integrated tax on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall not be required to pay any interest on the amount of central tax and State tax or, as the case may be, the Central tax and the Union territory tax payable.*

77.1 Introduction

This provision deals with a situation when CGST/SGST or CGST/UTGST is paid on any inter-state supply. Further also it covers interest implication a situation where IGST is paid on transaction of intra-state supply.

77.2 Analysis

- (i) This provision deals with a situation when, if a taxable person wrongly pays CGST/SGST or CGST/UTGST on the transaction treating it as intra-state supply, but which is subsequently held to be inter-state supply. Upon payment of IGST on such transaction, the CGST/SGST or CGST/UTGST will be refunded in such manner and subject to prescribed conditions.
- (ii) The refund of such CGST/SGST or CGST/UTGST would be granted subject to such conditions as may be prescribed in this regard.
- (iii) If a taxable person wrongly pays IGST by treating a supply as inter-state supply, which is subsequently held to be intra-state supply, interest is not required to be paid on the CGST/SGST or CGST/UTGST payable.

77.3 Related provisions

Section	Description	Remarks
Section 54	Refund of tax	Provision for claiming refund of tax.

77.4 FAQs

- Q1. What is the remedy available when tax is paid wrongly as CGST/SGST when subsequently the supply is considered as inter-state supply attracting IGST?
- Ans. Refund can be claimed by the taxable person who has paid CGST/SGST or CGST/UTGST on payment of IGST subject to such conditions as may be prescribed.
- Q2. Is interest payable on CGST/SGST or CGST/UTGST, when IGST was wrongly paid on the transaction of intra-state supply?

Ans. When IGST was wrongly paid on intra-state supply, it is not required to pay any interest on the amount so paid when CGST/SGST or CGST/UTGST becomes payable.

77.5 MCQ

Q1. Which section deals with tax wrongly collected and deposited with Central or State Government?

- (a) Section 57
- (b) Section 58
- (c) Section 77
- (d) Section 79

Ans. (c) Section 77

Q2. If CGST/SGST is wrongly remitted instead of IGST, the tax payer can _____

- (a) seek refund
- (b) adjust against future liability
- (c) take re-credit
- (d) file a civil suit for recovery

Ans. (a) Seek refund

Statutory provision

78. *Initiation of recovery proceedings*

Any amount payable by a taxable person in pursuance of an order passed under this Act shall be paid by such person within a period of three months from the date of service of such order failing which recovery proceedings shall be initiated:

Provided that where the proper officer considers it expedient in the interest of revenue, he may, for reasons to be recorded in writing, require the said taxable person to make such payment within such period less than a period of three months as may be specified by him.

78.1. Introduction

This provision empowers the proper officer to collect any amount which is payable by a taxable person in pursuance of an order passed under the Act

78.2 Analysis

- (a) This section enables initiation of proceedings for recovery of amount from taxable person.
- (b) The amount shall be paid by taxable person within a period of 3 months of the service of order, failing which the Proper Officer shall initiate the recovery proceedings.
- (c) If it is in the interest of revenue, the proper officer after recording the reasons in writing,

may initiate the recovery proceedings even before the completion of the said period of 3 months. However it empowers the Proper Officer in the interest of revenue after recording the reasons to initiate recovery proceedings even before the said completion of 3 months.

78.3 Comparative review

There is no similar provision under erstwhile Central Indirect Tax laws.

78.4 Related provisions

Section	Description	Remarks
Section 79	Recovery of tax	Provision for recovering the tax dues from a person
Section 84	Continuation and validation of certain recovery proceedings	Provisions for continuing the recovery proceedings on a taxable person

78.5 FAQs

1. When shall amount be payable by a taxable person in pursuance of order passed under this Act?

In normal course, any amount payable by a taxable person in pursuance of an order passed under the Act shall be paid by such person within 3 months from the date of service of such order.

2. When can proper officer require the taxable person, to make payment of payable amount within such shorter period as may be specified by him?

When the proper officer considers it necessary in the interest of revenue, he may, after recording reasons in writing, ask the said taxable person, to make such payment within such shorter period as may be specified by him.

78.6 MCQ's

- Q1. When can recovery proceedings be initiated?

- (a) To recover any amount payable by a taxable person in pursuance of an order passed under the Act
- (b) To recover any input tax credit availed by taxable person
- (c) None of the above
- (d) All of the above

- Ans. (a) To recover any amount payable by a taxable person in pursuance of an order passed under the Act

- Q2. What is the time limit for recovery of any amount payable by a taxable person in pursuance of an order passed under the Act?

- (a) 6 months

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

Ans. (b) 3 months.

Q3. When can proper officer require the taxable person, to make payment within shorter period as may be specified?

- (a) It is necessary in the interest of revenue
- (b) When amount payable exceeds ₹ 10 Lakhs
- (c) Both of the above
- (d) None of the above

Ans. (a) It is necessary in interest of revenue

Statutory Provision

79. Recovery of Tax

- (1) *Where any amount payable by a person to the Government under any of the provisions of this Act or the rules made thereunder is not paid, the proper officer shall proceed to recover the amount by one or more of the following modes, namely: —*
- (a) *the proper officer may deduct or may require any other specified officer to deduct the amount so payable from any money owing to such person which may be under the control of the proper officer or such other specified officer;*
 - (b) *the proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person which are under the control of the proper officer or such other specified officer;*
 - (c)
 - (i) *the proper officer may, by a notice in writing, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the Government either forthwith upon the money becoming due or being held, or within the time specified in the notice not being before the money becomes due or is held, so much of the money as is sufficient to pay the amount due from such person or the whole of the money when it is equal to or less than that amount;*
 - (ii) *every person to whom the notice is issued under sub-clause (i) shall be bound to comply with such notice, and in particular, where any such notice is issued to a post office, banking company or an insurer, it shall not be necessary to produce any pass book, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like being made*

- before payment is made, notwithstanding any rule, practice or requirement to the contrary;*
- (iii) in case the person to whom a notice under sub-clause (i) has been issued, fails to make the payment in pursuance thereof to the Government, he shall be deemed to be a defaulter in respect of the amount specified in the notice and all the consequences of this Act or the rules made thereunder shall follow;*
 - (iv) the officer issuing a notice under sub-clause (i) may, at any time, amend or revoke such notice or extend the time for making any payment in pursuance of the notice;*
 - (v) any person making any payment in compliance with a notice issued under sub-clause (i) shall be deemed to have made the payment under the authority of the person in default and such payment being credited to the Government shall be deemed to constitute a good and sufficient discharge of the liability of such person to the person in default to the extent of the amount specified in the receipt;*
 - (vi) any person discharging any liability to the person in default after service on him of the notice issued under sub-clause (i) shall be personally liable to the Government to the extent of the liability discharged or to the extent of the liability of the person in default for tax, interest and penalty, whichever is less;*
 - (vii) where a person on whom a notice is served under sub-clause (i) proves to the satisfaction of the officer issuing the notice that the money demanded or any part thereof was not due to the person in default or that he did not hold any money for or on account of the person in default, at the time the notice was served on him, nor is the money demanded or any part thereof, likely to become due to the said person or be held for or on account of such person, nothing contained in this section shall be deemed to require the person on whom the notice has been served to pay to the Government any such money or part thereof;*
 - (d) the proper officer may, in accordance with the rules to be made in this behalf, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid; and in case, any part of the said amount payable or of the cost of the distress or keeping of the property, remains unpaid for a period of thirty days next after any such distress, may cause the said property to be sold and with the proceeds of such sale, may satisfy the amount payable and the costs including cost of sale remaining unpaid and shall render the surplus amount, if any, to such person;*
 - (e) the proper officer may prepare a certificate signed by him specifying the amount due from such person and send it to the Collector of the district in which such person owns any property or resides or carries on his business or to any officer authorised by the Government and the said Collector or the said officer, on*

receipt of such certificate, shall proceed to recover from such person the amount specified thereunder as if it were an arrear of land revenue;

- (f) *Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the proper officer may file an application to the appropriate Magistrate and such Magistrate shall proceed to recover from such person the amount specified thereunder as if it were a fine imposed by him.*
- (2) *Where the terms of any bond or other instrument executed under this Act or any rules or regulations made thereunder provide that any amount due under such instrument may be recovered in the manner laid down in sub-section (1), the amount may, without prejudice to any other mode of recovery, be recovered in accordance with the provisions of that sub-section.*
- (3) *Where any amount of tax, interest or penalty is payable by a person to the Government under any of the provisions of this Act or the rules made thereunder and which remains unpaid, the proper officer of State tax or Union territory tax, during the course of recovery of said tax arrears, may recover the amount from the said person as if it were an arrear of State tax or Union territory tax and credit the amount so recovered to the account of the Government.*
- (4) *Where the amount recovered under sub-section (3) is less than the amount due to the Central Government and State Government, the amount to be credited to the account of the respective Governments shall be in proportion to the amount due to each such Government.*

79.1 Introduction

The section empowers the departmental officers to collect/recover any amount which is payable under GST Act. Section 79 provides for the manner in which the recovery proceedings can be carried out.

79.2 Analysis

- (i) When **any amount** that is payable by any person (*hereinafter referred to as **defaulter***) to Government is not paid, the officer can adopt one or more of the methods set out in section 79 for recovery of amounts payable. The methods are :
- (a) **Deduction out of any money owing to defaulter:**
- There should be some money which is being owed by the Government to defaulter;
 - The amount payable can be deducted out of the said amount due to defaulter;
 - The deduction can be done by the proper officer himself or he may ask any other specified officer to do so.
 - The proper officer shall specify the amount so deducted in form **GST DRC-09**.

(b) **By detaining and selling the goods belonging to defaulter:**

- There should be goods which are under the control of the proper officer or other specified officer;
- Such goods should belong to the person who is liable to pay any amount.
- The goods may be detained and sold by the proper officer or such other specified officer on request by the proper officer;
- Out of the realisation, the amount payable by defaulter shall be recovered.
- As per Rule 144 of CGST Rules, the goods shall be sold through a process of auction including e-auction, for which a notice shall be issued in **FORM GST DRC-10** clearly indicating the goods to be sold and the purpose of sale. The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the above notice. If the goods are perishable or hazardous in nature or the expenses of storing them is likely to exceed the value, then proper officer may sell them before 15 days.
- The proper officer shall issue a notice to the successful bidder in **FORM GST DRC-11** requiring him to make the payment within a period of fifteen days from the date of auction. On payment of the full bid amount the possession of the said goods shall be transferred to the successful bidder and issue a certificate in **FORM GST DRC-12**.
- Where the defaulter pays the amount under recovery, including any expenses incurred on process of recovery, before the issue of notice issued in **FORM GST DRC-10** (Notice of Auction) then the proper officer shall cancel the process of auction and release the goods.

(c) **Recovery from any other person who owes money to defaulter.**

- This applies when any other person -
 - has become due to pay money to the defaulter;
 - is likely to become due to pay money to the defaulter;
 - holds money for or on account of the defaulter;
 - may subsequently hold money for or on account of the defaulter.
- In such cases the proper officer may issue notice in writing in **Form GST DRC-13** to such other person to pay to the credit of the Government –
 - forthwith
 - upon the money becoming due or
 - being held, or
 - at or within the time specified in the notice not being before the money becomes due or is held.

- The amount directed to be paid in the notice shall be –
 - Where the amount due/held by such other person is more than amount due by the defaulter – to the extent of amount due by the defaulter;
 - Where the amount due/held by such other person is equal to or less than amount due by defaulter - whole of money due/held.
- Such other person to whom such notice is issued is bound to comply with the same.
- In cases where such notice is issued to a post office, banking company or an insurer, they are required to comply with the same without insisting on production of any passbook, deposit receipt, policy or any other document for the purpose of any entry, endorsement or the like, though that might be the normal practice.
- If such person to whom such notice is issued, fails to comply, he shall be treated as defaulter to the extent of the amount mentioned in the notice and all other consequences under the law shall follow;
- Where the third person makes the payment of the amount specified in the notice in **FORM GST DRC-13**, then the proper officer shall issue a certificate in **FORM GST DRC-14** to the third person clearly indicating the details of the liability so discharged.
- The notice so issued may be amended or revoked or time may be extended for making any payment;
- The payment made by such other person in accordance with the notice issued, shall be deemed to have made the payment on behalf of such defaulter and the amount credited to the government shall be deemed to constitute the discharge of liability of such defaulter to the extent of the payment made. Consequently no civil suit or other proceedings could be filed or initiated by the defaulter on the notice, who has complied with this provision.
- Instead of crediting the amount to the government, if such person makes the payment to defaulter, then such other person shall be personally liable to the Government to the extent of the amount due by the defaulter or amount discharged to the defaulter whichever is lower.
- However such person shall not be personally liable, if he proves to the officer issuing the notice that
 - the money demanded or any part thereof was not due to the person in default or
 - at the time of service of the notice he did not hold any money for or on account of the person in default,

- the money was not demanded from him; or
- any part of the money demanded is not likely to become due to such other person or
- any part of the money will not likely be held for or on account of such person.

(d) Collection by detention of any movable or immovable property.

- On authorisation by competent authority, proper officer in accordance with the Rule 147 of the CGST Rules framed for this purpose, *interalia*
 - prepare a list of movable and immovable property belonging to the defaulter,
 - estimate their value as per the prevalent market price and
 - issue an order of attachment or distrain and a notice for sale in **FORM GST DRC-16** prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due
 - The property attached or distrained shall be sold through auction, including e-auction, for which a notice shall be issued in **FORM GST DRC- 17** clearly indicating the property to be sold and the purpose of sale.
- Such detention of any movable or immovable property belonging to defaulter will be done till the amount payable is paid.
- If any part of the amount payable or cost of distress or keeping the property is not paid within 30 days from such distress, the proper officer may sell the property and with the proceeds he may adjust towards:
 - amount payable;
 - costs including the cost of sale remaining unpaid;
- After such adjustment, the remaining surplus shall be returned to the defaulter.

(e) Recovery through District Collector:

- Proper officer may prepare a certificate signed by him specifying the amount due from the defaulter.
- Such certificate will be sent to the Collector of the District in **FORM GST DRC-18** in which the defaulter.
 - owns any property; or
 - resides; or
 - carries on his business.

- The DC on receipt of such certificate shall proceed to recover from such defaulter the amount specified in the certificate as if such amount is arrears of land revenue.

(f) Recovery through Magistrate:

- This provision has overriding effect over Code of Criminal Procedure;
 - In this case the proper officer may file an application to the appropriate Magistrate;
 - The Magistrate to whom application (in **FORM GST DRC- 19**) is made shall proceed to recover from the defaulter the amount specified in the application as if it is fine imposed by such Magistrate.
- (ii) Under the GST Act, rules or regulations there would be requirement to execute bond or other instruments. If such bond/instrument provides that the amount becoming due shall be recovered in terms of Section 79(1), then the recovery shall be effected as discussed above irrespective of whether other mode of recovery exists or not.
- (iii) Further it is also provided that, if either SGST Officer/ UTGST Officer while recovering SGST/UTGST arrears may also recover any amount due from the defaulter the amount due by him under CGST Act as if it is SGST/UTGST and later pass it on to the Central Government.
- (iv) Similar provision also exists in SGST/UTGST Act for recovery of any amount due under SGST Act/UTGST Act to be recovered by CGST officers while recovering arrears of CGST as though the amount due was CGST and later pass it on to the concerned State Government/Union Territory.
- (v) It is also provided that in case where the SGST officer/UTGST officer also collects CGST in the course of collection of SGST/UTGST or *vice versa*, where the amount recovered is not fully covering both the liabilities, the amount collected has to be apportioned between Centre and State/Union Territory in the same proportion of the amounts due.
- (vi) Recovery through execution of a decree, etc.- Where any amount is payable to the defaulter in the execution of a decree of a civil court for the payment of money or for sale in the enforcement of a mortgage or charge, the proper officer shall send a request in **FORM GST DRC- 15** to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908, execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.
- (vii) Recovery from Company under liquidation- Where the company is under liquidation, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in **FORM GST DRC-24**.

79.3 Comparative Review

Under the erstwhile tax laws, similar provision exists in Central Excise Law⁵, Customs Law⁶ as well as Service Tax Law⁷. In the context of section 87 of the Finance Act, 1994, the Karnataka High Court in UOI Vs Prashanthi [2016-TIOL-1127-HC-KAR-ST] held that such recovery cannot be effected before determination of liability under section 73.

Also, similar provision also exists in all most all the State VAT laws as well.

79.4 FAQ

Q1. What are the methods of recovery as prescribed in Section 79?

- Ans. — Deduction out of any money owing to defaulter.
— By detaining and selling the goods belonging to defaulter.
— Recovery from any other person who owes money to defaulter.
— Collection by detention of any movable or immovable property.
— Recovery through District Collector.
— Recovery through Magistrate.

Q2. Can the authorities use more than one of the methods for the recovery proceedings?

Ans. Yes, they can use one or more methods at the option and choice of the proper officer.

Q3. In case of recovery of SGST/UTGST by CGST officer in the course of recovery of CGST, where the total amount recovered is ₹ 2 Crore whereas the amounts due were ₹ 2 Crores of CGST and ₹ 3 Crore of SGST/UTGST, to which account, the amount recovered would be allocated?

Ans. 2 Crores recovered will be allocated between Centre and State/Union Territory in the proportion of 2:3.

79.5 MCQ

Q1. Recovery of amount payable by a defaulter can be made from _____

- (a) customer
- (b) bank
- (c) post office
- (d) all the above.

Ans. (d) all the above.

Q2. Recovery of amount payable by a defaulter can be made _____

⁵Section 11D of Central Excise Act, 1944

⁶Section 28B of Customs Act, 1962

- (a) after determination of liability under section 73 or 74
- (b) even before issue of notice under section 73 or 74
- (c) any time
- (d) at the discretion of the proper officer.

Ans. (a) after determination of liability under section 73 or 74

Q3. After how many days, the proper officer may cause the sale of distressed property?

- (a) 30 days
- (b) 60 days
- (c) 90 days
- (d) 120 days

Ans. (a) 30 days

Statutory Provision

80. Payment of tax and other amount in installments

On an application filed by a taxable person, the Commissioner may, for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, other than the amount due as per the liability self-assessed in any return, by such person in monthly instalments not exceeding twenty four, subject to payment of interest under section 50 and subject to such conditions and limitations as may be prescribed:

Provided that where there is default in payment of any one instalment on its due date, the whole outstanding balance payable on such date shall become due and payable forthwith and shall, without any further notice being served on the person, be liable for recovery

80.1 Introduction

This section permits a taxable person to make payment of an amount due on installment basis, other than the amount due as per self-assessed return. The term 'installments' in general parlance would mean equated periodical payments (money due) spread over an agreed period of time. This provision happens to be beneficial piece of law to the tax payers to pay the demand in installments along with interest.

80.2 Analysis

- (i) This section empowers the Commissioner to grant permission only to the taxable person to make payment of any amount due on instalment basis, on an application filed electronically in **FORM GST DRC-20**, .
- (ii) The Commissioner after considering the request by the taxable person (in **FORM GST DRC-20**) and report of the jurisdictional office, may issue an order in **FORM GST DRC-21**, allowing the taxable person either extend the time or allow payment of any amount due under the Act on instalment basis.

- (iii) This section applies to amounts due other than the self-assessed liability shown in any return.
- (iv) The instalment period shall not exceed 24 months.
- (v) The taxable person shall also be liable to pay prescribed interest on the amount due from the first day such tax was due to be payable till the date tax is paid.
- (vi) If default occurs in payment of any one instalment the taxable person would be required to pay the whole outstanding balance payable on such date of default itself without further notice.

80.3 Comparative review

These provisions are broadly similar to the provisions contained in erstwhile KVAT Rules (Rule 53 of the KVAT rules, 2005). However, KVAT law specifies the time frame for interest payments to be the period upto the month the last instalment is due. Further, the above provision is replicated in the GST Act, from the KVAT law. In Central Indirect Taxes, it was allowed by the Department in exceptional cases although express provisions were not there.

80.4 Related provisions

Section	Description
50	Interest on delayed payment of tax

80.5 FAQs

- Q1. Whether application is to be made to pay the amount due in installments?
- Ans. Yes, an application should be made by a taxable person to the commissioner stating the reasons for his/her request to make payment through installments. (in **FORM GST DRC-20**)
- Q2. Can an unregistered person be covered under the said provisions?
- Ans. A taxable person is covered by the provision, While Section 2(107) defines taxable person as "a person who is registered or liable to be registered under Section 22 or Section 24". Hence unregistered person cannot opt the benefit of this provision.
- Q3. From which date does the interest liability arise.
- Ans. The interest is liable to be paid from the date on which the said amount of tax became due to be paid till the actual payment of tax i.e., last instalment.
- Q4. 'A' requested the Commissioner to provide the benefit to pay ` 5, 00,000/- under installments. Commissioner directs 'A' to make the payment in five monthly installments. How to pay the interest?
- Ans. It is assumed that the actual date on which the tax was required to be paid as 06.06.2015. Benefit of instalment was granted by Commissioner on 25.06.2016 to be paid w.e.f 02.06.2016 onwards over 5 installments.

Payment date	Interest to be paid as per section 45 – No of days	Amount on which interest to be paid
1st Instalment – 02.06.2016	06.06.2015 to 01.06.2016 = 361 days	₹ 1,00,000/-
2nd Instalment – 02.07.2016	06.06.2015 to 01.07.2016 = 391 days	₹ 1,00,000/-
3rd Instalment – 02.08.2016	06.06.2015 to 01.08.2016 = 422 days	₹ 1,00,000/-
4th Instalment - 02.09.2016	06.06.2015 to 01.09.2016 = 453 days	₹ 1,00,000/-
5th Instalment – 02.10.2016	06.06.2015 to 01.10.2016 = 483 days	₹ 1,00,000/-

Q5. What will happen if the taxable person fails to pay any one instalment on its due date?

Ans. In such a case, the entire outstanding balance payable as on the said due date shall forthwith become due and payable without any further notice and be liable for recovery.

80.6 MCQ

Q1. The following amounts due cannot be paid through installments,

- (a) Self-assessed tax shown in return
- (b) Arrears of tax
- (c) Short paid tax for which notice has been issued
- (d) Concealed liability

Ans. (a) Self-assessed tax shown in return

Q2. Maximum number of installments permissible under section 80

- (a) 36
- (b) 12
- (c) 48
- (d) 24

Ans. (d) 24

Q3. Which officer/s has the power to grant permission for payment of tax through instalment?

- (a) Commissioner
- (b) Assistant Commissioner
- (c) Chief Commissioner
- (d) both (a) and (b)

Ans. (A) Commissioner

Statutory Provision**81. Transfer of property to be void in certain cases**

Where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person:

Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

81.1 Introduction

This provision is for protecting the Government revenue by avoiding transfer of property by a taxable person to another person. This would prevent any attempt to defraud the revenue by alienating the properties.

81.2 Analysis

- (i) The said provision would be applicable only when any tax has become due.
- (ii) The following acts done by a person, in favour of any another person, after the tax becomes due, would be void

Situations / cases – Void	Situations / cases – valid
<ul style="list-style-type: none"> Creates a charge on; or Parts with the property Belonging to him; or In his possession <p>By way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties.</p>	<p>Made for adequate consideration and</p> <ul style="list-style-type: none"> without notice of the pendency of proceeding Without notice of such tax or other sum payable by the said person, With previous permission of the proper officer.

- (iii) The transfer will be void, when it is or was with an intention of defrauding the Government revenue.

Illustrations:

- Mr. Defrauder was served with a notice of demand for ₹ 20 Lakhs on 10th June 2018. He filed a reply for the said notice on 20th June 2018, stating that he was unable to deposit tax dues as he was financially stressed. On 15th June 2018, Mr. Defrauder transferred all the property worth ₹35 Lakhs under his name to the name of his wife for a consideration of ₹10,000/-. Is this act of Mr. Defrauder valid?

As per section 81, the said transfer would be void and the property worth ₹35 Lakhs would be considered still to be in the hands of Mr. Defrauder.

2. In the above illustration, if transfer of property was for a consideration of ₹ 42 Lakhs to Mr. X who is unaware of the pending proceedings of Mr. Defrauder. The transfer took place on 15th June 2018. Is the act of Mr. Defrauder valid?

In this case the transaction would be a valid act, since the transfer was made for adequate consideration and also without notice of the pendency of proceeding.

3. On Mr. Perfect, notice was issued on 10th June 2018. However, the same was received by Mr. Perfect on 20th June, 2018. Meanwhile the property of Mr. Perfect was sold to Mr. Perfectionist for ₹ 35 Crore. Is the sale void or valid?

The sale is valid since on the date of sale there was no pending proceeding on Mr. Perfect.

81.3 Comparative review

This provision is new to Indirect Tax law. It is a concept borrowed from the Income-Tax law to safeguard the revenue. According to the Income Tax (IT) Act, certain transfers can be considered void without a tax-clearance certificate (Section 281B). "This can be transfer of immovable property, that is, sale or mortgage of housing property, any gift, or exchange,"

81.4 Related provisions

All the provisions which are in relation to assessment and determination of tax would be applicable. The same is provided below:

Section	Description
62	Assessment of non-filers of returns
63	Assessment of unregistered persons
64	Summary assessment in certain special cases
73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts
74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts

81.5 FAQs

Q1. When the transaction in property is void as per section 81?

Ans. During the pendency of proceeding under GST Act, if the taxable person transfers the property of his to another person with an intent of defrauding the Government revenue, then such transfer would be considered as void.

81.6 MCQ

Q1. Charge on which of the following is void during pending of proceedings,

- (a) Parts with the property belonging to him
- (b) Creates a charge on Property
- (c) Parts with the property in his possession
- (d) both (a) and (b)

Ans. (d) both (a) and (b)

Q2. What all modes of transfers are covered under section 81?

- (a) Sale
- (b) Exchange
- (c) Mortgage
- (d) All of the above

Ans. (d) All of the above

Q3. When the transfer of property would be considered as void

- (a) Transaction is done to defraud the Govt. revenue
- (b) Transaction is done without intention to defraud the Govt. revenue
- (c) Any of the above

Ans. Transaction is done to defraud the Govt. revenue

Statutory Provision

82. Tax to be first charge on property

Notwithstanding anything to the contrary contained in any law for the time being in force, save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, any amount payable by a taxable person or any other person on account of tax, interest or penalty which he is liable to pay to the Government shall be a first charge on the property of such taxable person or such person.

82.1 Introduction

Other than as provided under Insolvency and Bankruptcy Code, 2016, this provision shall have an overriding effect over the other provisions contained in any law for the time being in force. This provision provides that if any dues are payable by a taxable person or any other person to the government, then it would have first charge on the property of such taxable or other person.

82.2 Analysis

- (i) The provisions of this section would apply to a taxable person or any other person who is liable to pay tax, interest or penalty to Government.
- (ii) Any liability to be paid to the Government would be given priority in the matter of effecting recovery by placing a first charge on the property of the taxable person or any other person.

- (iii) This provision also covers any other person since there are many provisions in the Act, which provide for creating a liability or recovery from a person other than the taxable person like a legal representative, member of partitioned HUF etc.

82.3 Comparative review

These provisions are broadly similar to the provisions contained,

1. Section 142A – Customs Act, 1962
2. Section 11E – Central Excise Act, 1944
3. Section 48 – Karnataka VAT Act, 2003
4. Section 88 – Finance Act, 1994

82.4 FAQ

Q1. When can the charge on property of taxable person be created?

Ans. The charge can be created only when taxable person or any other person is liable to pay tax or interest or penalty to Government.

Q2. Are unregistered persons covered under the said provision?

Ans. The section refers to both taxable person and any other person, on whose property first charge could be created. Hence, all persons as defined under Section 2(84) of the CGST Act would be covered, whether he is a taxable person or not.

82.5 MCQ

Q1. What liabilities can be recovered under this section?

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

Ans. (d) All of the above

Q2. Mr. Richie Poor, has the following properties, which of the below would be treated as attracting first charge.

- (a) Richie Nilaya, a mansion in the name of Mr. Richie
- (b) Mrs. Richie's fixed deposit
- (c) Richie's neighbour, Mrs. Y's Jewellery
- (d) None of the above

Ans. (a) Richie Nilaya, a mansion in the name of Mr. Richie

Statutory Provision**83. Provisional attachment to protect revenue in certain cases**

- (1) *Where during the pendency of any proceedings under section 62 or section 63 or section 64 or section 67 or section 73 or section 74, the Commissioner is of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary so to do, he may, by order in writing attach provisionally any property, including bank account, belonging to the taxable person in such manner as may be prescribed.*
- (2) *Every such provisional attachment shall cease to have effect after the expiry of a period of one year from the date of the order made under sub-section (1).*

83.1 Introduction

This section confers power to provisionally attach the property of the taxable person in certain situations to protect the interest of the Government.

83.2 Analysis

- (i) This section applies only during the pendency of any proceedings under:
- (a) Section 62 – Assessment of non-filers of returns.
 - (b) Section 63 – Assessment of unregistered persons.
 - (c) Section 64 – Summary assessment in certain special cases.
 - (d) Section 67 Power of inspection, search and seizure.
 - (e) Section 73- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of other than fraud or any wilful misstatement or suppression of facts.
 - (f) Section 74- Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts.
- (ii) The provisional attachment of property of taxable person shall be executed by the Commissioner.
- (iii) The only condition is that the Commissioner should be of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary to provisionally attach the property. The Commissioner may also seize bank accounts of such persons, if it is in the interest of revenue.
- (iv) Such provisional attachment would be valid for one year from the date of the order made by the Commissioner in **FORM GST DRC-22**.
- (v) Where the property attached is of perishable or hazardous nature, and if the taxable person pays an amount equivalent to the market price of such property or the amount that is or may become payable by the taxable person, whichever is lower, then such property shall be released forthwith, by an order in **FORM GST DRC-23**, on proof of

payment. Further, where the taxable person fails to pay the aforesaid amount, the Commissioner may dispose of such property and the amount realized thereby shall be adjusted against the tax, interest, penalty, fee or any other amount payable by the taxable person.

- (vi) Any person whose property is attached may, within 7 days of the attachment may file an objection to the effect that the property attached was or is not liable to attachment, and the Commissioner may, after affording an opportunity of being heard to the person filing the objection, release the said property by an order in **FORM GST DRC- 23**.

The Commissioner may, upon being satisfied that the property was, or is no longer liable for attachment, release such property by issuing an order in **FORM GST DRC- 23**

83.3 Comparative review

These provisions are broadly similar to the provisions contained in erstwhile

- Finance Act, 1994 (Section 73C)
- Central Excise Act, 1944 (Section 11DDA)
- Customs Act, 1962 (Section 28BA)
- Delhi VAT Act, 2004 (Section 46A)

83.4 Related provisions

Section	Description
62	Assessment of non-filers of returns.
63	Assessment of unregistered persons.
64	Summary assessment in certain special cases.
67	Power of inspection, search and seizure.
73	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of other than fraud or any wilful misstatement or suppression of facts.
74	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts.

83.5 FAQs

Q1. Provisional attachment shall be applicable to which proceedings?

Ans. Provisional attachment shall be applicable for the following pending proceedings of a taxable person,

1. Assessment of non-filers of returns.
2. Assessment of unregistered persons.

3. Summary assessment in certain special cases.
4. Inspection, search and seizure.
5. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts.
6. Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful-misstatement or suppression of facts.

Q2. What is the condition for provisionally attaching the property of a taxable person?

Ans. The Commissioner should be of the opinion that for the purpose of protecting the interest of the Government revenue, it is necessary to do so.

Q3. Why attachment to be done before conclusion of proceedings?

Ans. Attachment to be done before conclusion of proceedings, if Commissioner is of the opinion that there is risk of recovery and to protect interest of revenue.

83.6 MCQ

1. Till what period does the order passed for provisional attachment is valid?

- (a) Infinite period
- (b) One year
- (c) Ten years
- (d) till the end of the such proceedings

Ans. (c) One year

2. Who is the competent authority for passing an order for provisional attachment?

- (a) The Deputy Commissioner
- (b) The GST Council
- (c) The Commissioner
- (d) The Assistant Commissioner

Ans. (b) The Commissioner

3. Attachment can be done under section 83:

- (a) Before completion of proceedings.
- (b) After completion of proceedings.
- (c) After 3 attempts to recover dues.
- (d) Only if there is risk of delinquency in payment of dues.

Ans. (a) Before completion of proceedings.

Statutory Provision**84. Continuation and validation of certain recovery proceedings**

Where any notice of demand in respect of any tax, penalty, interest or any other amount payable under this Act, (hereafter in this section referred to as "Government dues"), is served upon any taxable person or any other person and any appeal or revision application is filed or any other proceedings is initiated in respect of such Government dues, then—

- (a) where such Government dues are enhanced in such appeal, revision or other proceedings, the Commissioner shall serve upon the taxable person or any other person another notice of demand in respect of the amount by which such Government dues are enhanced and any recovery proceedings in relation to such Government dues as are covered by the notice of demand served upon him before the disposal of such appeal, revision or other proceedings may, without the service of any fresh notice of demand, be continued from the stage at which such proceedings stood immediately before such disposal;*
- (b) where such Government dues are reduced in such appeal, revision or in other proceedings—*
 - (i) it shall not be necessary for the Commissioner to serve upon the taxable person a fresh notice of demand;*
 - (ii) the Commissioner shall give intimation of such reduction to him and to the appropriate authority with whom recovery proceedings is pending;*
 - (iii) any recovery proceedings initiated on the basis of the demand served upon him prior to the disposal of such appeal, revision or other proceedings may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.*

84.1 Introduction

This section deals with continuation of proceedings, where a notice is already served for recovery of government dues upon a taxable person or any other person and upon any appeal, revision application or other proceeding there is reduction or enhancement of such Government dues.

84.2 Analysis

- (i) The section refers to –
 - any notice of demand in respect of Government dues (tax, interest or any other amount payable) served on taxable person or any other person; and
 - any appeal, revision application is filed or other proceedings are initiated in respect of such Government dues.

Further—

- (a) such Government dues may be enhanced; or
- (b) reduced in such appeal, revision or in other proceedings

The order for such reduction or enhancement of any demand under section 84 shall be issued in **FORM GST DRC- 25**.

- (ii) In such cases, the Commissioner shall –
- Serve another notice on the taxable person or any other person, in respect of the enhanced amount.
 - If notice of demand is already served on taxable person or any other person before such appeal, revision or any other proceedings, then recovery of enhanced amount would be continued from the stage at which the initial proceedings stood. There is no need to issue a fresh notice of demand to the extent already covered by earlier notice.
 - In case the Government dues are reduced in such appeal, revision or in other proceedings – the Commissioner
 - Is not required to serve fresh notice of demand upon the taxable person;
 - Shall intimate such reduction to taxable person and also to appropriate authority with whom recovery proceedings are pending;

Any recovery proceedings are initiated prior to the disposal of such appeal, revision application or other proceeding may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before such disposal.

84.3 Comparative review

The provisions under this section of GST are in line with the provisions of section 45 of Delhi Value Added Tax Act, 2004.

84.4 Related provisions

Section	Description
Section 79	Recovery of tax

84.5 FAQs

Q1. How should the recovery proceedings of enhanced demand under an appeal, revision of application or other proceedings to be continued?

Ans. In case of enhanced demand consequent to appeal, revision of application or other proceedings, then

- the Commissioner is required to issue fresh notice of demand only for enhance demand.
- If already recovery proceedings of Govt. dues is served on taxable person before disposal of appeal, revision of application or other proceedings, then the enhanced demand would be merged with the first recovery proceedings.

Q2. Under what circumstances issue of fresh notice is not necessary ?

Ans. When a notice is already served for recovery on taxable person or any other person,

before disposal of appeal, revision application or other proceedings, then issue of fresh notice is not required to the extent of amount covered in the notice in case of increase in demand and when there is reduction also there is no need to issue fresh notice.

- Q3. What will the fate of the recovery proceedings initiated prior to disposal of such appeal, revision or other proceedings, where Government dues are reduced?

Ans. *Where such Government dues are enhanced :*

Any recovery proceedings initiated prior to disposal of such appeal, revision or other proceedings may be continued in respect of the Government dues covered by the notice of demand served to him earlier from the stage at which it stood immediately prior to such disposal.

Where such Government dues are reduced:

Any recovery proceedings initiated prior to disposal of such appeal, revision or other proceedings may be continued in relation to the reduced amount from the stage at which it stood immediately prior to such disposal.

84.6 MCQ

- Q1. When Commissioner can issue a fresh notice to recover the Government dues?

- (a) Demand amount is enhanced
- (b) Demand amount is reduced
- (c) both (a) and (b)

Ans. (a) Demand amount is enhanced

- Q2. When Commissioner is not required to serve fresh notice to recover the Government dues:

- (a) Demand amount is reduced
- (b) Already proceedings of recovery of Government dues is served before disposal of appeal, revision of application or other proceedings
- (c) Demand amount is enhanced
- (d) Both (a) and (b)

Ans. (d) Both (a) and (b)

- Q3. Who can issue notice for enhanced demand by appeal, revision of application or other proceedings:

- (a) Commissioner
- (b) Assistant Commissioner
- (c) Joint Commissioner
- (d) Any of above

Ans. (a) Commissioner

Chapter-XVI

Liability to Pay in Certain Cases

- 85. Liability in case of transfer of business
- 86. Liability of agent and principal
- 87. Liability in case of amalgamation or merger of companies
- 88. Liability in case of company in liquidation
- 89. Liability of directors of private company
- 90. Liability of partners of firm to pay tax
- 91. Liability of guardians, trustees, etc.
- 92. Liability of Court of Wards, etc.
- 93. Special provisions regarding liability to pay tax, interest or penalty in certain cases
- 94. Liability in other cases

Statutory Provision

85. Liability in case of Transfer of Business

- (1) *Where a taxable person, liable to pay tax under this Act, transfers his business in whole or in part, by sale, gift, lease, leave and license, hire or in any other manner whatsoever, the taxable person and the person to whom the business is so transferred shall, jointly and severally, be liable wholly or, to the extent of such transfer, to pay the tax, interest or any penalty due from the taxable person up to the time of such transfer, whether such tax, interest or penalty has been determined before such transfer, but has remained unpaid or is determined thereafter.*
- (2) *Where the transferee of a business referred to in subsection (1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the supply of goods or services or both effected by him with effect from the date of such transfer and shall, if he is a registered person under this Act, apply within the prescribed time for amendment of his certificate of registration.*

85.1 Introduction

This section deals with tax liability that may arise in case of transfer of business. It deals with the following situations:

- Liability arising before the transfer of business as a whole or in part; and
- Liability arising post transfer of business as a whole or in part.
- Such liability may arise on account of sale, gift, lease, leave and license, hire or in any other manner.

85.2 Analysis

(i) Liability arising prior to transfer:

- The provision applies when a taxable person who is liable to pay tax transfer his business either wholly or in part, which could be by way of:
- Sale
 - Gift
 - Lease
 - Leave and license
 - Hire or
 - In any other manner

Tax liability: Both transferor and transferee will be jointly and severally liable for payment of taxes, interest and / penalty due upto the time of transfer of business (wholly or partly).

The joint and several liability will remain even if such amounts were determined and due after the transfer of business.

Interestingly even penal liability, which is quasi-criminal in nature, is sought to be fastened on the transferee, although he would not have been responsible for the non-payment of tax liability by the transferor prior to transfer of business

(ii) Liability arising post transfer

The tax, interest and / or penalty which is determined and which relates to the period, post transfer of business will clearly be the liability of the transferee of business.

It will remain the liability of the transferee whether or not the business is continued in the same name or otherwise.

As a process, in case the transferee is already an existing taxable person, he needs to apply for amendment of his registration certificate within the prescribed time incorporating the changes as to the acquisition of the business (whole or part).

(iii) Going concern transfer

Sale of business as a 'going concern' is not taxable as per paragraph 4(c), schedule II of the CGST Act. Read with exemption notification no. 12/2017- Central Tax (Rate) dated 28th June, 2017. Please also refer rule 41 that permits the transferor to upload GST ITC 02 on the common portal for effecting a smooth transfer of all unutilised credits pursuant to a 'going concern' transfer.

85.3 Comparative analysis

The liability in respect of transactions, post the date of transfer of business, viz., where the

liability is fastened on the transferee is comparable to the erstwhile indirect tax provisions. However, in respect of joint and several liability of both, the transferor and transferee, for liabilities upto the date of transfer is comparable to certain State level VAT laws.

85.4 FAQs

Q1. In case of transfer of business, who is liable to pay tax in respect of business transactions prior to such transfer?

Ans. Both the transferor and transferee of business (either wholly or partly) are jointly and severally liable to pay tax.

Q2. Whether such liability as mentioned above is applicable only for tax?

Ans. Such liability is applicable to interest and penalty also in addition to tax.

Q3. What are the types of business transfers covered in Section 85?

Ans. Following types of business transfers are covered in the subject provision:

- (a) Sale;
- (b) Gift;
- (c) Lease;
- (d) Leave and license;
- (e) Hire; or
- (f) In any other manner

Q4. To what extent the transferor of business is liable to pay tax / interest / penalties?

Ans. The transferor of business is jointly and severally liable to pay tax / interest / penalties arisen along with the transferee (whether determined prior to transfer or post transfer) upto the date of transfer of business.

Q5. Who is liable to pay tax in respect of supplies made after the date of transfer of business?

Ans. The transferee of business is liable to pay tax after the date of transfer of business.

Q6. If the transferee carries on an existing business, what are the actions to be taken on transfer?

Ans. The transferee is required to make amendments in his registration certificate to give effect to the business transfer

85.5 MCQ:

Q1. Transfer of business includes

- (a) Sale
- (b) Lease
- (c) Leave & License

- (d) All the above

Ans: d) All the above

Q2. Who is liable to pay the tax in case of transfer of business?

- (a) Transferor
(b) Transferee
(c) Both jointly or severally
(d) jointly

Ans: c) Both jointly or severally

Statutory Provision

86. Liability of Agent and Principal

Where an agent supplies or receives any taxable goods on behalf of his principal, such agent and his principal shall, jointly and severally, be liable to pay the tax payable on such goods under this Act.

86.1 Introduction

This section casts the liability on a principal, in addition to the liability of agent who effects the supply of taxable goods on behalf of principal or procures taxable goods on behalf of his principal.

86.2 Analysis

Under the GST law, in cases where –

- Taxable Goods are supplied by agent on behalf of principal; or
- Taxable Goods are procured by agent on behalf of principal;

the agent is primarily liable for tax. However, by virtue of this provision, both agent and principal, will be jointly and severally made liable to pay for tax payable on such supplies.

It is important to note that transactions between a Principal and Agent involving 'handling' of goods is regarded as a supply *inter se* vide paragraph 3, schedule I. But, in this section, 'joint and several' liability is being fasten on person who are not covered by the said fiction regarding supply. This section is to provide a recourse to the Government against either of them and not necessarily only upon default by the principal obligor. Government is free to recover dues from either of them or both (upto the total dues only) without having to exhaust its remedies against the one who was principally liable (principal obligor) and then only proceed against the other.

86.3 FAQs

Q1. Whether the principal is also liable for tax payable on the goods supplied by the Agent?

Ans. Yes, the principal will also be jointly and severally liable to pay tax on such supplies, along with the agent.

86.4 MCQ

Q1. Agent and Principal, both are liable to pay tax on supply or receipt of

- (a) Taxable Goods only
- (b) Services only
- (c) Goods along with service
- (d) None of the above

Ans: (a) Taxable Goods only

Q2. Agent and Principal are liable to pay tax.....

- (a) Jointly
- (b) Separately
- (c) Both jointly and severally
- (d) Jointly or Separately

Ans: (c) Both jointly and severally

Statutory Provision:**87. Liability in case of Amalgamation or Merger of companies**

- (1) *When two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to tax accordingly.*
- (2) *Notwithstanding anything contained in the said order, for all purposes of this Act, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order and the registration certificates of the said companies shall be cancelled, with effect from the date of the said order.*

87.1 Introduction

This section deals with tax liability on transactions between the effective date and date of order of Tribunal/Court in case of amalgamation or merger of companies.

87.2 Analysis

- (i) In cases of amalgamation or merger of two or more companies by virtue of an order passed by Tribunal/Court/otherwise., the following two crucial dates are relevant, -
 - Date from which the amalgamation/merger is effective;

- Date of the order pursuant to which the amalgamation/merger takes place;
- (ii) Normally, by virtue of the said order the transactions of supply of goods and/or services inter-se the companies merged/amalgamated between two dates would get nullified as they would become one entity from the effective date (and not from the date of the order).
 - (iii) However, for the purposes of GST, by virtue of this provision, such transactions would continue to be treated as supply by one entity and receipt by the other, viz., all provisions of this law would equally apply as if the amalgamation or merger had not taken place and both the entities continue as two different taxable persons. Till the date of order of amalgamation / merger, those companies shall be treated as distinct companies and should discharge their respective tax liabilities.
 - (iv) Thus, this provision would eclipse the order of the Court/Tribunal and its legal effect for the limited purposes of GST law.
 - (v) It provides that wherever necessary, the registration certificates of the said companies would stand cancelled with effect from the date of the said order.

Please refer to facility provided by rule 41 for transfer of credits.

87.3 Comparative analysis with the erstwhile regime

This is comparable to most of the State level VAT laws, wherein the sale of goods between such entities (between the effective date of merger / amalgamation and the date of the order) will be treated as sale by one entity and purchase by the other. Such transactions will continue to be liable to tax as if the merger or amalgamation had not taken place and both the entities continue as two different entities.

87.4 MCQ:

- Q1. When two or more companies are amalgamated, the liability to pay tax on supplies between the effective date of amalgamation order and date of amalgamation order would be on -
- (a) Transferee;
 - (b) Respective companies;
 - (c) Any one of the companies;
 - (d) None of the above.

Ans: (d) Respective Companies.

Statutory Provision:

88. Liability in case of company in liquidation

- (1) *When any company is being wound up whether under the orders of a court or Tribunal or otherwise, every person appointed as receiver of any assets of a company*

(hereinafter referred to as the “liquidator”), shall, within thirty days after his appointment, give intimation of his appointment to the Commissioner.

- (2) The Commissioner shall, after making such inquiry or calling for such information as he may deem fit, notify the liquidator within three months from the date on which he receives intimation of the appointment of the liquidator, the amount which in the opinion of the Commissioner would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter to become, payable by the company.*
- (3) When any private company is wound up and any tax, interest or penalty determined under this Act on the company for any period, whether before or in the course of or after its liquidation, cannot be recovered, then every person who was a director of such company at any time during the period for which the tax was due shall, jointly and severally, be liable for the payment of such tax, interest or penalty, unless he proves to the satisfaction of the Commissioner that such non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.*

88.1 Introduction

This section deals with the tax and other dues of a company in case it is wound up or liquidated. This section has to be read with Rule 160 of GST Rules, 2017.

88.2 Analysis

- (i) Every person appointed as receiver / liquidator needs to give intimation of his appointment to the Commissioner within 30 days of his appointment.
- (ii) Within 3 months from the date of such intimation, the Commissioner, after making necessary enquiry or calling of information, will notify the liquidator to set apart a sum of money that would be sufficient to discharge, in his opinion, the amount of tax, interest and penalty payable by the company.
- (iii) When a private company is not able to clear its dues, then every person who was the director at any time during the period, for which tax is due, would be liable jointly and severally to pay the dues.
- (iv) However, if any director proves to the satisfaction of the Commissioner that such non-recovery is not due to his gross neglect, misfeasance or breach of duty, the liability would not arise in the hands of such director.
- (v) Rule 160 of GST Rules, 2017 states that where a company is under liquidation, as specified u/s 88 of the GST Act, then the Commissioner shall notify the liquidator for recovery of any amount representing tax, interest, penalty or any amount due under the Act.
- (vi) While section 88 provides the provision must be made by liquidator for GST dues ‘then’

or 'likely thereafter to become payable', Rule 68 provides only for 'amount due' i.e. crystallised liabilities existing on the date of the letter and not for likely liabilities to become payable thereafter.

- (vii) As per Rule 160, the intimation must be sent in Form GST DRC – 24 to the Liquidator. This intimation must contain the following details:
- (a) Name of the company being liquidated
 - (b) The GSTIN of the company being liquidated
 - (c) Date of the letter
 - (d) Period for which demand is being made
 - (e) Demand Order No.
 - (f) Reference to Liquidator's letter intimating liquidation of the company
 - (g) The actual amount/ likely amount the company owes to State/ Central Government in terms of tax, interest, penalty, other dues and total arrears thereof
- (viii) Rule 160 employs the term 'notify' the liquidator while Form GST DRC – 24 'directs' the liquidator to make sufficient provision for discharge of current and anticipated liabilities before final winding up of the company.

88.3 MCQ

- Q1. Intimation regarding appointment of liquidator should be given to the Commissioner within 30 days of
- (a) Liquidation
 - (b) Cancellation of registration
 - (c) Appointment of Liquidator
 - (d) Order of Court

Ans: (c) Appointment of Liquidator

- Q2. Commissioner will notify the amount of liability within how many days of intimation
- (a) 3 months
 - (b) 30 days
 - (c) 60 days
 - (d) 6 months

Ans: (a) 3 months

- Q3. When would a director not be liable to pay the tax dues,
- (a) Liquidator refuses to pay
 - (b) Auditor refuses to pay

- (c) If the non-recovery is not due to gross neglect of the director
- (d) None of the above

Ans: c) If the non-recovery is not due to gross neglect of the director

Statutory Provision:

89 Liability of directors of Private Company

- (1) *Notwithstanding anything contained in the Companies Act, 2013 (18 of 2013), where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.*
- (2) *Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, nothing contained in sub-section (1) shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company.*
Provided that nothing contained in this sub-section shall apply to any personal penalty imposed on such director.

89.1 Introduction

This section deals with recovery of tax dues, interest or penalty from the directors of a private company, where the private company has not discharged its tax, penalty or interest liability towards the supply of goods or services.

89.2 Analysis

- (i) If the tax, interest or penalty were not paid by a private company in relation to any supply of goods or services for any period, then every Director of such private company during such period will be liable to pay such dues. The liability of the Director will be relaxed only when, he proves that such non-recovery of dues is not because of his gross negligence, misfeasance or breach of duty in relation to affairs of company.
- (ii) However, an exception has been carved out for the above provision – viz., this is not applicable to personal penalty imposed on such director.

89.3 MCQ

- Q1. When a private company is converted into public company, the liability of director of private company before conversion is.....

- (a) Tax Only
- (b) Tax and Interest
- (c) Tax, Interest or Penalties
- (d) None of the above

Ans. (d) None of the above

Q2. Who is liable to pay the tax in case tax, interest or penalty can't be recovered from the private company?

- (a) Additional director
- (b) Whole time Director
- (c) Managing Director
- (d) All of the above

Ans. (d) All of the above

Statutory Provision

90. Liability of Partners of firm to pay tax

Notwithstanding any contract to the contrary and any other law for time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall jointly and severally, be liable for such payment:

Provided that where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date:

Provided further that if no such intimation is given within one month from the date of retirement, the liability of such partner under the first proviso shall continue until the date on which such intimation is received by the Commissioner.

90.1 Introduction

This section deals with the liability of a partner of a firm to pay any tax, interest or penalty, that was otherwise payable by the firm.

90.2 Analysis

- (i) Where a partnership firm is liable to pay any tax, interest or penalty, all the partners of such firm will be jointly and severally liable to pay such amounts.
- (ii) If any of the partners retire, then such partner or the firm shall intimate the Commissioner by a notice in writing within one month from the date of retirement. In

such cases, the retiring partner shall be liable to pay tax, interest and penalty, if any upto the date of his retirement (whether determined or not prior to retirement).

- (iii) However, where no such intimation is given by the partner to the Commissioner within 1 month from retirement date, the liability of such retired partner will continue till the date on which the intimation is received by the Commissioner.
- (iv) The provision will be equally applicable for LLPs.

Every partner who retires from a partnership firm should file an intimation to the jurisdictional Commissioner giving the details of his retirement – viz., the name of the firm, registration number of the firm and the date of his / her retirement.

If the firm is operating in more than one States, such intimation should be filed in all such States.

90.3 FAQs

Q1. Whether the retiring partner is liable to pay tax?

Ans. Retiring partner shall be liable to pay tax, interest and penalty, if any upto the date of his retirement (whether determined or not prior to retirement).

Q2. What are the precautions to be taken by the retiring partner?

Ans. Retiring partner shall intimate the Commissioner by a notice in writing of his retirement within one month from the date of his Retirement.

Q3. Whether partner or firm is liable to intimate to the Commissioner regarding his retirement?

Ans. Either the retiring partner or the firm shall intimate the Commissioner by a notice in writing of retirement of a partner.

Q4. What is the time limit for the firm or partner to give intimation of retirement of partner?

Ans. The time limit to intimate retirement is within one month from the date of retirement to ensure that the liability is not fastened post retirement date.

Q5. What are the consequences of non-intimation?

Ans. The liability of the retiring partner continues till the date of receipt of intimation by the Commissioner

90.4 MCQ

1. Retiring partner should intimate the retirement to

- (a) Department
- (b) Government
- (c) Commissioner
- (d) All of the above

Ans. (c) Commissioner

2. Intimation to the Commissioner has to be given within.....

- (a) 1 month
- (b) 60 days
- (c) 90 days
- (d) 45 days

Ans. 1 month

3. If the intimation is delayed to the Commissioner then the retiring partner is liable to pay tax dues till:

- (a) the date of intimation to the Commissioner
- (b) the date of acceptance of intimation by the Department
- (c) the date of retirement
- (d) the date of show cause notice

Ans. The date of intimation to the Commissioner

Statutory Provision

91 – Liability of guardians, trustees etc.

Where the business in respect of which any tax, interest or penalty is payable under this Act is carried on by any guardian, trustee or agent of a minor or other incapacitated person on behalf of and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent in like manner and to the same extent as it would be determined and recoverable from any such minor or other incapacitated person, as if he were a major or capacitated person and as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

91.1 Introduction

This section enables collection of tax, interest or penalty from the guardians, trustees or agents of a minor or any other incapacitated person in respect of the business carried on for them.

91.2 Analysis

(a) In respect of business carried on, on behalf of, or for the benefit of a minor or incapacitated person (by the following persons who carry on such business) then such person will be liable to tax:

- Guardian; or
- Trustee; or

— Agent;

- (b) The tax, interest, penalty or any other dues which such minor or incompetent person will be liable to, are the amounts which are recoverable from the minor or any such incapacitated person and which are levied, assessed in the hands of guardian, trustee or agent.
- (c) The dues are recoverable from the guardian, trustee or agent in respect of business of the minor or other incapacitated person by treating them as major or capacitated person, who is conducting the business for himself.
- (d) The deeming fiction is required to overcome the general principle of law, which operates in favour of a minor or incapacitated person to plead minority or incapacity in respect of dues or claims, particularly penal liability.
- (e) Interestingly the expression 'incapacitated person' is not defined in the Act. It should refer only to a person who is a person of unsound mind or one who is terminally ill.

91.3 FAQs

Q1. Who is liable for tax dues etc., in case of a business of minor or incapacitated person?

Ans. The Guardian, or the Trustee; or the Agent as the case may be who is conducting the business for the benefit of minor or incapacitated person

Q2. Whether the minor for whom the business is carried out by Guardian can escape liability on the ground of minority of the beneficiary?

Ans. The minor is deemed to be a major for the purposes of collection of any tax/interest/penalties arising out of the business carried out for him. Hence the general principle of law has no application and the Guardian, Trustee or Agent cannot escape each liability.

91.4 MCQ

Q1. In case of business carried on by minor or other incapacitated person through Guardian / Agent who is liable to pay tax?

- (a) Guardian/Agent
- (b) Friend
- (c) Business Partner
- (d) None

Ans. (a) Guardian/Agent

Q2. The dues recoverable under this section includes

- (a) Only Interest
- (b) Any dues which are recoverable under this Act
- (c) Only tax

(d) Only Penalty

Ans. (b) Any dues which are recoverable under this Act

Statutory Provision

92 – Liability of Courts of Wards etc.

Where the estate or any portion of the estate of a taxable person owning a business in respect of which any tax, interest or penalty is payable under this Act is under the control of the Court of Wards, the Administrator General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who in fact manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager, in like manner and to the same extent as it would be determined and be recoverable from the taxable person as if he were conducting the business himself, and all the provisions of this Act or the rules made thereunder shall apply accordingly.

92.1 Introduction

This section empowers collection of tax, interest or penalty from Administrator General, Official Trustee or any receiver or manager, who controls the estate or any portion thereof in respect of the taxable person who owns a business and whose estate is being controlled.

92.2 Analysis

In respect of any tax, interest or penalty relating to a business of the taxable person whose estate or part thereof is under their control of the following, (the same persons (following) will be liable as if they were themselves conducting the business as taxable person/s):

- (i) Administrator general or
- (ii) Official trustee or
- (iii) Any receiver or manager or
- (iv) Including any person, whatever be his designation, who in fact actually manages the business.

Illustration. Mr. ABC is appointed as manager of Mr. X, to manage the estate of Mr. X, who owns a garment business. Mr. X is liable to pay Rs. 20,00,000/- of CGST, interest and penalty to the Government. The department can recover such dues from Mr. ABC who is managing the estates of Mr. X., by invoking this provision.

92.3 FAQs

Q1. Who is liable to pay tax dues if the estate of a taxable person is controlled by Court of Wards?

Ans. The dues are recoverable from the Court of Wards as if he is conducting the business for himself.

92.5 MCQs

Q1. If the estate or any portion of the estate of a taxable person is under the control of the Court of Wards, Administrative General etc., the tax due from such taxable person is liable to be paid by -

- (a) Court of Wards.
- (b) Taxable Person
- (c) Legal representative of taxable person
- (d) None of the above

Ans. (a) Court of Wards

Q2. The Court of Wards, Administrative General, etc., must be appointed by-

- (a) Supreme Court
- (b) High Court
- (c) Any court
- (d) None of the above

Ans: (c) Any Court

Q3. The dues recoverable under this section includes

- (a) Only Interest
- (b) Any dues which are recoverable under this Act
- (c) Only tax
- (d) Only Penalty

Ans. (b) Any dues which are recoverable under this Act

Statutory Provision**93. Special Provisions regarding liability to pay tax interest or penalty in certain cases**

(1) *Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 where a person, liable to pay tax, interest and penalty under this Act, dies, then-*

- (a) *if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act, and*
- (b) *if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, penalty or interest due from such person under this Act,-*

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

- (2) *Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 where a taxable person, liable to pay tax, interest or penalty under this Act, is a Hindu Undivided Family or an association of persons and the property of the Hindu Undivided Family or the association of persons, is partitioned amongst the various members or groups of members, then, each member or group of members shall, jointly and severally, be liable to pay the tax, interest or penalty due from the taxable person under this Act upto the time of the partition whether such tax, penalty or interest has been determined before partition but has remained unpaid or is determined after the partition.*
- (3) *Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 where a taxable person, liable to pay tax, interest or penalty under this Act, is a firm, and the firm is dissolved, then every person who was a partner shall, jointly and severally, be liable to pay the tax, interest or penalty due from the firm under this Act up to the time of dissolution whether such tax, interest or penalty has been determined before the dissolution, but has remained unpaid or is determined after dissolution.*
- (4) *Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016 where a taxable person liable to pay tax, interest or penalty under this Act,-*
 - (a) *is the guardian of a ward on whose behalf the business is carried on by the guardian, or*
 - (b) *is a trustee who carries on the business under a trust for a beneficiary.*

then if the guardianship or trust is terminated, the ward or the beneficiary shall be liable to pay the tax, interest or penalty due from the taxable person upto the time of the termination of the guardianship or trust, whether such tax, interest or penalty has been determined before the termination of guardianship or trust but has remained unpaid or is determined thereafter.

93.1 Introduction

Section 93 of GST Act is subject to Insolvency and Bankruptcy Code, 2016. The objects clause of Insolvency and Bankruptcy Code inter-alia provide that it has been enacted amongst other things to 'alter the order of priority of payment of Government dues'.

As per Section 53 of Banking & Insolvency code provides for distribution of assets of a company. It starts with a non-obstante clause against 'any law' enacted by Central or State Government. As per S.53, Government dues stand fifth in the order of priority as follows:

- a. Insolvency Resolution process costs and liquidation costs paid in full
- b. Workmen's dues for 24 months preceding liquidation commencement date and debts owed to a secured creditor
- c. Wages and unpaid dues owed to employees for 12 months preceding liquidation commencement date

- d. Financial debts owed to unsecured creditors
- e. Amounts due to Central Government and the State Government, including amount to be received on account of Consolidated Fund of India and Consolidated Fund of State, in respect of whole or part of two years preceding liquidation commencement date¹

GST is received by Central and State Governments in Consolidated Fund of India and Consolidated Fund of State respectively

As per S.74, GST, interest, penalty can be demanded for a period of five years from the relevant date. However S.82 states that any amount payable by a taxable person or any other person on account of tax, interest and penalty shall be a first charge on the property of such taxable person or other person, subject to Insolvency and Bankruptcy Code, 2016.

93.2 Analysis

Death of person (individual)

- (i) If a person (an individual) who is liable to pay tax dies: -
 - (a) In case of continuation of business: the legal representative or the any other person who carries on the business after his death is liable to pay tax, interest, penalty or any other due which is due from the deceased person; or
 - (b) In case of discontinuation of business before or after his death: only the legal representative is liable to pay the tax, interest, penalty or any other dues to the government.
- (ii) The liability of the legal representative in case of discontinued business is only to the extent of property or estate received from such deceased person.
- (iii) The legal representative or any other person as the case may be is liable to pay the tax, interest or penalty whether-
 - (a) It has been determined before his death but has remained unpaid or
 - (b) It has been determined after his death¹

Partition of HUF or AOP

- (i) In case of a HUF or AOP property is partitioned between the member or group of members then the liability to pay tax, interest or penalty
 - Is on each member or group of members (jointly and severally) who got a portion in that property.
 - The member or the group of members is/are liable only upto the time of partition whether such
 - Tax, interest and penalty has been determined before partition but has remained unpaid or
 - is determined after such partition

¹ This is to overcome the Supreme Court decision in Shabina Abraham Vs CCE, 2015 (322) ELT 372 (SC),

Dissolution of firm

- (i) In case the firm is dissolved-
- Every person who was a partner upto the time of dissolution is jointly and severally liable to pay the tax, interest or penalty.
 - The person who was a partner is liable to pay tax even if it is
 - determined before dissolution but not paid or
 - determined after dissolution.
 - The provision applicable for partnership firm would equally apply for LLP as well.

Termination of Guardianship or Trusteeship

- (ii) In case the guardian is carrying on the business on behalf of a ward or the trustee who carries the business under the trust on behalf of beneficiary, then on the termination of guardianship or trusteeship,
- The ward or the beneficiary is liable to pay tax, interest or penalty upto the time of such termination.
 - The ward or the beneficiary is liable to pay tax, interest or penalty
 - determined before the termination of guardianship or trusteeship but not paid or
 - determined after such termination

The above provisions are applicable to extent that there is no contrary provision in Insolvency and Bankruptcy Code, 2016.

93.3 FAQs

- Q1. Can a legal representative be made liable for tax dues payable by a deceased person?
- Ans. Yes. Legal representative is made liable for the tax dues of the deceased person even if it is determined after death.
- Q2. To what extent tax dues of the deceased person could be recoverable from the legal representative?
- Ans. (a) In case of continuation of business: the legal representative or the any other person who carries on the business after his death is liable to pay tax, interest, penalty or any other due which is due from the deceased person; or
- (b) In case of discontinuation of business before or after his death : only the legal representative is liable to pay the tax, interest, penalty or any other dues to the government. The liability of the legal representative in case of discontinued business is only to the extent of property or estate received from such deceased person.
- Q3. In case of partition of HUF or AOP, what would be the extent of liability of members of the HUF/AOP?

Ans. The member or the group of members is/are liable only upto the time of partition.

Q4. In case of dissolution of a firm, upto which date the partners would be responsible to pay the tax dues?

Ans. Every person who was a partner upto the time of dissolution is jointly and severally liable to pay the tax, interest or penalty

93.4 MCQ

Q1. Who is liable to pay tax if the business of an individual is discontinued before his death-

- (a) Board of Directors or Manager
- (b) Any member of his person who is willing to pay
- (c) Legal representative of taxable person
- (d) Employee

Ans. (c) Legal representative of taxable person

Q2. The legal representative or any other person of an individual who is dead is liable to pay tax, only if -

- (a) The business has been carried on by the legal representative
- (b) The business has been carried by the legal representative or any other person
- (c) The business has been carried by any other person
- (d) None of the above.

Ans. (b) The business has been carried on by the legal representative or any other person

Q3. The dues recoverable under this section includes-

- (a) Only Interest
- (b) Any dues which are recoverable under this Act
- (c) Only tax
- (d) Only Penalty

Ans. (b) Any dues which are recoverable under this Act

Q4. As per this section, the member or group of members of HUF or AOP is/are liable to pay tax on taxable supplies -

- (a) Even after its partition
- (b) Upto the time of partition
- (c) Both (a) and (b)
- (d) None of the above

Ans. (b) Upto the time of partition

Statutory Provision**94. Liability in other cases**

- (1) *Where a taxable person is a firm or an association of persons or a Hindu Undivided Family and such firm, association or family has discontinued business-*
- (a) *the tax, interest or penalty payable under this Act by such firm, association or family up to the date of such discontinuance may be determined as if no such discontinuance had taken place; and*
 - (b) *every person who, at the time of such discontinuance, was a partner of such firm, or a member of such association or family, shall, notwithstanding such discontinuance, jointly and severally, be liable for the payment of tax and interest determined and penalty imposed and payable by such firm, association or family, whether such tax and interest has been determined or penalty imposed prior to or after such discontinuance and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a taxable person.*
- (2) *Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of association, as it existed before and as it exists after the reconstitution, shall, without prejudice to the provisions of section 90, jointly and severally, be liable to pay tax, interest and penalty due from such firm or association for any period before its reconstitution.*
- (3) *The provisions of sub-section (1) shall, so far as may be, apply where the taxable person, being a firm or association of persons is dissolved or where the taxable person, being a Hindu Undivided Family, has effected partition with respect to the business carried on by it and accordingly references in that sub-section to discontinuance shall be construed as reference to dissolution or, to partition.*

Explanation.- For the purpose of this chapter,

- (a) *a "limited liability partnership" formed and registered under the provisions of the Limited Liability Partnership Act, 2008) shall also be considered as a firm.*
- (b) *"court" means the District Court, High Court or Supreme Court.*

94.1 Introduction

This section discusses the liability of partners of firm or members of AOP or HUF on discontinuation of business.

94.2 Analysis

- (i) In case of discontinuance of business, the firm or AOP or HUF, the liability of the firm/AOP/HUF shall be determined (upto the date of discontinuance) as if no such discontinuance had taken place.
- (ii) Every partner of such firm or member of such AOP or HUF at the time of discontinuance shall be jointly and severally liable for payment of tax, interest and penalty imposed.

- (iii) In case of change in the constitution of the firm or association, the partners and members who existed before reconstitution shall be liable jointly and severally to pay tax, interest and penalty for any period upto the date of reconstitution. This will operate even if the retirement was intimated to the commissioner in terms of Section 90.
- (iv) Discontinuance includes dissolution of firm or association and partition in case of HUF.
- (v) This provision, the way it applies to a partnership firm will apply to an LLP as well.

94.3 FAQs

- Q1. In case of discontinuance of business of a firm or AOP or HUF, who would be liable to pay the tax and other dues?
- Ans. Every partner of the firm or member of the AOP or HUF at the time of discontinuance shall be jointly and severally liable.
- Q2. In case of discontinuance of partnership business to what extent a partner would be liable?
- Ans. The partner is liable jointly and severally for liability of the discontinued firm of tax, interest and penalty.
- Q3. In case of reconstitution of partnership firm how and to what extent the partners liability is determined?
- Ans. Without prejudice to the provisions of section 90, all the partners of the firm prior to the date of reconstitution and after the date of reconstitution shall jointly and severally, be liable to pay tax, interest or penalty due from firm which is reconstituted, for any period before its reconstitution.

94.4 MCQs

- Q1. In case of discontinuance of HUF business, the liability would arise till the date of
- (a) Discontinuance
 - (b) Court verdict
 - (c) As mutually agreed upon by the HUF members
 - (d) determination of liability by the Department.
- Ans. (a) Discontinuance
- Q2. The expression 'firm' would include a _____
- (a) company
 - (b) LLP
 - (c) HUF
 - (d) AOP.
- Ans. (b) LLP

Chapter–XVII

Advance Ruling

95. Definitions

96. Authority for Advance Ruling

97. Application for Advance Ruling

98. Procedure on receipt of application

99. Appellate Authority for Advance Ruling

100. Appeal to Appellate Authority

101. Orders of Appellate Authority

102. Rectification of advance ruling

103. Applicability of advance ruling

104. Advance ruling to be void in certain circumstances

105. Powers of Authority and Appellate Authority

106. Procedure of Authority and Appellate Authority

Statutory provision

95. Definitions

In this Chapter, unless the context otherwise requires, -

- (a) *“advance ruling” means a decision provided by the Authority or the Appellate Authority to an applicant on matters or on questions specified in sub-section (2) of section 97 or sub-section (1) of section 100, in relation to the supply of goods and/or services or both being undertaken or proposed to be undertaken by the applicant;*
- (b) *“Appellate Authority” means the Appellate Authority for Advance Ruling referred to in section 99;*
- (c) *“applicant” means any person registered or desirous of obtaining registration under the Act;*
- (d) *“application” means an application made to the Authority under sub-section (1) of section 97;*
- (e) *“Authority” means the Authority for Advance Ruling, referred to in section 96;*

95.1 Introduction

This section provides the definitions of the expressions 'advance ruling', 'applicant', 'application', 'authority' and 'appellate authority', for the purpose of the chapter on advance rulings. The meanings of said words assigned by the definitions have to be applied unless the context otherwise requires.

95.2 Analysis

- (i) The expression 'advance ruling' would mean the decision taken in writing from the AAR (including appellate authority) only on the questions raised by the Applicant relating to several matters specified in Section 97(2) or in Section 100(1) i.e., with respect to an order given u/s 98(4), with respect to supply of goods and / or services proposed to be undertaken or already being undertaken.
- (ii) The word "applicant" refers to any person already registered or one who desires to get registered under the Act.
- (iii) The term "application" refers to the application made for advance ruling under section 97(1), in FORM GST ARA-1.
- (iv) The word "authority" refers to the AAR constituted under section 96 of CGST Act in each State or Union territory.
- (v) The expression "Appellate Authority" refers to the Appellate Authority for Advance Ruling constituted under section 99 in each State or Union territory.
- (vi) Advance ruling decision can only be in respect of matters or questions specified in section 97(2) or section 100(1) of the Act in relation to the supply of goods and/or services, which is either proposed to be undertaken or is being undertaken by the applicant and cannot travel beyond that. Thus, an application can be made even before the applicant has undertaken an activity of supplying goods and/or services.
- (vii) Applicant under the GST law may be a person who is already registered under the GST Act or who wishes to obtain a registration. Therefore, registration at the time of making the application is not necessary. One can make an application to the authority under section 97(1) stating the question on which he seeks advance ruling. The term 'Person' has been defined in section 2(84) of the Act. The scope of persons eligible for making applications has been widened as compared to the list of persons as per erstwhile tax regime under Central Excise, Customs and Service Tax.
- (viii) Under erstwhile laws, while the advance ruling can be sought on specified question of law or fact, under the GST law, several situations are covered in section 97(2) of the Act.
- (ix) Under erstwhile laws, advance ruling can be sought by an applicant on an activity of production or manufacture of goods or import or export of goods proposed to be undertaken or a service proposed to be provided by him. However, under the GST laws, advance ruling can also be sought on a present activity of supply of goods and or services being undertaken by the applicant.

95.3 Comparative review

For the first time an appellate authority for advance ruling has been prescribed. This is a marked departure from the pre-GST regime, which did not provide for an appellate remedy against rulings given by AAR.

95.4 Related Provisions

Section / Rule/ Form	Description	Remarks
Section 2(84)	Person	Contains an inclusive list of 14 different types of persons.
Section 97(2)	Question on advance ruling	Provides for a list of matters in respect of which applicant can sought the advance ruling.
Section 100(1)	Appeal to the Appellate authority	Prescribed or jurisdictional CGST/SGST officer or an applicant can appeal to the appellate authority, if aggrieved by the advance ruling pronouncement of the authority.

95.5 FAQs

Q1. Can advance ruling be given orally?

Ans. No. Advance ruling cannot be given orally in view of section 98(6) and 98(7).

Q2. Can Advance Ruling be applied for after supply of goods and/or services?

Ans. Yes, as per section 95(a) of the Act, application can be made for Advance Ruling in relation to the supply of goods and/ or services being undertaken by the applicant.

Q3. Who can make an application for advance ruling?

Ans. An application for advance ruling can be made by any person who is registered or is desirous of obtaining a registration under the GST.

Legend

- (i) AAR: Authority for Advance Rulings
- (ii) AAAR: Appellate Authority for Advance Ruling
- (iii) AA: Appellate Authority
- (iv) UT: Union Territory

Statutory provision:**96. Authority for advance ruling**

Subject to the provisions of this Chapter, for the purposes of this Act, the Authority for advance ruling constituted under the provisions of a State Goods and Services Tax Act or Union Territory Goods and Services Tax Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory

96.1 Introduction

The Authority for advance ruling constituted under provisions of a State GST Act or UTGST Act shall be deemed to be the Authority for advance ruling in respect of that State or Union territory.

96.2 Analysis

The AAR shall be located in each State/Union Territory constituted under the provisions of State Goods and Services Tax Act and Union Territory Goods and Services tax Act.

96.3 Comparative review

Under erstwhile laws, there is one AAR for three Central indirect tax laws i.e. Central Excise, Customs and Service Tax constituted by the Central Government under section 28F of the Customs Act, 1962 having its office in Delhi. Under the GST law, there will be one AAR in each State or Union Territory because the concept of advance ruling is being made applicable to SGST laws/ UTGST laws as well.

96.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 95 (e)	Authority	Defines the meaning of 'Authority'.
Section 95 (a)	Advance Ruling	Defines 'Advance Ruling' as a written decision on matters or questions specified in section 97(2) or section 100(1).

96.5 FAQs

Q1. Where will the office of AAR be situated?

Ans. The office of the AAR will be situated in each State/UT.

Statutory provision:**97. Application for Advance Ruling**

(1) *An applicant desirous of obtaining an advance ruling under this Chapter may make an application in such form and manner and accompanied by such fee as may be prescribed, stating the question on which the advance ruling is sought.*

- (2) *The question on which the advance ruling is sought under this Act shall be in respect of,*
- (a) *classification of any goods and/or services or both;*
 - (b) *applicability of a notification issued under provisions of this Act;*
 - (c) *determination of time and value of supply of goods or services or both;*
 - (d) *admissibility of input tax credit of tax paid or deemed to have been paid;*
 - (e) *determination of the liability to pay tax on any goods or services or both;*
 - (f) *whether applicant is required to be registered;*
 - (g) *whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.*

97.1 Introduction

This section specifies the matters in respect of which an advance ruling can be sought by way of an application which may be in such form and manner duly accompanied with the fee as may be prescribed.

97.2 Analysis

- (i) An applicant who seeks an advance ruling should make an application in the prescribed FORM GST ARA-1 together with a fee of ₹ 5000/- (Rule 104 of the CGST Rules, 2017) and should state the question on which such a ruling is sought.
- (ii) The question raised is limited to the following:
 - Classification of goods and / or services or both;
 - Applicability of notification issued under the Act.
 - Determining the time and value of goods or services or both;
 - Input credit admissibility of tax paid or deemed to be paid;
 - Determination of liability to tax on goods or services or both;
 - Registration requirement of an applicant;
 - Whether any particular thing done by the applicant amounts to or results in supply of goods or services or both.

97.3 Comparative review

The questions on which AAR can be sought is quite comprehensive as compared to the erstwhile indirect tax regime.

Under the erstwhile laws, the applicant may withdraw the application within 30 days from the date of application. However, there is no such withdrawal provision under GST laws.

97.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 95(d)	Application	This section states that 'application' means an application made to the Authority under section 97(1).
Section 95(c)	Applicant	Defines applicant as a person who is registered or is desirous of obtaining registration under the GST Act.
Section 95(a)	Advance Ruling	Defines 'Advance Ruling' as a decision on matters or questions specified in section 97(2) or section 100(1).

97.5 FAQs

Q1. Who can make an application to the AAR?

Ans. An applicant desirous of obtaining an advance ruling (whether registered or not) can make an application to AAR.

Q2. Can a question relating to classification of services or goods be referred to AAR?

Ans. Yes, a question on classification of services or goods can be referred to AAR.

Q3. Can the issue relating to admissibility of input credit be raised in an application for advance ruling?

Ans. Yes, an issue in relation to admissibility of input tax credit of tax paid or which is deemed to have been paid can be raised in an application for advance ruling.

Q4. Can the issue relating to notification having a bearing on tax rate, be raised before the AAR?

Ans. Yes, an issue relating to applicability of any notification issued under act can be raised before the AAR

Q5. Can the application made to the authority be withdrawn at any time?

Ans. It appears that there is no such provision under GST law.

Statutory provision**98. Procedure on receipt of application**

(1) *On receipt of an application, the Authority shall cause a copy thereof to be forwarded to the concerned officer and, if necessary, call upon him to furnish the relevant records:*

Provided that where any records have been called for by the Authority in any case, such records shall, as soon as possible, be returned to the said concerned officers.

(2) *The Authority may, after examining the application and the records called for and after*

hearing the applicant or his authorised representative and the concerned officer or his authorised representative, by order, either admit or reject the application:

Provided that the Authority shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

Provided further that no application shall be rejected under this sub-section unless an opportunity of hearing has been given to the applicant:

Provided also that where the application is rejected, the reasons for such rejection shall be specified in the order.

- (3) *A copy of every order made under sub-section (2) shall be sent to the applicant and to the concerned officer.*
- (4) *Where an application is admitted under sub-section (2), the Authority shall, after examining such further material as may be placed before it by the applicant or obtained by the Authority and after providing an opportunity of being heard to the applicant or his authorized representative as well as to the concerned officer or his authorised representative, pronounce its advance ruling on the question specified in the application.*
- (5) *Where the members of the Authority differ on any question on which the advance ruling is sought, they shall state the point or points on which they differ and make a reference to the Appellate Authority for hearing and decision on such question.*
- (6) *The Authority shall pronounce its advance ruling in writing within ninety days from the date of receipt of application.*
- (7) *A copy of the advance ruling pronounced by the Authority duly signed by the members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer and the jurisdictional officer after such pronouncement.*

98.1 Introduction

This section sets out the procedure to be followed by the Authority for Advance Ruling (AAR) on receipt of an application for advance ruling by an applicant.

98.2 Analysis

Receipt of Application

- (i) On receipt of an application in FORM GST ARA -1, the AAR shall forward a copy to the concerned officer and, if necessary, direct him to furnish the relevant records.
- (ii) The records so called for by the AAR should be returned as soon as possible to the concerned officer.
- (iii) The AAR, at its discretion, would examine the application and the records called for, and after hearing the applicant or his authorized representative and concerned officer or his authorised representative pass an order, either admitting or rejecting the application.

- (iv) The AAR shall not admit the application where the question raised in the application is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.
- (v) Before rejecting the application, the applicant ought to be given an opportunity of being heard.
- (vi) Where the application is finally rejected, the reasons for such rejection shall be stated in the order.
- (vii) A copy of every order made shall be sent to the applicant and to the concerned officer.

In the 23rd GST Council meeting held in Guwahati on 9th & 10th of November 2017, it was decided to introduce a facility for manual filing of application for advance ruling for the time being. The list of name and address of the officers for submission of application of advance ruling in each state is also released in this regard. In this regard, a circular no. 25/25/2017-GST dated 21st December, 2017 issued whereby rule 107A has been inserted in the CGST Rule, 2017 which states that in respect of any process or procedure prescribed in Chapter XII, any reference to electronic filing of an application, intimation, reply, declaration, statement or electronic issuance of a notice, order or certificate on the common portal shall, in respect of that process or procedure, include the manual filing of the said application, intimation, reply, declaration, statement or issuance of the said notice, order or certificate in such Forms as appended to the CGST Rules.

Pronouncement of advance ruling

Where the application is admitted, the AAR shall proceed as follows:

- Examine such further material as may be placed before it by the applicant or obtained by the AAR.
- Provide opportunity of being heard to the applicant or his authorized representatives and concerned officer or this authorized representative.
- Pronounce its advance ruling on the question specified in the application.

Reference to Appellate Authority

- (i) Where the members of the AAR differ on any question on which the advance ruling is sought, they shall state the point/s of difference and refer it to the Appellate Authority for advance ruling for final decision.
- (ii) The AAR shall pronounce its advance ruling in writing within ninety days of the receipt of application.
- (iii) The Appellate Authority to whom a reference is made due to difference of opinion is required to pronounce the ruling within ninety days of such reference. [Sec101(2)]

Submission of advance ruling pronounced.

A copy of the advance ruling pronounced by the concerned AAR / Appellate Authority, duly

signed by the Members and certified, shall be sent to the applicant and to the concerned officer after pronouncement.

98.3 Comparative review

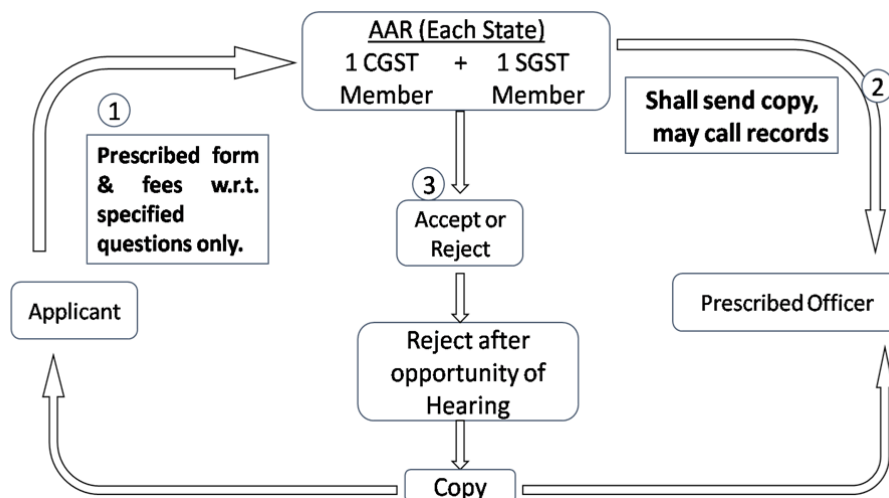
- (i) The provision has some similarities with the Advance Rulings provision in Central Indirect Tax laws.
- (ii) In case of difference of opinion, the matter would be directly referred to the appellate authority, which is a new development.

98.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 116	Appearance by authorised representative	This section defines the meaning of authorised representative (AR), who can be appointed as an AR, disqualification of AR etc. For the purpose of this sub section "authorised representative" shall have the meaning assigned to it in Section 116.

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

Application for Advance ruling – Sec: 98 & 97



* Not to admit if already before/decided by any Adjudicating or Appellate Authority.

Procedure for Advance ruling

98.5 FAQs

Q1. When AAR shall not admit the application for advance ruling?

Ans. AAR shall not admit the application where the issue raised is already pending or decided in any proceedings in the case of an applicant under any of the provisions of this Act.

Q2. Can an application be rejected without providing the applicant an opportunity of being heard?

Ans. No. Before rejecting the application, AAR shall provide the applicant an opportunity of being heard.

Q3. Whether it is necessary to give reasons for rejection in the order of the AAR?

Ans. Yes. Where the application is rejected, reasons for such rejection shall be given in the order.

Q4. When should a reference be made to the appellate authority?

Ans. A reference shall be made to the Appellate Authority stating the point of differences, when the members of the authority differ on any question on which advance ruling is sought.

98.6 MCQs

Q1. On receipt of an application for advance ruling, Authority for Advance ruling shall:

- (a) fix a date of hearing
- (b) forward a copy of the same to concerned officers
- (c) None of the above

Ans. (b) forward a copy of the same to concerned officers.

Q2. AAR shall refuse to admit the application if the issue raised in the application is already pending in the applicant's own case before:

- (a) any First Appellate Authority
- (b) the Appellate Tribunal
- (c) any Court;
- (d) All the above

Ans. (d) All the above

Q3. The AAR shall pronounce its advance ruling:

- (a) Without examining further materials placed before it by the applicant
- (b) After examining further materials placed before it by the applicant
- (c) Without providing the applicant or his AR any opportunity of being heard
- (d) After providing the applicant or his AR any opportunity of being heard
- (e) (b) & (d) both

Ans. (e) (b) & (d) both

Q4. The AAR should pronounce the ruling within:

- (a) 30 days
- (b) 90 days
- (c) 60 days
- (d) 45 days.

Ans. (b) 90 days

Statutory provision

99. Appellate Authority for Advance Ruling

Subject to the provisions of this Chapter, for the purposes of this Act, the Appellate Authority for Advance Ruling constituted under the provisions of a State Goods and Services Tax Act or a Union Territory Goods and Services Tax Act shall be deemed to be the Appellate Authority in respect of that State or Union territory.

99.1 Introduction

The appellate authority for advance ruling shall be constituted in each state/UT.

99.2 Analysis

The appellate authority constituted in each state/UT shall be deemed to be the appellate authority in respect of that state/UT.

99.3 Comparative Review

This is a new concept hitherto not seen in the pre-GST regime.

Under erstwhile tax laws, there is no provision for an appellate authority for advance ruling, which is a new development under GST laws.

99.4 Related Sections

Section	Description	Remarks
Section 95 (b)	Appellate Authority	Defines the meaning of 'Appellate Authority' as the one constituted under section 99.

Statutory provision

100 Appeal to Appellate Authority

- (1) *The concerned officer, the jurisdictional officer or an applicant aggrieved by any advance ruling pronounced under sub-section (4) of section 98, may appeal to the Appellate Authority.*
- (2) *Every appeal under this section shall be filed within a period of thirty days from the*

date on which the ruling sought to be appealed against is communicated to the concerned officer, the jurisdictional officer and the applicant:

Provided that the Appellate Authority may, if it is satisfied that the appellant was prevented by a sufficient cause from presenting the appeal within the said period of thirty days, allow it to be presented within a further period not exceeding thirty days.

- (3) *Every appeal under this section shall be in such form, accompanied by such fee and verified in such manner as may be prescribed.*

100.1 Introduction

This section deals with the procedure to be followed for filing of an appeal before the appellate authority against the order of the authority under section 98(4).

100.2 Analysis

- (i) An appeal can be filed by the concerned or jurisdictional officer or the applicant, who is aggrieved by the ruling.
- (ii) The appeal should be filed within 30 days from the date of receipt of the ruling. This period can further be extended for another 30 days, if there is sufficient cause for not filing the appeal within the first 30 days.
- (iii) The appeal shall be in the prescribed FORM GST ARA-2 together with a fee of ₹ 10,000/-
- (iv) The appeal shall be verified in the prescribed manner.
- (v) Prescribed fee to be paid by the appellant.

100.3 Comparative review

This is a new mechanism evolved which was not prevalent in the erstwhile indirect tax regime.

100.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 99	Appellate authority for advance ruling	This section discusses about constitution of appellate authority in each State / UT and who will be its members.

100.5 FAQs

Q1. Who can file an appeal before the appellate authority for advance ruling?

Ans. The concerned Officer or jurisdictional officer or the applicant may file an appeal before the Appellate Authority, if he is aggrieved by the advance ruling pronounced by the authority under section 98(4).

Q2. What is the time limit for filing an appeal before the appellate authority for advance ruling?

Ans. The time limit for filing an appeal before the appellate authority is 30 days from the date of communication of the advance ruling to the aggrieved party. This time can further be extended by another 30 days if sufficient cause is shown for not filing the appeal within the first 30 days.

Statutory provision

101. Orders of the Appellate Authority

- (1) *The Appellate Authority may, after giving the parties to the appeal or reference an opportunity of being heard, pass such order as it thinks fit, confirming or modifying the ruling appealed against or referred to.*
- (2) *The order referred to in sub-section (1) shall be passed within a period of ninety days from the date of filing of the appeal under section 100 or a reference under sub-section (5) of section 98.*
- (3) *Where the members of the Appellate Authority differ on any point or points referred to in appeal or reference, it shall be deemed that no advance ruling can be issued in respect of the question under the appeal or reference.*
- (4) *A copy of the advance ruling pronounced by the Appellate Authority duly signed by the Members and certified in such manner as may be prescribed shall be sent to the applicant, the concerned officer, the jurisdictional officer and to the Authority after such pronouncement.*

101.1 Introduction

This section deals with the procedure to be followed by the appellate authority to pass an order against the advance ruling of the authority appealed against under section 100.

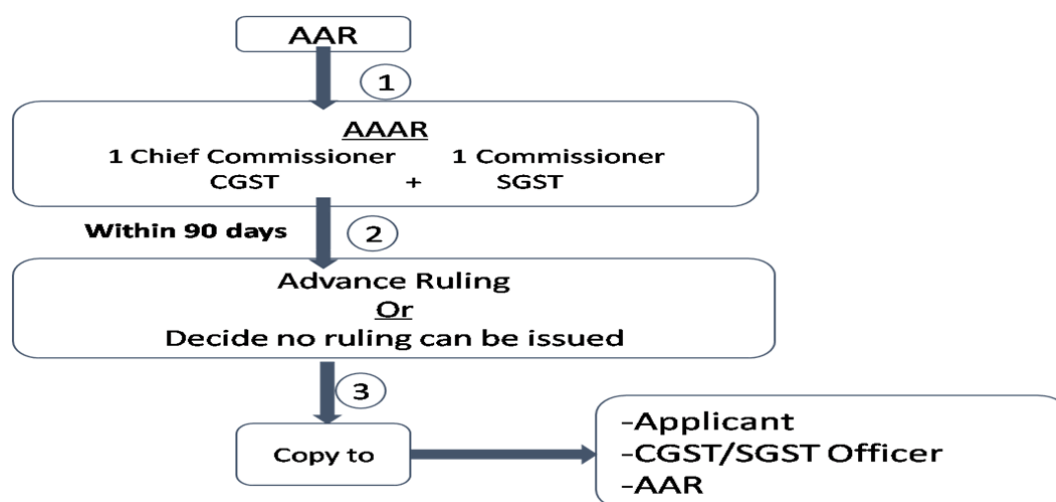
101.2 Analysis

- (i) The appellate authority must afford a reasonable opportunity of being heard to the parties before passing the order.
- (ii) The said authority can either pass such order as it deems fit, or confirm or modify the ruling appealed against.
- (iii) The order should be passed within 90 days from the date of filing appeal.
- (iv) If there is a difference of opinion between members on the question covered under the appeal, then it would be considered that no advance ruling is issued in the matter.
- (v) A copy of the appellate order should be signed by the members and communicated to the concerned officer and applicant, as soon as possible after such pronouncement.

101.3 Related Provisions

Section / Rule / Form	Description	Remarks
Section 99	Appellate authority for advance ruling	This section discusses about constitution of appellate authority in each State / UT and who will be its members.

Appellate Authority for Advance ruling – Sec: 100 & 101



Note: Rulings pronounced will only have a prospective effect,

101.4 FAQs

Q1. What is the time limit for passing of an order by the appellate authority for advance ruling?

Ans. The time limit for passing of an order by the appellate authority for advance ruling is 90 days from the date of filing of appeal.

Q2. Under what circumstances, advance ruling cannot be issued in respect of the question covered under the appeal?

Ans. If members of the appellate authority differ on any point or points of the question referred to them in appeal under 101(3), then it shall be deemed that no advance ruling is issued in respect of the question covered under the appeal.

Statutory provision**102. Rectification of advance ruling**

The Authority or the Appellate Authority may amend any order passed by it under section 98 or section 101, so as to rectify any error apparent on the face of the record, if such error is noticed by the Authority or the Appellate Authority on its own accord, or is brought to its notice by the concerned officer, the jurisdictional officer, the applicant or the appellant within a period of six months from the date of the order:

Provided that no rectification which has the effect of enhancing the tax liability or reducing the amount of admissible input tax credit shall be made unless the applicant or the appellant has been given an opportunity of being heard.

102.1 Introduction

This section deals with the circumstances as to when an order of the authority or the Appellate authority can be rectified, time limit within which it can be done and the notice to the applicant or the appellant in case such rectification results in enhancing the tax liability or reducing the amount of admissible input tax credit.

102.2 Analysis

1. The advance ruling can be rectified by the authorities on their own accord or upon receipt of application from the jurisdictional officer or the applicant, if there are any mistakes apparent on the record.
2. The application for rectification can be made within six months, and cannot result in substantial amendment of the order.
3. If the rectification results in increase in tax liability or reducing of input credit then a hearing has to be given to the applicant/appellant.
4. The Appellate authority may amend the order to rectify any mistake apparent from the record, if such mistake:
 - (a) Is noticed by it on its own accord, or
 - (b) Is brought to its notice by the concerned or the jurisdictional officer or
 - (c) Is brought to its notice by the applicant.

102.3 Related Provisions

Section/Rule/Form	Description	Remarks
Section 98	Procedure on receipt of application	This section states the procedure to be followed by the authority on receipt of an application or by the Appellate authority on a reference made to it by the authority. Section 98(6) provides for time limit of 90 days for pronouncement of advance ruling.

Section/Rule/Form	Description	Remarks
Section 101	Orders of the Appellate Authority	This section talks about passing of the order by the appellate authority, its time limit, communication of the order and the situation where no advance ruling can be issued.

102.4 FAQs

Q1. When can an advance ruling order may be rectified?

Ans. An advance ruling may be amended by the authority or appellant authority, as the case may be, with a view to rectify any mistake apparent from the record, which:

- (a) is noticed by the AAR or Appellate Authority on its own accord, or
- (b) is brought to the notice of the AAR or Appellate Authority by the concerned or the jurisdictional officer or;
- (c) is brought to the notice of the AAR or Appellate Authority notice by the applicant.

Q2. Under what circumstances, a notice is required to be issued to the applicant or appellant, as the case may be, before rectification of an advance ruling order?

Ans. Before rectification of an advance ruling order, a notice is required to be issued to the applicant or appellant, as the case may be, to provide him a reasonable opportunity of being heard, if such rectification has the effect of:

- enhancing the tax liability or
- reducing the amount of admissible input tax credit.

102.5 MCQs

Q1. Rectification of order can be done under the following circumstances

- (a) to do justice
- (b) when there is mistake apparent on record
- (c) if it is in the interest of revenue
- (d) none of the above.

Ans. (b) when there is mistake apparent on record

Statutory provision**103. Applicability of advance ruling**

(1) *The advance ruling pronounced by the Authority or, as the case may be, the Appellate Authority under this chapter shall be binding only -*

- (a) *on the applicant who had sought it in respect of any matter referred to in subsection (2) of section 97 of the application for advance ruling;*

- (b) on the concerned or jurisdictional officer in respect of the applicant.
- (2) The advance ruling referred to in sub-section (1) shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed.

103.1 Introduction

It states the binding effect of an advance ruling.

103.2 Analysis

- (i) The advance ruling pronounced by the Authority under this chapter shall be binding only on the applicant and on the jurisdictional officer in respect of the applicant.
- (ii) The advance ruling shall be binding on the said persons/authorities unless there is a change in law or facts or circumstances, on the basis of which the advance ruling has been pronounced. When any change occurs in such laws, facts or circumstances, the advance ruling shall no longer remain binding on such person.

103.3 Comparative review

The provision is similar to the Advance Rulings provisions in erstwhile Central Indirect Tax laws as contained in section 23E of Central Excise Act, section 28J of Customs Act and section 96E of the Finance Act, 1994.

103.4 Related Provisions

Section / Rule / Form	Description	Remarks
Section 97	Applicability of advance ruling	This Section sets out the questions on which ruling can be sought.

103.5 FAQs

Q1. Is the advance ruling binding on other assessee?

Ans. No. Advance ruling is binding only on the assessee who as an applicant has sought advance ruling in relation to any of the matters specified in subsection (2) of section 97.

Q2. Are the tax authorities bound by the advance ruling?

Ans. Only the jurisdictional officer/concerned officer, in respect of applicant who has sought advance ruling is bound by such rulings pronounced.

Statutory provision

104. Advance Ruling to be void in certain circumstances

- (1) Where the Authority or the Appellate Authority finds that advance ruling pronounced by it under sub-section (4) of section 98 or under sub-section (1) of section 101 has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab initio and thereupon all the provisions of the Act or the Rules made thereunder shall apply to the

applicant or the appellant as if such advance ruling had never been made:

Provided that no order shall be passed under this sub-section unless an opportunity of being heard has been given to the applicant or the appellant.

Explanation. - The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of section 73 or sub-sections (2) and (10) of section 74.

- (2) *A copy of the order made under sub-section (1) shall be sent to the applicant, the concerned office and the jurisdictional officer.*

104.1 Introduction

It states the circumstances under which the ruling would be considered as void *ab initio*.

104.2 Analysis

- (i) If the Authorities (AAR and appellate authority) find that the advance ruling order has been obtained by the applicant/appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void *ab initio*.
- (ii) Consequently, all the provisions of the Act shall apply to the applicant as if such advance ruling had never been made.
- (iii) Before passing the order, an opportunity of being heard should be given to the applicant/appellant.
- (iv) The period beginning with the date of advance ruling and ending with the date of order under this sub-section shall be excluded in computing the period for issuance of Show-cause notice and adjudication order under sub-section (2) and (10) of both Section 73 and 74 respectively.
- (v) A copy of the order so made shall be sent to the applicant and the concerned/jurisdictional officer.

104.3 Comparative review

The provision relating to the circumstances when an advance ruling can be declared void *ab initio* are more or less the same as those in the erstwhile central Indirect Tax laws as contained in section 23F of Central Excise Act, section 28K of Customs Act and section 96F of the Finance Act, 1994 except that under GST laws, an additional criterion of “suppression of material facts” has been added to serve as a basis for declaring an advance ruling void *ab initio*.

104.4 Related Provisions

Section/Rule/Form	Description	Remarks
Section 73(2) & 73 (10)	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized for any reason other than fraud or any wilful misstatement or suppression of facts	Sub-section 2 deals with time limit for issue of show-cause notice and sub-section 10 deals with time limit for issuance of adjudication order.
Section 74(2) & 74 (10)	Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilized by reason of fraud or any wilful misstatement or suppression of facts	Sub-section 2 deals with time limit for issue of show-cause notice and sub-section 10 deals with time limit for issuance of adjudication order.

104.5 FAQs

Q1. Can the advance ruling be declared as void without hearing?

Ans. No. Advance ruling cannot be declared as void unless the opportunity of being heard has been given.

Q2. Under what circumstances advance ruling can be declared as void?

Ans. The authority or the appellate authority may declare an advance ruling to be void *ab initio* if it the applicant or the appellant, as the case may be, has obtained it by fraud, suppression of material facts or misrepresentation of facts.

Statutory provision**105. Powers of the Authority and Appellate Authority**

- (1) *The Authority or the Appellate Authority shall, for the purpose of exercising its powers regarding—*
- (a) *discovery and inspection;*
 - (b) *enforcing the attendance of any person and examining him on oath;*
 - (c) *issuing commissions and compelling production of books of account and other records,*
- have all the powers of a civil court under the Code of Civil Procedure, 1908.*
- (2) *The Authority or the Appellate Authority shall be deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973, and every proceeding before the Authority or the Appellate Authority shall be deemed to be a judicial proceedings within the meaning of sections 193 and 228, and for the purpose of section 196 of the Indian Penal Code.*

105.1 Introduction

The provision specifies the powers conferred on the AAR and appellate authority in the discharge of its functions.

105.2 Analysis

- (i) The Authorities have all the powers of a civil court under the Code of Civil Procedure, 1908 for the purpose of discovery and inspection, enforcing the attendance of any person and examining him on oath, issuing commissions and compelling production of books of account and other records.
- (ii) The Authorities are deemed to be a civil court for the purposes of section 195, but not for the purposes of Chapter XXVI of the Code of Criminal Procedure, 1973.
- (iii) Every proceeding before the Authorities shall be deemed to be a judicial proceeding within the meaning of sections 193, 196 and 228 of the Indian Penal Code, 1860.

105.3 Comparative review

The powers remain exactly the same as have been specified in section 23G of Central Excise Act, section 28L of Customs Act and section 96G of the Finance Act, 1994.

105.4 FAQs

Q1. What are the powers vested with the authority and the appellate authority?

Ans. The authority or the appellate authority shall have all the powers of a civil court to exercise the following powers:

- discovery and inspection;
- enforcing attendance of any person and examining him on oath;
- issuing commissions and compelling production of books of accounts and other records.

Q2. What is the nature of proceedings conducted by the AAR and appellate authority under this chapter?

Ans. The nature of proceeding conducted by AAR and appellate authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purpose of section 196, of Indian Penal Code (45 of 1860)

105.5 MCQs

Q1. The AAR shall be deemed to be _____ for the purpose of this chapter:

- (a) High Court
- (b) Supreme Court
- (c) Economic Offences Court
- (d) Civil Court

Ans. (d) Civil court

Q2. The proceedings under this chapter shall be deemed to be:

- (a) Quasi-judicial proceedings
- (b) Judicial proceedings
- (c) Administration proceedings
- (d) Special proceedings

Ans. (b) Judicial proceedings

Statutory provision

106. Procedure of the Authority and the Appellate Authority

The Authority or, as the case may be, the Appellate Authority shall, subject to the provisions of this Chapter, have power to regulate its own procedure.

106.1 Introduction

It states the procedure to be followed by the AAR and the appellate authority in discharging its functions.

106.2 Analysis

The Authorities shall have the power to regulate their own procedure.

106.3 Comparative review

The powers remain exactly the same as are contained in section 23H of Central Excise Act, section 28L of Customs Act and section 96H of the Finance Act.

Chapter–XVIII

Appeals and Revision

- 107. Appeals to Appellate Authority
- 108. Powers of Revisional Authority
- 109. Constitution of Appellate Tribunal and Benches thereof
- 110. President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.
- 111. Procedure before Appellate Tribunal
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- 117. Appeal to High Court
- 118. Appeal to Supreme Court
- 119. Sums due to be paid notwithstanding appeal, etc.
- 120. Appeal not to be filed in certain cases
- 121. Non-appealable decisions and orders

Statutory Provisions

107. Appeals to Appellate Authority

- (1) Any person aggrieved by any decision or order passed under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by an adjudicating authority may appeal to such appellate authority as may be prescribed within three months from the date on which the said decision or order is communicated to such person.
- (2) The Commissioner may, on his own motion, or upon request from the Commissioner of State tax or the Commissioner of Union Territory Tax, call for and examine the record of any proceeding in which an adjudicating authority has passed any decision or order under this Act, or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, for the purpose of satisfying himself as to the legality or propriety of the said decision or order and may, by order, direct any Officer subordinate to him to apply to the Appellate Authority within six months from the date of communication of the said decision or order for the determination of such points arising out of the said decision or order as may be specified by the Commissioner in his order.

- (3) Where, in pursuance of an order under sub-section (2), the authorized officer makes an application to the Appellate Authority, such application shall be dealt with by the Appellate Authority as if it were an appeal made against the decision or order of the adjudicating authority and such authorised officer were an appellant and the provisions of this Act relating to appeals shall apply to such application.
- (4) The Appellate Authority may, if he is satisfied that the appellant was prevented by sufficient cause from presenting the appeal within the aforesaid period of three months or six months, as the case may be, allow it to be presented within a further period of one month.
- (5) Every appeal under this section shall be in such form and shall be verified in such manner as may be prescribed.
- (6) No appeal shall be filed under sub-section (1) unless the appellant has paid –
- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
 - (b) a sum equal to ten percent of the remaining amount of tax in dispute arising from the said order, in relation to which the appeal has been filed.
- (7) Where the appellant has paid the amount under sub-section (6), the recovery proceedings for the balance amount shall be deemed to be stayed.
- (8) The Appellate Authority shall give an opportunity to the appellant of being heard.
- (9) The Appellate Authority may, if sufficient cause is shown at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:
Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.
- (10) The Appellate Authority may, at the time of hearing of an appeal, allow an appellant to add any ground of appeal not specified in the grounds of appeal, if it is satisfied that the omission of that ground from the grounds of appeal was not wilful or unreasonable.
- (11) The Appellate Authority shall, after making such further inquiry as may be necessary, pass such order, as it thinks just and proper, confirming, modifying or annulling the decision or order appealed against but shall not refer the case back to the adjudicating authority that passed the said decision or order.
Provided that an order enhancing any fee or penalty or fine in lieu of confiscation or confiscating goods of greater value or reducing the amount of refund or input tax credit shall not be passed unless the appellant has been given a reasonable opportunity of showing cause against the proposed order:
Provided further that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilized, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the order is passed within the time limit specified under section 73 or section 74.

- (12) *The order of the Appellate Authority disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reasons for such decision.*
- (13) *The Appellate Authority shall, where it is possible to do so, hear and decide every appeal within a period of one year from the date on which it is filed:*
Provided that where the issuance of order is stayed by an order of a Court or Tribunal, the period of such stay shall be excluded in computing the period of one year.
- (14) *On disposal of the appeal, the Appellate Authority shall communicate the order passed by it to the appellant, respondent and to the adjudicating authority.*
- (15) *A copy of the order passed by the Appellate Authority shall also be sent to the jurisdictional Commissioner or the authority designated by him in this behalf and the jurisdictional Commissioner of State Tax or Commissioner of Union Territory Tax or an authority designated by him in this behalf.*
- (16) *Every order passed under this section shall, subject to the provisions of section 108 or section 113 or section 117 or section 118, be final and binding on the parties.*

107.1 Introduction

- (a) This section pertains to appeals to appellate authority by any person who is aggrieved against decision or order passed by adjudicating authority.
- (b) This section also provides for appeal by revenue against decision or order passed by adjudicating authority.

107.2 Analysis

- (i) The appeal is to be filed by the assessee within a period of 3 months from the date of communication of decision or order in **Form GST APL-01**, along with relevant documents either electronically or otherwise as notified by the Commissioner against a provisional acknowledgement. The grounds of appeal and form of verification must be duly signed and a certified copy of the decision or order is to be filed before the Appellate Authority within 7 days of filing the appeal electronically. Thereafter, a final acknowledgement indicating the appeal number shall be issued in **Form GST APL-02** by the said authority. In such a situation the appeal shall be deemed to be filed on the date on which the provisional acknowledgement stands issued.

In case the said certified copy is submitted after a period of 7 days, the date of filing of appeal shall be the date of submission of such copy.

The appeal shall be treated to be filed only when the final acknowledgement, indicating the appeal number is issued.

- (ii) The Commissioner of Central / State or any Union territory with a view to satisfying himself about the legality or propriety of any order or decision direct a subordinate officer to file an application before the Appellate Authority within six months from the date of communication of decision or order in **Form GST APL-03**, along with relevant

documents either electronically or otherwise as notified against issue of an acknowledgement. A certified copy of the decision or order of the appeal is to be filed before the Appellate Authority within 7 days of filing the application electronically and an appeal number shall be generated accordingly.

- (iii) The appellate authority in either of the above cases is empowered to condone the delay up to a period of 1 month.
- (iv) Appeal to be filed in prescribed form duly verified in prescribed manner along with
 - Amount of tax, interest, fine, fee & penalty, as is admitted, in full; and
 - pre-deposit of sum equal to 10% of remaining amount of tax in dispute.
- (v) On payment of above amount, the recovery proceedings for balance amount are deemed to be stayed.
- (vi) Maximum 3 adjournments shall be granted to a party on showing reasonable cause that is to be recorded in writing.
- (vii) Appellate authority may allow any additional grounds not specified in the grounds of appeal on being satisfied that the omission was not wilful or unreasonable.
- (viii) Appellate authority to pass the order confirming, modifying or annulling the decision or order appealed against but shall not remand the case back to the adjudicating authority.
- (ix) Opportunity of being heard to be granted in case of order for enhancing fees or penalty or fine in lieu of confiscation of goods or reducing amount of refund/input tax credit after issuing show cause notice.
- (x) The appellate authority has power to issue show cause notice in case it is of the opinion that any tax has not been paid or short paid or erroneously refunded or input tax credit is wrongly availed or utilised.
- (xi) Appellate authority need to hear and decide the appeal, wherever possible, within a period of 1 year from the date of filing.
- (xii) Where the issuance of order is stayed by an order of a court or Tribunal, the period of such stay shall be excluded in computing the period of one year.
- (xiii) Appellate authority to communicate the copy of order to the appellant, the respondent, the adjudicating authority, jurisdictional Commissioner of CGST, SGST and UTGST.
- (xiv) The Appellate Authority shall, along with its order under sub-section (11) of section 107 of the Act, issue a summary of the order in **FORM GST APL-04** clearly indicating the final amount of demand confirmed.

107.3 Comparative review

- (i) Similar provisions are contained in Section 84 & ,85of the Finance Act, 1994 & Section 35 of the Central Excise Act, 1944

- (ii) After examining the records of proceedings related to decision or order passed by adjudicating authority subordinate to him, Principal Commissioner of Central Excise or Commissioner of Central Excise may pass an order.
- (iii) Under Service Tax, previously the time limit for filing first appeal to CCE (Appeals) by adjudicating authority is 1 month from the date of order or decision of Principal Commissioner of Central Excise or Commissioner of Central Excise

107.4 Related provisions

- (i) Section 2(4) defines “adjudicating authority”
- (ii) Section 2(24) defines “commissioner”
- (iii) Section 2(8) defines “Appellate Authority”

Statutory Provisions

108 Powers of Revisional Authority

- (1) *Subject to the provisions of section 121 and any rules made thereunder, the Revisional Authority may, on his own motion, or upon information received by him or on request from the commissioner of State tax or the Commissioner of Union territory tax, call for and examine the record of any proceedings and if he considers that any decision or order passed under this Act or under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.*
- (2) *The Revisional Authority shall not exercise any power under sub-section (1), if:-*
 - (a) *the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or*
 - (b) *the period specified under sub-section (2) of section 107 has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised; or*
 - (c) *the order has already been taken for revision under this section at any earlier stage; or*
 - (d) *the order has been passed in exercise of the powers under sub-section (1):*
Provided that the Revisional Authority may pass an order under sub-section (1) on any point which has not been raised and decided in an appeal referred to in clause (a) of sub-section (2), before the expiry of a period of one year from the date of the order in

such appeal or before the expiry of a period of three years referred to in clause (b) of that sub-section, whichever is later.

- (3) *Every order passed in revision under sub-section (1) shall, subject to the provisions of sections 113 or section 117 or section 118, be final and binding on the parties.*
- (4) *If the said decision or order involves an issue on which the Appellate Tribunal or the High Court has given its decision in some other proceedings and an appeal to the High Court or the Supreme Court against such decision of the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Tribunal and the date of the decision of the High Court or the date of decision of the High Court and the date of the decision of the Supreme Court shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2) where proceedings for revision have been initiated by way of issue of a notice under this section.*
- (5) *Where the issuance of an order under sub-section (1) is stayed by the order of a Court or Appellate Tribunal, the period of such stay shall be excluded in computing the period of limitation referred to in clause (b) of sub-section (2).*
- (6) *For the purposes of this section, the term, -*
 - (i) *'record' shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority.*
 - (ii) *'decision' shall include intimation given by any officer lower in rank than the Revisional Authority.*

108.1 Introduction

This section pertains to revisionary powers of Revisional Authority.

108.2 Analysis

- (i) After examining the record of any proceeding, the Revisional Authority may stay the operation of any decision or order if he considers that such decision or order passed by any officer subordinate to him is erroneous in so far as it is prejudicial to the interest of the revenue.
- (ii) After giving the concerned person an opportunity of being heard and after making further necessary inquiry, the Revisional Authority may pass such order within 3 years of passing of the said order sought to be revised including enhancing or modifying or annulling the said decision or order.
- (iii) The Revisional Authority shall not exercise such revisionary powers if
 - (a) appeal is filed against the order to –
 - Appellate Authority U/s.107
 - Appellate Tribunal U/s.112
 - High Court U/s.117
 - Supreme Court U/s.118

- (b) period of 6 months as specified in section 107(2) has not expired or more than 3 years have expired after passing the decision or order
- (c) the order has already been taken for revision at any earlier stage
- (d) revisionary order has already been passed once.
- (iv) However, the Revisional Authority may pass an order on any point which has not been raised & decided in an appeal, referred to hereinabove, within 1 year from the date of order passed in such appeal or within 3 years from the date of such order sought to be revised, whichever is later.

108.3 Related provisions

- (i) Section 2(99) defines "Revisional Authority"

Statutory Provisions

109 Constitution of the Appellate Tribunal and Benches thereof

- (1) *The Government shall, on the recommendations of the Council, by notification, constitute with effect from such date as may be specified therein, an Appellate Tribunal known as the Goods and Services Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or Revisional Authority.*
- (2) *The powers of the Appellate Tribunal shall be exercisable by the National Bench and Benches thereof (hereinafter in this Chapter referred to as "Regional Benches"), State Bench and Benches thereof (hereafter in this Chapter referred to as "Area Benches").*
- (3) *The National Bench of the Appellate Tribunal shall be situated at New Delhi which shall be presided over by the President and shall consist of one Technical Member (Centre) and one Technical Member (State).*
- (4) *The Government shall, on the recommendations of the Council, by notification, constitute such number of Regional Benches as may be required and such Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).*
- (5) *The National Bench or Regional Benches of the Appellate Tribunal shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases where one of the issues involved relates to the place of supply.*
- (6) *The Government shall, by notification, specify for each State or Union territory, a Bench of the Appellate Tribunal (hereafter in this Chapter, referred to as "State Bench") for exercising the powers of the Appellate Tribunal within the concerned State or Union territory:*

Provided that the Government shall, on receipt of a request from any State Government, constitute such number of Area Benches in that State, as may be recommended by the Council:

Provided further that the Government may, on receipt of a request from any State, or on its own motion for a Union territory, notify the Appellate Tribunal in a State to act as the Appellate Tribunal for any other State or Union territory, as may be recommended by the Council, subject to such terms and conditions as may be prescribed.

- (7) *The State Bench or Area Benches shall have jurisdiction to hear appeals against the orders passed by the Appellate Authority or the Revisional Authority in the cases involving matters other than those referred to in sub-section (5).*
- (8) *The President and the State President shall, by general or special order, distribute the business or transfer cases among Regional Benches or, as the case may be, Area Benches in a State.*
- (9) *Each State Bench and Area Benches of the Appellate Tribunal shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State) and the State Government may designate the senior most Judicial Member in a State as the State President.*
- (10) *In the absence of a Member in any Bench due to vacancy or otherwise, any appeal may, with the approval of the President or, as the case may be, the State President, be heard by a Bench of two Members:*

Provided that any appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in any order appealed against, does not exceed five lakh rupees and which does not involve any question of law may, with the approval of the President and subject to such conditions as may be prescribed on the recommendations of the Council, be heard by a Bench consisting of a single Member.

- (11) *If the Members of the National Bench, Regional Benches, State Bench or Area Benches differ in opinion on any point or points, it shall be decided according to the opinion of the majority, if there is a majority, but if the Members are equally divided, they shall state the point or points on which they differ, and the case shall be referred by the President or, as the case may be, State President for hearing on such point or points to one or more of the other Members of the National Bench, Regional Benches, State Bench or Area Benches and such point or points shall be decided according to the opinion of the majority of Members who have heard the case, including those who first heard it.*
- (12) *The Government, in consultation with the President may, for the administrative convenience, transfer—*
 - (a) *any Judicial Member or a Member Technical (State) from one Bench to another Bench, whether National or Regional; or*
 - (b) *any Member Technical (Centre) from one Bench to another Bench, whether National, Regional, State or Area.*

- (13) *The State Government, in consultation with the State President may, for the administrative convenience, transfer a Judicial Member or a Member Technical (State) from one Bench to another Bench within the State.*
- (14) *No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely on the ground of the existence of any vacancy or defect in the constitution of the Appellate Tribunal.*

109.1 Introduction

- (a) This section pertains to constitution of GST Appellate Tribunal

109.2 Analysis

- (a) Upon recommendation of Council, Central Government to constitute Goods & Service Tax Appellate Tribunal for hearing appeals against the orders passed by the Appellate Authority or Revisional Authority.
- (b) The powers of the Appellate Tribunal shall be exercisable by the National Bench or Regional Benches and State Bench or Area Benches.
- (c) The National Bench shall be situated at New Delhi which shall be presided over by the President, one Technical Member (Centre) and one Technical Member (State).
- (d) The Regional Benches shall consist of a Judicial Member, one Technical Member (Centre) and one Technical Member (State).
- (e) The National Bench or Regional Benches to hear the appeals where one of the issues involved relates to the place of supply.
- (f) The State Bench or Area Benches to hear the appeals involving matters other than matters covering place of supply.
- (g) The President and the State President shall by general or special order distribute the business or transfer cases among Regional Benches or Area Benches in a State.
- (h) In the absence of a member of any bench due to vacancy or otherwise, any appeal with the approval of President or State President be heard by a bench of two members.
- (i) Any matter (other than matter involving question of law) involving tax, input tax credit, fine, fee or penalty not exceeding ₹5 Lakhs may be heard by single member bench.
- (j) No act or proceedings of the Appellate Tribunal shall be questioned or shall be invalid merely only on the ground of the existence of any vacancy or defect in the constitution of Appellate Tribunal.

109.3 Related provisions

- (i) Section 2(9) defines "Appellate Tribunal"
- (ii) Section 2(36) defines "Council"

Statutory Provisions**110 President and Members of Appellate Tribunal, their qualification, appointment, conditions of service, etc.**

- (1) A person shall not be qualified for appointment as—
- (a) the President, unless he has been a Judge of the Supreme Court or is or has been the Chief Justice of a High Court, or is or has been a Judge of a High Court for a period not less than five years;
 - (b) a Judicial Member, unless he—
 - (i) has been a Judge of the High Court; or
 - (ii) is or has been a District Judge qualified to be appointed as a Judge of a High Court; or
 - (iii) is or has been a Member of Indian Legal Service and has held a post not less than Additional Secretary for three years;
 - (c) a Technical Member (Centre) unless he is or has been a member of Indian Revenue (Customs and Central Excise) Service, Group A, and has completed at least fifteen years of service in Group A;
 - (d) a Technical Member (State) unless he is or has been an officer of the State Government not below the rank of Additional Commissioner of Value Added Tax or the State goods and services tax or such rank as may be notified by the concerned State Government on the recommendations of the Council with at least three years of experience in the administration of an erstwhile law or the State Goods and Services Tax Act or in the field of finance and taxation.
- (2) The President and the Judicial Members of the National Bench and the Regional Benches shall be appointed by the Government after consultation with the Chief Justice of India or his nominee:
- Provided that in the event of the occurrence of any vacancy in the office of the President by reason of his death, resignation or otherwise, the senior most Member of the National Bench shall act as the President until the date on which a new President, appointed in accordance with the provisions of this Act to fill such vacancy, enters upon his office:*
- Provided further that where the President is unable to discharge his functions owing to absence, illness or any other cause, the senior most Member of the National Bench shall discharge the functions of the President until the date on which the President resumes his duties.*
- (3) The Technical Member (Centre) and Technical Member (State) of the National Bench and Regional Benches shall be appointed by the Government on the recommendations of a Selection Committee consisting of such persons and in such manner as may be prescribed.

- (4) *The Judicial Member of the State Bench or Area Benches shall be appointed by the State Government after consultation with the Chief Justice of the High Court of the State or his nominee.*
- (5) *The Technical Member (Centre) of the State Bench or Area Benches shall be appointed by the Central Government and Technical Member (State) of the State Bench or Area Benches shall be appointed by the State Government in such manner as may be prescribed.*
- (6) *No appointment of the Members of the Appellate Tribunal shall be invalid merely by the reason of any vacancy or defect in the constitution of the Selection Committee.*
- (7) *Before appointing any person as the President or Members of the Appellate Tribunal, the Central Government or, as the case may be, the State Government, shall satisfy itself that such person does not have any financial or other interests which are likely to prejudicially affect his functions as such President or Member.*
- (8) *The salary, allowances and other terms and conditions of service of the President, State President and the Members of the Appellate Tribunal shall be such as may be prescribed:*
Provided that neither salary and allowances nor other terms and conditions of service of the President, State President or Members of the Appellate Tribunal shall be varied to their disadvantage after their appointment.
- (9) *The President of the Appellate Tribunal shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of seventy years, whichever is earlier and shall be eligible for reappointment.*
- (10) *The Judicial Member of the Appellate Tribunal and the State President shall hold office for a term of three years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.*
- (11) *The Technical Member (Centre) or Technical Member (State) of the Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office, or until he attains the age of sixty-five years, whichever is earlier and shall be eligible for reappointment.*
- (12) *The President, State President or any Member may, by notice in writing under his hand addressed to the Central Government or, as the case may be, the State Government resign from his office:*
Provided that the President, State President or Member shall continue to hold office until the expiry of three months from the date of receipt of such notice by the Central Government, or, as the case may be, the State Government or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.

- (13) *The Central Government may, after consultation with the Chief Justice of India, in case of the President, Judicial Members and Technical Members of the National Bench, Regional Benches or Technical Members (Centre) of the State Bench or Area Benches, and the State Government may, after consultation with the Chief Justice of High Court, in case of the State President, Judicial Members, Technical Members (State) of the State Bench or Area Benches, may remove from the office such President or Member, who—*
- (a) *has been adjudged an insolvent; or*
 - (b) *has been convicted of an offence which, in the opinion of such Government involves moral turpitude; or*
 - (c) *has become physically or mentally incapable of acting as such President, State President or Member; or*
 - (d) *has acquired such financial or other interest as is likely to affect prejudicially his functions as such President, State President or Member; or*
 - (e) *has so abused his position as to render his continuance in office prejudicial to the public interest:*
- Provided that the President, State President or the Member shall not be removed on any of the grounds specified in clauses (d) and (e), unless he has been informed of the charges against him and has been given an opportunity of being heard.*
- (14) *Without prejudice to the provisions of sub-section (13),—*
- (a) *the President or a Judicial and Technical Member of the National Bench or Regional Benches, Technical Member (Centre) of the State Bench or Area Benches shall not be removed from their office except by an order made by the Central Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the Supreme Court nominated by the Chief Justice of India on a reference made to him by the Central Government and of which the President or the said Member had been given an opportunity of being heard;*
 - (b) *the Judicial Member or Technical Member (State) of the State Bench or Area Benches shall not be removed from their office except by an order made by the State Government on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of the concerned High Court nominated by the Chief Justice of the concerned High Court on a reference made to him by the State Government and of which the said Member had been given an opportunity of being heard.*
- (15) *The Central Government, with the concurrence of the Chief Justice of India, may suspend from office, the President or a Judicial or Technical Members of the National Bench. or the Regional Benches or the Technical Member (Centre) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the Supreme Court under sub-section (14).*

- (16) *The State Government, with the concurrence of the Chief Justice of the High Court, may suspend from office, a Judicial Member or Technical Member (State) of the State Bench or Area Benches in respect of whom a reference has been made to the Judge of the High Court under sub-section (14).*
- (17) *Subject to the provisions of article 220 of the Constitution, the President, State President or other Members, on ceasing to hold their office, shall not be eligible to appear, act or plead before the National Bench and the Regional Benches or the State Bench and the Area Benches thereof where he was the President or, as the case may be, a Member.*

Comments

This section deals with appointment of the President / Members of the Appellate Tribunal, their qualifications, methodology of appointment, service conditions etc., and hence are not commented upon in this background material.

Statutory Provisions

111 Procedure before Appellate Tribunal

- (1) *The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.*
- (2) *The Appellate Tribunal shall, for the purposes of discharging its functions under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—*
- (a) *summoning and enforcing the attendance of any person and examining him on oath;*
 - (b) *requiring the discovery and production of documents;*
 - (c) *receiving evidence on affidavits;*
 - (d) *subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;*
 - (e) *issuing commissions for the examination of witnesses or documents;*
 - (f) *dismissing a representation for default or deciding it ex parte;*
 - (g) *setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and*
 - (h) *any other matter which may be prescribed.*
- (3) *Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for*

the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

- (a) in the case of an order against a company, the registered office of the company is situated; or*
- (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.*
- (4) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973*

111.1 Introduction

- (i) This section deals with the procedure to be followed by Appellate Tribunal while disposing of any proceedings before it.

111.2 Analysis

- (i) The Appellate Tribunal is not bound by the procedure laid down under the Code of Civil Procedure except in respect of certain matters such as summoning and enforcing attendance of person, receiving evidence on affidavits, requiring production of documents etc.
- (ii) All the proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of Section 193, 228 & 196 of IPC.

Statutory Provisions

112 Appeals to Appellate Tribunal

- (1) Any person aggrieved by an order passed against him under section 107 or section 108 of this Act or of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act may appeal to the Appellate Tribunal against such order within three months from the date on which the order sought to be appealed against is communicated to the person preferring the appeal.*
- (2) The Appellate Tribunal may, in its discretion, refuse to admit any such appeal where the tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined by such order, does not exceed fifty thousand rupees.*
- (3) The Commissioner may, on his own motion or upon request from the Commissioner of State Tax or Commissioner of Union Territory Tax, call for and examine the record of any order passed by the Appellate Authority or the Revisional Authority under this Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act for the purpose of satisfying himself as to the legality or the propriety of the said order and may, by order, direct any officer subordinate to him to apply to the*

Appellate Tribunal within six months from the date on which the said order has been passed for the determination of such points arising out of the said order as may be specified by the Commissioner in his order.

- (4) *Where in pursuance of an order under sub-section (3) the authorized officer makes an application to the Appellate Tribunal, such application shall be dealt with by the Appellate Tribunal as if it were an appeal made against the order under sub-section (11) of section 107, or under sub-section (1) of section 108 and the provisions of this Act shall apply to such application, as they apply in relation to appeals filed under sub-section (1).*
- (5) *On receipt of notice that an appeal has been preferred under this section, the party against whom the appeal has been preferred may, notwithstanding that he may not have appealed against such order or any part thereof, file, within forty-five days of the receipt of the notice, a memorandum of cross-objections, verified in the prescribed manner, against any part of the order appealed against and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the time specified in sub-section (1).*
- (6) *The Appellate Tribunal may admit an appeal within 3 months after the expiry of period referred to in sub-section (1), or permit the filing of a memorandum of cross-objections within forty-five days after the expiry of the period referred to in sub-section (5) if it is satisfied that there was sufficient cause for not presenting it within that period.*
- (7) *An appeal to the Appellate Tribunal shall be in such form, verified in such manner and shall be accompanied by such fee, as may be prescribed:*
- (8) *No appeal shall be filed under sub-section (1) unless the appellant has paid*
 - (a) *in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and*
 - (b) *a sum equal to twenty percent of the remaining amount of tax in dispute, in addition to the amount paid under sub-section (6) of the section 107, arising from the said order, in relation to which the appeal has been filed:*
- (9) *Where the appellant has paid the amount as per sub-section (8), the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.*
- (10) *Every application made before the Appellate Tribunal, —*
 - (a) *in an appeal for rectification of error or for any other purpose; or*
 - (b) *for restoration of an appeal or an application, shall be accompanied by such fees as may be prescribed.*

112.1 Introduction

- (a) This section pertains to appeals to Appellate Tribunal by any person who is aggrieved against decision or order passed by Appellate Authority.

- (b) This section also provides for appeal by revenue against decision or order passed by Appellate Authority.

112.2 Analysis

- (a) The Appellate Tribunal has discretion to refuse to admit such appeal in case the tax amount or input tax credit or the difference in tax or input tax credit involved or amount of fine, fees or penalty ordered against does not exceed ₹ 50,000/-.
- (b) The Commissioner may issue directions to any subordinate officer to file appeal to Appellate Tribunal within 6 months from the date on which order had been passed against the order passed by the Appellate Authority or Revisional Authority.
- (c) Every appeal by assessee to Appellate Tribunal to be filed within 3 months from the date of communication of order or decision appealed against.
- (d) The appeal to the Appellate Tribunal by Revenue can be filed within 6 months from the date of order or decision appealed against.
- (e) Memorandum of Cross objection to be filed within 45 days from the receipt of notice of filing of such appeal.
- (f) Appellate Tribunal is empowered to condone the delay in filing appeal by assessee for a further period of 3 months or memorandum of cross objection for a further period of 45 days.
- (g) No powers to Appellate Tribunal to condone the delay in filing appeal by revenue.
- (h) Appeal to be filed in prescribed form duly verified in prescribed manner along with prescribed fees and
- Amount of tax, interest, fine, fee & penalty, as is admitted, in full; and
 - pre-deposit of sum equal to 20% of remaining amount of tax in dispute in addition to amount deposited during filling appeal before Appellate Authority
- (i) On payment of above amount, the recovery proceedings for balance amount are stayed till the disposal of appeal.
- (j) No pre-deposit shall be payable in case of appeal filed by department.
- (k) Every miscellaneous application shall be filed along with prescribed fees.

112.3 Relevant Rules

- (1) An appeal to the Appellate Tribunal is to be filed electronically, in **FORM GST APL-05** and a provisional acknowledgement shall be issued immediately.
- (2) A memorandum of cross-objections to the Appellate Tribunal shall be filed electronically in **FORM GST APL-06**.
- (3) The appeal and the memorandum of cross objections shall be signed and verified.
- (4) A certified copy of the decision or order appealed against along with specified fees shall be submitted within seven days of filing of the appeal, and a final acknowledgement, indicating the appeal number shall be issued thereafter in **FORM GST APL-02**:

If the documents are submitted within seven days from the date of filing the **FORM GST APL-05**, the date of filing of the appeal shall be the date of issue of provisional acknowledgement and where the hard copy of the appeal and documents are submitted after seven days, the date of filing of the appeal shall be the date of submission of documents. An appeal shall be deemed to be filed only on generation of the final acknowledgement number.

- (5) The fees for filing and restoration of appeal shall be one thousand rupees for every one lakh rupees of tax or input tax credit involved or the difference in tax or input tax credit involved or the amount of fine, fee or penalty determined in the order appealed against, subject to maximum of twenty-five thousand rupees.
- (6) There shall be no fee for application made before the Appellate Tribunal for rectification of errors.

112.4 Application to the Appellate Tribunal

- (a) A cross appeal or appeal by Revenue to the Appellate Tribunal shall be made electronically, in **FORM GST APL-07**.
- (b) A certified copy of the decision or order appealed against shall be submitted within seven days of filing the application under sub-rule (1) and an appeal number shall be generated by the Registrar.

112.5 Production of additional evidence before the Appellate Authority or the Appellate Tribunal

- (1) The appellant shall not be allowed to produce before the Appellate Authority or the Appellate Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the adjudicating authority or, as the case may be, the Appellate Authority except in the following circumstances, namely –
 - (a) where the adjudicating authority or, as the case may be, the Appellate Authority has refused to admit evidence which ought to have been admitted; or
 - (b) where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating authority or, as the case may be, the Appellate Authority; or
 - (c) where the appellant was prevented by sufficient cause from producing before the adjudicating authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of appeal; or
 - (d) where the adjudicating authority or, as the case may be, the Appellate Authority has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.
- (2) No evidence shall be admitted under sub-rule (1) unless the Appellate Authority or the Appellate Tribunal records in writing the reasons for its admission.

- (3) The Appellate Authority or the Appellate Tribunal shall not take any evidence produced under sub-rule (1) unless the adjudicating authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity -
- (a) to examine the evidence or document or to cross-examine any witness produced by the appellant; or
 - (b) to produce any evidence or any witness in rebuttal of the evidence produced by the appellant under sub-rule (1).
- (4) Nothing contained in this rule shall affect the power of the Appellate Authority or the Appellate Tribunal to direct the production of any document, or the examination of any witness, to enable it to dispose of the appeal.

112.6 Comparative review

- (a) Similar provisions are contained in Section 86 of the Finance Act, 1994 & Section 35B of the Central Excise Act, 1944.

Statutory Provisions

113. Orders of Appellate Tribunal

- (1) *The Appellate Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or annulling the decision or order appealed against or may refer the case back to the Appellate Authority, or the Revisional Authority or to the original adjudicating authority, with such directions as it may think fit, for a fresh adjudication or decision after taking additional evidence, if necessary.*
- (2) *The Appellate Tribunal may, if sufficient cause is shown, at any stage of hearing of an appeal, grant time to the parties or any of them and adjourn the hearing of the appeal for reasons to be recorded in writing:*
Provided that no such adjournment shall be granted more than three times to a party during hearing of the appeal.
- (3) *The Appellate Tribunal may amend any order passed by it under sub-section (1) so as to rectify any error apparent on the face of the record, if such error is noticed by it on its own accord, or is brought to its notice by the Commissioner or the Commissioner of State Tax or the Commissioner of Union Territory Tax or the other party to the appeal within a period of three months from the date of the order:*
Provided that no amendment which has the effect of enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability of the other party, shall be made under this sub-section, unless the party has been given opportunity of being heard.
- (4) *The Appellate Tribunal shall, as far as possible, hear and decide every appeal within a period of one year from the date on which it is filed.*

- (5) *The Appellate Tribunal shall send a copy of every order passed under this section to the Appellate Authority or Revisional Authority, or the original adjudicating authority, as the case may be, the appellant, the jurisdictional Commissioner or the Commissioner of State Tax or the Union Territory Tax.*
- (6) *Save as provided in section 117 or section 118, orders passed by the Appellate Tribunal on an appeal shall be final and binding on the parties.*

113.1 Introduction

- (i) This section pertains to the orders by Appellate Tribunal

113.2 Analysis

- (i) Appellate Tribunal to pass the order confirming, modifying or annulling the decision or order appealed against.
- (ii) The Appellate Tribunal also has power to remand the case back to the appellate authority or the Revisional authority or the original adjudicating authority.
- (iii) Maximum 3 adjournments shall be granted to a party on showing reasonable cause to be recorded in writing.
- (iv) The Appellate Tribunal is empowered to amend its order to rectify any mistake apparent from record, However, tribunal may rectify its order if the mistake is brought to its notice by Commissioner or other party to appeal within period of 3 months of date of such order. Opportunity of being heard to be granted in case such rectification results into enhancing an assessment or reducing a refund or input tax credit or otherwise increasing the liability.
- (v) The Appellate Tribunal to hear and decide the appeal, as far as possible, within a period of 1 year from the date of filing.
- (vi) The Appellate Tribunal to communicate the copy of order to appellate authority / Revisional authority / original adjudicating authority, the appellant, the jurisdictional Commissioner, Commissioner of State Tax or Union Territory Tax.
- (vii) The jurisdictional officer shall issue a statement in **FORM GST APL-04** clearly indicating the final amount of demand confirmed by the Appellate Tribunal.

Summary of Forms:

S.no.	Particulars	Form no.	Time Limit
1	Appeal to prescribed Appellate Authority by assessee	GST APL-01	Within 3 months from date of receipt of order
2	Final Acknowledgement indicating Appeal No.	GST APL-02	After filing of certified copy of the decision or order
3	Department Appeal	GST APL-03	Within 6 months from dt of receipt of order

4	Summary of the Order	GST APL-04	Max- within 1 year
5	Appeal to Appellate Tribunal by assessee	GST APL-05	Within 3 months from dt of receipt of order
6	Department Appeal to Tribunal	GST APL-07	Within 6 months from dt of receipt of order
7	Cross Objection by opposition party	GST APL-06	within 45 days

Summary of provisions:

S.no.	Particulars	Description
1	Date of filing appeal	a) date of filing appeal on portal when provisional acknowledgement issued b) date of filing hard copy if submitted within seven days from the date of filing
2	Refusal to admit appeal by Appellate tribunal	where tax or ITC involved or the difference between the two is less than ₹50,000/-
3	Fees for filing Appeal	₹1,000/- for every one lakh rupees of tax or ITC involved or difference in tax and ITC or the amount of fine, fee or penalty determined in the order appealed against, subject to a maximum of ₹ 25,000/-.
4	Condonation of delay in filing appeal	If satisfied, condone upto 3 months.
5	Pre deposit requirement for disputed amount	Assessee paid in full/ part amount of Tax, interest, fine, fee and penalty arising from the order appealed against:- 10% in case appeal to appellate authority 20% in case of Tribunal in addition to 10% deposited at time of appeal to appellate authority
6	Interest on refund of pre deposit	Shall be payable from date of payment till the date of Refund
7	Orders of Appellate Tribunal	As far as possible within one year confirming/ modifying/ annulling the order OR refer the case back to Appellate Authority

113.3 Comparative review

- (a) As per erstwhile provisions of Section 35C of the Central Excise Act, 1944, the time limit for rectification of mistake apparent from records is 6 months of date of order.
- (b) As per Section 35C, the preferable time limit for deciding the appeal by CESTAT is 3 years from date of filing.

Statutory Provisions**114. Financial and administrative powers of President**

- (1) *The President shall exercise such financial and administrative powers over the National Bench and Regional Benches of the Appellate Tribunal as may be prescribed:*

Provided that the President shall have the authority to delegate such of his financial and administrative powers as he may think fit to any other Member or any officer of the National Bench and Regional Benches, subject to the condition that such Member or officer shall, while exercising such delegated powers, continue to act under the direction, control and supervision of the President.

114.1 Introduction

This section pertains to the financial & administrative powers of the President over the National Bench and Regional Benches of the Appellate Tribunal.

114.2 Analysis

The President is empowered to delegate his financial and administrative powers to any other Member or any officer of the National Bench and Regional Benches, on a condition that such Member or officer shall continue to act under the direction, control and supervision of the President while exercising such delegated powers.

Statutory Provisions**115. Interest on refund of amount paid for admission of appeal**

Where an amount paid by the appellant under sub-section (6) of section 107 or under sub-section (8) of section 112 is required to be refunded consequent to any order of the Appellate Authority or of the Appellate Tribunal, interest at the rate specified under section 56 shall be payable in respect of such refund from the date of payment of the amount till the date of refund of such amount.

115.1 Introduction

- (i) This section provides for interest on delayed refund of pre-deposit made while filing the appeal.

115.2 Analysis

- (i) Interest at the rates specified in Section 56 shall be payable on refund of pre-deposit.
 (ii) Such interest to be calculated from the date of payment of such pre-deposit till the date of refund

115.3 Comparative review

Section 35FF of the Central Excise Act, 1944 read with Notification No. 24/2014-CE (NT) dated August 12, 2014 provides for interest on refund of pre-deposit at the rate of 6% per annum.

115.4 Related provisions

Section	Description
Section 56	Interest on delayed refunds
Section 107(6)	Appeal to Appellate Authority
Section 112(8)	Appeal to Appellate Tribunal

115.5 FAQ

Q1. When is interest on refund of pre-deposit calculated?

Ans. The interest will be calculated from the date of pre-deposit to the date of refund of the same.

Statutory Provisions**116. Appearance by authorised representative**

- (1) Any person who is entitled or required to appear before an Officer appointed under this Act, or the Appellate Authority or the Appellate Tribunal in connection with any proceedings under this Act, may, otherwise than when required under this Act to appear personally for examination on oath or affirmation, subject to the other provisions of this section, appear by an authorized representative.
- (2) For the purposes of this section, the expression “authorised representative” shall mean a person authorised by the person referred to in sub-section (1) to appear on his behalf, being —
 - (a) his relative or regular employee; or
 - (b) an advocate who is entitled to practice in any court in India, and who has not been debarred from practicing before any court in India; or
 - (c) any chartered accountant, a cost accountant or a company secretary, who holds a certificate of practice and who has not been debarred from practice; or
 - (d) a retired officer of the Commercial Tax Department of any State Government or Union Territory or of the Board, who, during his service under the Government, had worked in a post not below the rank than that of a Group-B gazetted officer for a period of not less than two years.
Provided that such officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation; or
 - (e) any person who has been authorized to act as a Goods and Services Tax Practitioner on behalf of the concerned registered person.
- (3) No person, —
 - (a) who has been dismissed or removed from government service; or

- (b) *who is convicted of an offence connected with any proceeding under this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or under the erstwhile law or under any of the Acts passed by a state legislature dealing with the imposition of taxes on sale of goods or supply of goods or services or both, or*
- (c) *who is found guilty of misconduct by the prescribed authority;*
- (d) *who has been adjudged as an insolvent, shall be qualified to represent any person under sub-section (1) --*
 - (i) *for all times in the case of a person referred to in clause (a), (b) and (c); and*
 - (ii) *for the period during which the insolvency continues in the case of a person referred to in clause (d).*
- (4) *Any person who has been disqualified under the provisions of the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act shall be deemed to be disqualified under this Act.*

116.1 Introduction

- (i) This section provides for appearance by authorised representative in proceedings or appeals except in circumstances where personal appearance is required for examination or oath or affirmation.

116.2 Analysis

- (i) “Authorised representative” means –
 - relative or regular employee
 - Practising Advocate
 - Practising CA, CWA or CS
 - A retired government officer who had worked for not less than 2 years in a post not lower in rank than Group-B gazetted officer
 - Goods and Services Tax Practitioner
- (ii) Any person, who has retired or resigned after serving more than 2 years in the indirect tax departments of Government of India or any State Government as a gazetted officer, shall not be entitled to appear as authorised representative for a period of 1 year from the date of retirement or resignation.
- (iii) Any person,
 - who has been dismissed or removed from government service
 - who is convicted of an offence under CGST Act, SGST Act, IGST Act, UTGST Act or under erstwhile laws

— who is found guilty of misconduct by the prescribed authority

shall not be qualified as authorised representative.

- (iv) Any person, who has become insolvent, shall not be qualified as authorised representative during the period of insolvency.
- (v) Any disqualification under SGST Act or UTGST Act shall be construed as disqualification under CGST Act.

116.3 Comparative review

- (i) Section 35Q of the Central Excise Act, 1944

116.4 Related provisions

- (i) Section 2(23) defines “chartered accountant”
- (ii) Section 2(28) defines “company secretary”
- (iii) Section 2(35) defines “cost accountant”
- (iv) Section 2(55) defines “goods and service tax practitioner”

116.5 MCQ

Q1. Any person who has retired/resigned after serving 2 years as gazetted officer in the indirect tax departments of the Government of India or any State Government shall be entitled to appear as authorised representative after:-

- (a) 1 year from date of resignation / retirement
- (b) 2 years from date of resignation / retirement
- (c) 3 years from date of resignation / retirement
- (d) Not entitled to appear at all

Ans. (a) 1 year from date of resignation / retirement

Q2. Any person who has been dismissed or removed from government services shall be entitled to appear as authorised representative after:-

- (a) 1 year from date of dismissal / removal
- (b) 2 years from date of dismissal / removal
- (c) 3 years from date of dismissal / removal
- (d) Not entitled to appear at all

Ans. (d) Not entitled to appear at all

Q3. Any insolvent person shall not be entitled to appear as authorised representative:-

- (a) Up to a period of 1 year of insolvency
- (b) Up to a period of 2 years of insolvency

- (c) During the period of insolvency
- (d) Not entitled to appear at all

Ans. (c) During the period of insolvency

Q4. Any person who is disqualified to represent, being found guilty of misconduct, has no further remedy at all

- (a) True
- (b) False

Ans. (a) True

Statutory Provisions

117. Appeals to High Court

- (1) Any person aggrieved by any order passed by the State Bench or Area Benches of the Appellate Tribunal may file an appeal to the High Court and the High Court may admit such appeal if it is satisfied that the case involves a substantial question of law.
- (2) An appeal under sub-section (1) shall be filed within one hundred and eighty days from the date on which the order appealed against is received by the aggrieved person and it shall be in such form verified in such manner as may be prescribed;

Provided that the High Court may entertain an appeal after the expiry of the said period if it is satisfied that there was sufficient cause for not filing it within such period.
- (3) Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question and the appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question:

Provided that nothing in this sub-section shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.
- (4) The High Court shall decide the question of law so formulated and deliver such judgment thereon containing the grounds on which such decision is founded and may award such cost as it deems fit.
- (5) The High Court may determine any issue which -
 - (a) has not been determined by the State Bench or Area Benches; or
 - (b) has been wrongly determined by the State Bench or Area Benches, by reason of a decision on such question of law as herein referred to in sub-section (3).

- (6) *When an appeal has been filed before the High Court, it shall be heard by a bench of not less than two Judges of the High Court, and shall be decided in accordance with the opinion of such Judges or of the majority, if any, of such Judges.*
- (7) *Where there is no such majority, the Judges shall state the point of law upon which they differ and the case shall, then, be heard upon that point only, by one or more of the other Judges of the High Court and such point shall be decided according to the opinion of the majority of the Judges who have heard the case including those who first heard it.*
- (8) *Where the High Court delivers a judgment in an appeal filed before it under this section, effect shall be given to such judgment by either side on the basis of a certified copy of the judgment.*
- (9) *Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908, relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.*

117.1 Introduction

- (i) This section provides for appeal to High Court by any person aggrieved by an order passed by State Bench or Area Benches.

117.2 Analysis

- (i) High Court may admit an appeal if it is satisfied that the case involves a substantial question of law.
- (ii) No appeal shall lie to High Court if such order is passed by National Bench or Regional Benches.
- (iii) Appeal to be filed in the form **GST APL 08**, precisely stating the substantial question of law involved, within 180 days from the date of receipt of order appealed against accompanied by prescribed fee.
- (iv) High Court is empowered to condone the delay in filing appeal.
- (v) On being satisfied, High Court shall formulate a substantial question of law.
- (vi) Appeal to be heard only on the question so formulated and the respondent shall be allowed to argue that the case does not involve such question.
- (vii) The High Court may hear the appeal on any other substantial question of law not formulated by it after satisfying, for reasons to be recorded, of involvement of such question in the case.
- (viii) The High Court may determine any issue which has not been determined or has been wrongly determined by the State Bench or Area Benches.
- (ix) Appeal to be heard by a Bench of not less than 2 Judges of High Court and shall be decided in accordance with the majority of opinion of such Judges.
- (x) Difference of opinion on any point shall be referred to one or more of the other Judges

of High Court and such point shall be decided according to the opinion of majority of Judges who have heard the case including those who first heard it.

- (xi) The effect of judgment of High Court shall be given on the basis of a certified copy of the judgment.
- (xii) The provisions of Code of Civil Procedure relating to appeals to High Court shall apply to appeals under this section.

117.3 Comparative review

- (i) Section 35G of the Central Excise Act, 1944

117.4 FAQ

Q1. Any appeal filed before High Court shall be heard by a bench consisting how many judges of High Court?

Ans. An appeal filed before the Honourable High Court shall be heard by judges consisting of not less than two judges.

117.5 MCQ

Q1. The High Court may admit an appeal if the case involves a substantial question of fact

- (a) True
- (b) False

Ans. (b) False

Q2. An appeal involving a matter, where two or more States or a State and Centre have a difference of views regarding place of supply, shall lie to High Court

- (a) True
- (b) False

Ans. (a) True

Q3. An appeal before High Court shall be filed within

- (a) 6 months from date of order
- (b) 6 months from date of communication of order
- (c) 180 days from date of order
- (d) 180 days from date of communication of order

Ans. (d) 180 days from date of communication of order

Q4. The High Court can condone the delay in filing appeal for a period up to

- (a) 1 Month
- (b) Month
- (c) Without any time limit
- (d) No condonation powers

Ans. (c) Without any time limit

Statutory Provisions**118. Appeals to Supreme Court**

- (1) *An appeal shall lie to the Supreme Court -*
 - (a) *from any order passed by the National Bench or the Regional Benches of the Appellate Tribunal; or*
 - (b) *from any judgment or order passed by High Court in an appeal made under section 117, in any case which, on its own motion or on an oral application made by or on behalf of the party aggrieved, immediately after passing of the judgment or order, the High Court certifies to be a fit one for appeal to the Supreme Court.*
- (2) *The provisions of the Code of Civil Procedure, 1908, relating to appeals to the Supreme Court shall, so far as may be, apply in the case of appeals under this section as they apply in the case of appeals from decrees of a High Court.*
- (3) *Where the judgment of the High Court is varied or reversed in the appeal, effect shall be given to the order of the Supreme Court in the manner provided in section 117 in the case of a judgment of the High Court.*

118.1 Introduction

- (i) This section provides for appeal to Supreme Court.

118.2 Analysis

An appeal can lie with the Supreme Court in case of:

- (i) Any judgement or order passed by National Bench, Regional Benches of Appellate Tribunal or High Court.
- (ii) When an appeal is reversed, or varied, the effect shall be given to the order of the Supreme Court on the question of law so formulated and delivered.
- (iii) The said judgement shall clearly indicate the grounds on which the decision is founded.
- (iv) Apart from this, the Supreme Court is empowered to frame any substantial question of law not formulated by any lower authority if it is satisfied that the case before it involves such question of law.

118.3 Comparative review

- (i) Section 35L of the Central Excise Act, 1944

118.4 Related provisions

Section 117 of CGST Act – Appeal to High Court

Statutory Provisions**119. Sums due to be paid notwithstanding appeal etc.**

Notwithstanding that an appeal has been preferred to the High Court or the Supreme Court, sums due to the Government as a result of an order passed by the National or Regional Benches of the Appellate Tribunal under sub-section (1) of section 113 or an order passed by the State Bench or Area Benches of the Appellate Tribunal under subsection (1) of section 113 or an order passed by the High Court under section 117, as the case may be, shall be payable in accordance with the order so passed.

119.1 Introduction

- (i) This section provides for payment of sums due pending appeal.

119.2 Analysis

- (i) The sums due to the Government as a result of an order passed by the Appellate Tribunal or High Court shall be paid notwithstanding that an appeal has been preferred to High Court or Supreme Court, as the case may be.

119.3 Comparative review

Section 35N of the Central Excise Act, 1944

Statutory Provisions**120. Appeal not to be filed in certain cases**

- (1) *The Board may, on the recommendation of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer the central tax under the provisions of this Chapter.*
- (2) *Where, in pursuance of the orders or instructions or directions, issued under subsection (1), the officer of the central tax has not filed an appeal or application against any decision or order passed under the provisions of this Act, it shall not preclude such officer of central tax from filing appeal or application in any other case involving the same or similar issues or questions of law.*
- (3) *Notwithstanding the fact that no appeal or application has been filed by the Officer of central tax pursuant to the orders or instructions or directions issued under sub-section (1), no person, being a party in appeal or application shall contend that the officer of central tax has acquiesced in the decision on the disputed issue by not filing an appeal or application.*
- (4) *The Appellate Tribunal or court hearing such appeal or application shall have regard to the circumstances under which appeal or application was not filed by the Officer of central tax in pursuance of the orders or instructions or directions issued under sub-section (1).*

120.1 Introduction

- (i) This section provides for non-filing of appeal by revenue in certain cases.

120.2 Analysis

- (i) On recommendation of Council, the Board may issue order or instructions or directions fixing monetary limits for the purpose of regulating the filing of appeal or application by Officer of central tax.
- (ii) In case the Officer has not filed an appeal / application against any decision / order in view of such order / instruction / directions, it shall not preclude him from filing appeal / application in any other cases involving same / similar issue or question of law.
- (iii) No party in appeal / application shall contend that the Officer has acquiesced (agreed / consented) in the decision on the disputed issue by not filing an appeal / application.
- (iv) The Appellate Tribunal or court hearing such appeal / application shall have regard to the circumstances under which appeal / application was not filed by the Officer in pursuance of such order / instructions / directions.

120.3 Comparative review

- (i) Section 35R of the Central Excise Act, 1944

Statutory Provisions**121. Non Appealable decision and orders**

Notwithstanding anything to the contrary in any provisions of this Act, no appeal shall lie against any decision taken or order passed by an officer of the central tax if such decision taken or order passed relates to any one or more of the following matters namely:-

- (a) *An order of the Commissioner or other authority empowered to direct transfer of proceeding from one officer to another officer;*
- (b) *An order pertaining to the seizure or retention of books of account, register and other documents; or*
- (c) *An order sanctioning prosecution under this Act; or*
- (d) *An order passed under section 80.*

121.1 Introduction

- (i) This section prescribes decisions or orders which are non-appealable.

121.2 Analysis

- (i) No appeal shall lie against any decision / order taken / passed by Officer of central tax if such decision / order relates to any one or more of following matters –
 - Transfer of proceeding from one officer to another officer;
 - Seizure or retention of books of account, register and other documents;
 - Order sanctioning prosecution under the Act

— Order passed U/s.80 related to payment of tax & other amount in instalments.

121.3 Related provisions

1. Section 80– Payment of tax and other amount in instalments
2. Section 2(41) defines “document”
3. Section 67– Power of inspection, search & seizure
4. Section 132– Prosecution

Chapter–XIX

Offences and Penalties

- 122. Penalty for certain offences
- 123. Penalty for failure to furnish information return
- 124. Fine for failure to furnish statistics
- 125. General penalty
- 126. General disciplines related to penalty
- 127. Power to impose penalty in certain cases
- 128. Power to waive penalty or fee or both
- 129. Detention, seizure and release of goods and conveyances in transit
- 130. Confiscation of goods or conveyances and levy of penalty
- 131. Confiscation or penalty not to interfere with other punishments
- 132. Punishment for certain offences
- 133. Liability of officers and certain other persons
- 134. Cognizance of offences
- 135. Presumption of culpable mental state
- 136. Relevancy of statements under certain circumstances
- 137. Offences by companies
- 138. Compounding of offences

Statutory Provision

122. Penalty for certain offences

- (1) Where a taxable person who -
- (i) supplies any goods or services or both without issue of any invoice or issues an incorrect or false invoice with regard to any such supply;
 - (ii) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder;
 - (iii) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;
 - (iv) collects any tax in contravention of the provisions of this Act but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

- (v) *fails to deduct the tax in accordance with the provisions of sub-section (1) of section 51, or deducts an amount which is less than the amount required to be deducted under the said sub-section, or where he fails to pay to the Government under sub-section (2) thereof, the amount deducted as tax;*
- (vi) *fails to collect tax in accordance with the provision of sub-section (1) of section 52, or collects an amount which is less than the amount required to be collected under the said sub-section, or where he fails to pay to the Government the amount collected as tax under sub-section (3) of section 52;*
- (vii) *takes or utilizes input tax credit without actual receipt of goods or services or both either fully or partially, in contravention of the provisions of this Act, or the rules made thereunder;*
- (viii) *fraudulently obtains refund of tax under this Act;*
- (ix) *takes or distributes input tax credit in contravention of section 20, or the rules made thereunder;*
- (x) *falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information or return with an intention to evade payment of tax due under this Act;*
- (xi) *is liable to be registered under this Act but fails to obtain registration;*
- (xii) *furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently;*
- (xiii) *obstructs or prevents any officer in discharge of his duties under the Act;*
- (xiv) *transports any taxable goods without the cover of documents as may be specified in this behalf;*
- (xv) *suppresses his turnover leading to evasion of tax under this Act;*
- (xvi) *fails to keep, maintain or retain books of account and other documents in accordance with the provisions of this Act or the rules made thereunder;*
- (xvii) *fails to furnish information or documents called for by an officer in accordance with the provisions of this Act or the rules made thereunder or furnishes false information or documents during any proceedings under this Act;*
- (xviii) *supplies, transports or stores any goods which he has reason to believe are liable to confiscation under this Act;*
- (xix) *issues any invoice or document by using the registration number of another registered person;*
- (xx) *tampers with, or destroys any material evidence or document;*
- (xxi) *disposes off or tampers with any goods that have been detained, seized, or attached under this Act;*

he shall be liable to a penalty of ten thousand rupees or an amount equivalent to the tax evaded or the tax not deducted under section 51 or short deducted or deducted but not

paid to the Government or tax not collected under Section 52 or short collected or collected but not paid to the Government or input tax credit availed of or passed on or distributed irregularly, or the refund claimed fraudulently, whichever is higher.

- (2) *Any registered person who supplies any goods or services or both on which any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized, -*
 - (a) *for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or ten percent of the tax due from such person, whichever is higher.*
 - (b) *for reason of fraud or any wilful misstatement or suppression of facts to evade tax, shall be liable to a penalty of ten thousand rupees or the tax due from such person, whichever is higher.*
- (3) *Any person who--*
 - (a) *aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1);*
 - (b) *acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;*
 - (c) *receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;*
 - (d) *fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry;*
 - (e) *fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder, or fails to account for an invoice in his books of account, shall be liable to a penalty which may extend to twenty-five thousand rupees.*

122.1 Introduction

For effective implementation of any tax-law and to do justice to tax abiding society, provisions to take strict action against offenders are required. The discussion in the following paragraphs deal with the punitive provisions of GST law.

122.2 Analysis

At the outset, the section declares the offences that attract penalty as a consequence, apart from the requirement to pay the tax and applicable interest. Some of the offences listed under this section may also attract prosecution under section 132 but that depend on the gravity of the offence defined in that section.

The Section is divided in three main parts:

- (i) The first sub-section prescribes 21 types of offences, any one of which if committed, can attract penalty of ten thousand rupees or equal to amount of tax involved, whichever is higher.
- (ii) The second sub-section deals with two situations, firstly, where certain offences committed are not due to either fraud or wilful misstatement or suppression of facts. In such a case, penalty will get reduced to 10% of tax involved subject to a minimum of ten thousand rupees. Secondly, where the offence committed is due to either fraud or any wilful misstatement or suppression of facts to evade tax will result in a penalty equal to tax involved subject to a minimum of ten thousand rupees.
- (iii) The third sub-section deals with offences where the person is not directly involved in any evasion but may be a party to evasion or if he does not attend summons or produce documents. Penalty in such a case would be upto twenty five thousand rupees.

While this section describes the offence and prescribes the penalty applicable, the procedure for adjudicating the imposition of this penalty is under section 73 and section 74 in which there is no express reference to this section. Persons found to have committed the offences listed in this section are liable to payment of penalty as follows:

- A. Penalty equivalent to higher of Rupees 10,000/- or tax evaded/ tax not deducted/ collected or short deducted/collected or tax deducted/collected but not paid, whichever is higher in the following cases:
 - 1. Supplies any goods/services:
 - (a) Without issue of any invoice or
 - (b) Issues an incorrect/false invoice in respect of such supply
 - 2. Issues an invoice without supply of goods/services in violation of the provisions of the Act/ Rules.
 - 3. Collects any amount as tax but fails to deposit the same with the Government beyond a period of three months from due date.
 - 4. Collects any tax in contravention of law but fails to deposit the same with the Government beyond a period of three months from due date.
 - 5. Fails to -
 - (a) Deduct tax/deduct appropriate tax, as per Section 51 (Section 51 is applicable to certain specific persons. The said section requires such specified persons to deduct tax at the rate of one per cent out of the payment to the supplier if the value of supply under a contract exceeds two lakh and fifty thousand rupees) or
 - (b) deposit the tax deducted with the Government
 - 6. Fails to -
 - (a) collect tax/collect appropriate tax as per provisions of Section 52 (Section 52 is

applicable to electronic commerce operator to collect tax from the supplier of goods at the time of payment to such supplier at the rate of one per cent)

- (b) deposit the tax collected with the appropriate Government
- 7. takes or utilizes input tax credit without actual receipt of goods/services either fully or partially in contravention of provisions of Act/ Rules.
- 8. fraudulently obtains refund of tax.
- 9. takes or distributes input tax credit in contravention of section 20, or the rules made thereunder (Section 20 prescribes manner of distribution of credit by input service distributor)
- 10. With an intention to evade payment of tax-
 - (a) falsifies or substitutes financial records, or
 - (b) produces fake accounts or documents, or
 - (c) furnishes any false information or return
- 11. fails to obtain registration.
- 12. furnishes any false information with regard to registration particulars, either at the time of applying for registration, or subsequently.
- 13. obstructs or prevents any officer in discharge of his duties.
- 14. transports any taxable goods without the cover of specified documents.
- 15. suppresses his turnover leading to evasion of tax.
- 16. fails to keep, maintain or retain books of account and other documents as specified in law.
- 17. fails to furnish information or documents called for by an officer or furnishes false information or documents during any proceedings.
- 18. supplies, transports or stores any goods which he has reason to believe are liable to confiscation.
- 19. issues any invoice or document by using the registration number of another taxable person.
- 20. tampers with, or destroys any material evidence or document.
- 21. disposes off or tampers with any goods that have been detained, seized, or attached under this Act.
- B. Penalty at a reduced rate of 10% of the tax involved subject to minimum of Rs.10,000 will be levied in cases where any registered taxable person who supplies any goods or services by whom any tax has not been paid or short-paid or erroneously refunded, or where the input tax credit has been wrongly availed or utilized for any reason, other than the reason of fraud or any wilful misstatement or suppression of facts to evade tax. Penalty of 100% of the tax involved subject to minimum of ₹ 10,000 where fraud or any wilful misstatement or suppression of facts to evade tax.

- C. Penalty up to rupees twenty-five thousand where any person:
1. aids or abets any of the offences specified in clause A above;
 2. acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation;
 3. receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;
 4. fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry
 5. fails to issue invoice in accordance with the provisions of this Act or rules made thereunder, or fails to account for an invoice in his books of account

122.3 Comparative review

Penalty provisions are more or less in line with the following provisions of subsumed Central laws in addition to the provisions of VAT laws of various States:

Section/Rule	Act/Rule	Provision
Section 9	Central Excise Act, 1944	Offences and penalties.
Chapter XVI	Customs Act, 1962	Offences & Prosecutions
Rules 8(3A)	Central Excise Rules, 2002	Failure to pay duty declared in return
Rules 25 & 26	Central Excise Rules, 2002	— Confiscation & Penalty — Penalty for Certain Offences
Section 76	Finance Act, 1994	Penalty for failure to pay Service tax
Section 77	Finance Act, 1994	General penalty for residual offences
Section 78	Finance Act, 1994	Penalty for failure to pay service tax for reasons of fraud
Section 89	Finance Act, 1994	Offences and Penalties
Rules 15	Cenvat Credit Rules, 2004	Penalty for defaults in relation to CENVAT credit
Rules 15A	Cenvat Credit Rules, 2004	General penalty

122.4 Related provisions

Section or Rule	Description
Section 2(107)	Definition of taxable person
Section 31	Tax Invoice
Section 51	Tax deducted at source (TDS)
Section 52	Collection of Tax at source
Sections 16 to 21, 41 and 42	Input tax credit & matching, reversal and reclaim
Section 22 to 30	Registration
Section 54 to 58	Refunds

122.5 FAQs

Q1. Whether penalty becomes automatically leviable without any adjudication?

Ans. Though not specifically mentioned in section 122 relating to penalties, in the light of section 126 dealing with general disciplines related to penalty and in view of principles of natural justice, penalties cannot be imposed without affording him an adequate opportunity of being heard.

Q2. Can there be any liability even if a person is not a taxable person?

Ans. Yes, penalty under sub-section (3) of Section 122 can be levied on any person even if he is not a taxable person.

122.6 MCQs

Q1. If a person has failed to obtain the registration the penalty is equivalent to:

- (a) amount of tax
- (b) 10% of tax
- (c) upto ₹ 10,000
- (d) the amount of tax or ₹ 10,000 whichever is higher

Ans. (d) the amount of tax or ₹ 10,000 whichever is higher

Q2. If a person fails to appear before GST officer, the maximum penalty that can be levied is:

- (a) amount of tax
- (b) 10% of tax
- (c) upto ₹ 10,000
- (d) none of the above

Ans. (d) none of the above

Q3. Penalty of 10% of the tax can be levied if:

- (a) a person repeatedly had not appeared before GST officer for 3 times
- (b) the taxable person has not filed returns for 6 consecutive months or more
- (c) a taxable person has been served with show cause notice for 3 times repeatedly
- (d) registered taxable person has not paid under *bona fide* belief

Ans. (d) registered taxable person has not paid under *bona fide* belief.

Q4. There is no penalty for not carrying specified documents during transportation of goods

- (i) True
- (ii) False

Ans. (ii) False

Statutory provision

123. Penalty for failure to furnish information return

If a person who is required to furnish an information return under Section 150 fails to do so within the period specified in the notice issued under sub-Section (3) thereof, the proper officer may direct that such person shall be liable to pay, by way of penalty of, a sum of one hundred rupees for each day of the period during which the failure to furnish such return continues:

Provided that the penalty imposed under this section shall not exceed five thousand rupees.

123.1 Introduction

This Section would be relevant where the information return as prescribed under Section 150 is not filed.

123.2 Analysis

If the person who is required to file an 'information return' as prescribed under Section 150 has not filed the return within the stipulated period of 30 days (please see section 150(2)) from the date of issue of show cause notice, a penalty of ₹ 100/- per day shall be levied for each day for which the failure continues but not exceeding five thousand rupees.

123.3 Comparative Review

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

123.4 Related provisions

Section	Description
Section 150	Obligation to furnish Information Return

123.5 FAQs

Q1. What would be the penalty for not filing the information return?

Ans. Penalty of Rs.100 per day would be applicable for each day for which the failure continues subject to maximum of Rs. 5,000/-.

Q2. Would penalty under this Section be payable for defective returns?

Ans. No, the penalty for defective information returns would not be payable under this section.

Q3. Is there any maximum ceiling on penalty payable for failure to furnish information return u/s. 150?

Ans. Yes. There is maximum ceiling of Rs. 5,000/- for failure to furnish information return u/s. 150.

Statutory provision**124. Fine for failure to furnish statistics**

If any person required to furnish any information or return under section 151, —

- (a) *without reasonable cause fails to furnish such information or return as may be required under that section, or*
- (b) *wilfully furnishes or causes to furnish any information or return which he knows to be false,*
he shall be punishable with a fine which may extend to ten thousand rupees and in case of a continuing offence to a further fine which may extend to one hundred rupees for each day after the first day during which the offence continues subject to a maximum limit of twenty-five thousand rupees.

124.1 Introduction

This section provides for penal consequences for failure to furnish information or return as required under section 151 regarding collection of statistics

124.2 Analysis

The section specifies penalty for failure to provide information or return in two circumstances viz.

- (a) fails to furnish information or return without reasonable cause; and
- (b) where furnished knowing it to be false.

The penalty specified is of upto ₹ 10,000/- and where the offence is continuing a further fine of upto ₹ 100 per day subject to maximum of ₹ 25,000/-.

124.3 Related provisions

Section	Description
Section 151	Power to collect statistics

Statutory provision**125. General Penalty**

Any person, who contravenes any of the provisions of this Act or any rules made thereunder for which no penalty is separately provided for in this Act, shall be liable to a penalty which may extend to twenty-five thousand rupees.

125.1 Introduction

The duty of the State is not only to recover all lawful dues from a defaulter, but to do justice towards the law abiding populace to impose a penalty – *jus in rem*. To this end offences are listed in section 122 along with penalty specifically applicable to each. Any offence that does not have a specific penalty prescribed, cannot be let off without penal consequences. Section 125 is a general penalty provision under the GST law for cases where no separate penalty is prescribed under the Act or rules.

125.2 Analysis

Penalty upto rupees twenty five thousand is imposable where any person contravenes:

- (a) any of the provisions of the Act; or
- (b) rules made thereunder.

for which no penalty is separately prescribed under the Act

125.3 Comparative review

General penalty provisions are more or less in line with the following provisions of subsumed Central laws in addition to the provisions of VAT laws of various States:

Section/Rule	Act/Rule	Provision
Rule 27	Central Excise Rules, 2002	General Penalty
Rule 15A	Cenvat Credit Rules, 2004	General penalty
Section 77	Finance Act, 1994	General penalty for residual offences

The residuary penalty as prescribed under service tax law and central excise law is upto ₹ 10,000/- and ₹ 5,000/ respectively-. There is substantial increase in maximum limit of penalty as prescribed under the Act.

125.4 Related provisions

Section	Description
Section 126	General disciplines related to penalty

125.5 FAQs

Q1. Which are the cases where general penalty can be levied?

Ans. The instances where there is no specific penalty prescribed under any other section or rule made thereunder general penalty will be attracted.

Q2. What is the amount of general penalty leviable under the Act?

Ans. An amount upto ₹ 25,000/-

125.6 MCQs

Q1. General penalty can be levied in addition to the specific penalties prescribed under the law

- (i) Yes, general penalty is levied in addition to the specific penalties
- (ii) No, when no specific penalty is prescribed, then only the general penalty applies.

Ans. (ii) No, when no specific penalty is prescribed, then only the general penalty applies.

Q2. If the assessee discovers any default on his own he must pay penalty along under this section?

- (i) Yes
- (ii) No

Ans. (ii) No.

Statutory provision

126. General disciplines related to penalty

(1) No officer under this act shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.

Explanation. - For the purpose of this sub-section –

- (a) a breach shall be considered a 'minor breach' if the amount of tax involved is less than rupees five thousand.
- (b) an omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

(2) The penalty imposed under this act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.

(3) No penalty shall be imposed on any person without giving him an opportunity of being heard.

(4) The officer under this act shall while imposing penalty in an order for a breach of the any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.

(5) When a person voluntarily discloses to an officer under this act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

(6) The provisions of this section shall not apply in such cases where the penalty specified under the Act is either a fixed sum or expressed as a fixed percentage.

126.1. Introduction

While penalties are not new in tax laws, this section lays down certain guiding principles to ensure tax administration can be held accountable to the tax paying citizen. It is salutary that such well-reasoned 'general disciplines' relating to penalty are provided in the Act.

126.2. Analysis

Guidelines for imposing penalty is one of the highlights of this progressive tax legislation. Courts have, for long, addresses the presence of circumstances surrounding the instance of – non-payment of tax now admitted – for the imposition of penalty. Now, a section providing guidance on 'how' and 'when' – to impose or refrain from imposing penalty – is salutary.

The following guiding disciplines in certain circumstances apply to substantial penalties:

- (a) No penalty can be imposed where the tax involved is less than ₹ 5,000/- (minor breach) or in case of documentation errors apparent on the face of record.
- (b) When penalty is still liable to be imposed, the next safety as laid down is to inquire into the degree and severity of the breach to proceed with imposition of penalty. In these cases, if the facts do not demand imposition of penalty, restraint is advised. However, no such discretion is provided in the section while providing for amount of penalty.
- (c) Person liable to penalty must be given an opportunity of being heard. Further a speaking order is passed for imposing such penalty.
- (d) Voluntary disclosure by a person to an officer (not merely in his own books and records) about the circumstances of the breach may be considered as a mitigating factor for the quantifying of penalty.
- (e) Cases involving fixed sum or fixed percentage of penalty are excluded.

126.3 Comparative review

Finance Act, 1994 *vide* Section 80, provided for waiver of penalties in cases where the assessee was able to prove that there was a reasonable cause of failure. The same was deleted with effect from 14.05.2015.

126.4 Related provisions

Section/Rule/Form	Description	Remarks
Section 122	Offences	Penalty for certain offences

126.5 FAQs

Q1. What are the discretionary powers of the officers to waive the penalties?

Ans. Section 126(2) prescribes that penalty shall be levied depending on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

Q2. What is regarded as "minor breach"?

Ans. A breach shall be considered a 'minor breach' if the amount of tax involved is less than rupees five thousand.

Q3. What shall be considered as "mistake easily rectifiable"?

Ans. An omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.

126.6 MCQs

Q1. For minor breaches of tax regulations or procedural requirements, the tax authority shall-

- (a) not impose substantial penalties
- (b) impose nominal penalty
- (c) not impose any penalty.
- (d) none of the above.

Ans. (c) not impose any penalty.

Statutory provision

127. Power to impose penalty in certain cases

Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceeding under sections 62, or section 63 or section 64 or section 73 or section 74 or section 129 or section 130, he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

127.1 Introduction

This section empowers to the proper officer to initiate separate penalty proceedings even if the penalty is not covered under any proceedings under any other sections.

127.2 Analysis

Penalty proceedings can be initiated under this Section even if the same are not covered under the following sections:

Section 62: Assessment of non-filers of returns

Section 63: Assessment of unregistered persons

Section 64: Summary assessment in certain special cases

Section 73 and 74: Determination of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed

Section 129: Detention, seizure and release of goods and conveyances in transit

Section 130: Confiscation of goods or conveyances and levy of penalty

In other words, penalties can be imposed by proper officer after giving due opportunity even in cases where there are no proceedings open with regard to assessment, adjudication,

detention or confiscation. This may involve situations where there is no evasion of tax directly by the person concerned but he may be involved in offences mentioned in sub-section (3) of Section 122. Section 122(3) encompasses the following situations:

1. aids or abets any of the offences specified in section 122(1)
2. acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation;
3. receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;
4. fails to appear before the officer of central tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry;
5. fails to issue invoice in accordance with the provisions of this Act or the rules made thereunder, or fails to account for an invoice in his books of account.

Statutory provision

128. Power to waive penalty or fee or both

The Government may, by notification, waive in part or full, any penalty referred to in section 122 or section 123 or section 125 or any late fee referred to in section 47 for such class of taxpayers and under such mitigating circumstances as may be specified therein on the recommendations of the Council.

128.1 Introduction

This section empowers the government to waive penalty for certain class of taxpayers or under certain circumstances.

128.2 Analysis

This section provides for waiver of penalty leviable under section 122 or section 123 or section 125 or late fee payable under section 47 to those class of taxpayers or under such mitigating factors as notified by the Government.

As per Notification No 28/2017 and 50/2017, the Central Government, on the recommendations of the Council, hereby waives the late fee payable under section 47 of the said Act, for all registered persons who failed to furnish the return in FORM GSTR-3B for the month of July, 2017, Aug 2017 and Sept 2017 by the due date.

As per Notification No 64/2017, the Central Government, on the recommendations of the Council, hereby waives the amount of late fee payable by any registered person for failure to furnish the return in FORM GSTR-3B for the month of October, 2017 onwards by the due date under section 47 of the said Act, which is in excess of an amount of twenty-five rupees for every day during which such failure continues.

Provided that where the total amount of central tax payable in the said return is nil, the amount of late fee payable by such registered person for failure to furnish the said return for the month of October, 2017 onwards by the due date under section 47 of the said Act shall stand waived to the extent which is in excess of an amount of ten rupees for every day during which such failure continues

Statutory provision

129. Detention, seizure and release of goods and conveyances in transit

- (1) *Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or rules made thereunder, all such goods and the conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released,*
 - (a) *on payment of the applicable tax and penalty equal to one hundred percent of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to two percent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods comes forward for payment of such tax and penalty;*
 - (b) *on payment of the applicable tax and penalty equal to the fifty percent of the value of the goods reduced by the tax amount paid thereon, and, in case of exempted goods, on payment of an amount equal to five percent of the value of goods or twenty-five thousand rupees, whichever is less, where the owner of the goods does not come forward for payment of such tax and penalty.*
 - (c) *upon furnishing a security equivalent to the amount payable under clause (a) or clause (b) in such form and manner as may be prescribed:*
Provided that no such goods or conveyance shall be detained or seized without serving an order of detention or seizure on the person transporting the goods.
- (2) *The provisions of sub-section (6) of section 67 shall, mutatis mutandis, apply for detention and seizure of goods and conveyances.*
- (3) *The proper officer detaining or seizing goods or conveyances shall issue a notice specifying the tax and penalty payable and thereafter, pass an order for payment of tax and penalty under clause (a) or clause (b) or clause (c).*
- (4) *No tax, interest or penalty shall be determined under sub-section (3) without giving the person concerned an opportunity of being heard.*
- (5) *On payment of the amount referred to in sub-section (1), all proceedings in respect of the notice specified in sub-section (3) shall be deemed to be concluded.*

- (6) *Where the person transporting any goods or the owner of the goods fails to pay the amount of tax and penalty as Provided in sub-section (1) within seven days of such detention or seizure, further proceedings shall be initiated in accordance with the provisions of section 130:*

Provided that where the detained or seized goods are perishable or hazardous in nature or are likely to depreciate in value with passage of time, the said period of seven days may be reduced by the proper officer.

129.1 Introduction

This section provides for the provision relating to detention of goods or conveyances or both in case of certain defaults under the law.

129.2 Analysis

- (a) If a person contravenes any provision of the Act while transporting or storing goods, then such goods and the conveyance in which such goods are carried and all the documents relating to such goods and conveyance can be detained or seized. The proper officer detaining and seizing the goods and/or conveyance has to give proper opportunity to the transporter to explain his case by issuing a proper notice to him. After hearing the transporter the officer shall pass an appropriate order.
- (b) In case of default, where the owner of the goods **comes forward for the payment of tax**, penalty will be levied equal to 100% of the amount of tax and in case of exempted goods 2% of the value of goods or Rs.25000/- whichever is less.
- (c) In case where owner of the goods **does not come forward for payment of tax**, then an order shall be passed for payment of amount of tax and penalty equal to **50% of the value of goods** reduced by tax amount paid (to be paid by any other person other than owner) and in case of exempted goods 5% of the value of goods or Rs.25000/- whichever is less.
- (d) The proper officer shall release the goods upon the payment of tax and amount of penalty in the above manner or upon furnishing a security equivalent of the amount payable and all the proceedings under this particular section shall deemed to be concluded. However, if the person (either owner of the goods or any other person) fails to discharge the amount of tax and penalty under this section within 7 days, than the goods and/or conveyance shall be liable for confiscation. The period of 7 days can be reduced by proper officer if goods are of perishable or hazardous nature. Further, such goods can be released on provisional basis under bond as per the provisions of section 67.

129.3 Related provision

Section / Rule / Form	Description	Remarks
Section 68	Inspection of goods in movement	Prescribed documents are requires to be carried along with the goods being transported.

129.4 FAQs

Q1. Under what circumstances a conveyance can be detained?

Ans. A conveyance can be detained, when the conveyance is used for –

- Transportation of any goods or
- Storage of such goods while they are in transit

in violation of the GST Act or rules made thereunder.

Q2. What is the quantum of penalties in case of detention/seizure of goods and/or conveyance?

Ans. The quantum of penalties in case of detention/seizure of goods and/or conveyance are:-

- In case of owner– the quantum of penalty would be equivalent to the amount of tax and in case of exempted goods 2% of the value of the goods or Rs.25000/- whichever is less.
- In case, payment is to be made by the person other than the owner, penalty shall be 50% of the value of the goods and in case of exempted goods 5% of the value of goods or Rs.25000/- whichever is less..

129.5 MCQs

Q1. The detained goods shall be released only after payment of –

- (a) Applicable tax and penalty;
- (b) Furnishing a security;
- (c) Tax and Interest;
- (d) Either (a) or (b).

Ans. (d) Either (a) or (b)

Q2. Number of days within which the amount of tax and penalty on seized goods should be paid-

- (a) 3
- (b) 12
- (c) 7
- (d) 15

Ans. (c) 7

Statutory provision**130. Confiscation of goods and/or conveyances and levy of penalty**

- (1) *Notwithstanding anything contained in this Act, if any person –*
- (i) *supplies or receives any goods in contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax; or*
 - (ii) *does not account for any goods on which he is liable to pay tax under this Act; or*
 - (iii) *supplies any goods liable to tax under this Act without having applied for the registration; or*
 - (iv) *contravenes any of the provisions of this Act or the rules made thereunder with intent to evade payment of tax, or*
 - (v) *uses any conveyance as a means of transport for carriage of taxable goods in contravention of the provisions of this Act or rules made thereunder unless the owner of the conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person in charge of the conveyance,*
- then, all such goods or conveyances shall be liable to confiscation and the person shall be liable to penalty under section 122.*
- (2) *Whenever confiscation of any goods or conveyance is authorized by this Act, the officer adjudging it shall give to the owner of the goods an option to pay in lieu of confiscation such fine as the said officer thinks fit:*
- Provided that such fine shall not exceed the market value of the goods confiscated, less the tax chargeable thereon.*
- Provided further that the aggregate of such fine and penalty leviable shall not be less than the amount of penalty leviable under sub-section (1) of section 129:*
- Provided also that where any such conveyance is used for the carriage of the goods or passengers for hire, the owner of the conveyance shall be given an option to pay in lieu of the confiscation of the conveyance a fine equal to the tax payable on the goods being transported thereon.*
- (3) *Where any fine in lieu of confiscation of goods or conveyance is imposed under sub-section (2), the owner of such goods or conveyance or the person referred to in sub-section (1), shall, in addition, be liable to any tax, penalty and charges payable in respect of such goods or conveyance.*
- (4) *No order for confiscation of goods or conveyance or for imposition of penalty shall be issued without giving the person a reasonable opportunity of being heard.*
- (5) *Where any goods or conveyance are confiscated under this Act, the title of such goods or conveyance shall thereupon vest in the Government.*
- (6) *The proper officer adjudging confiscation shall take and hold possession of the things*

confiscated and every officer of Police, on the requisition of such proper officer, shall assist him in taking and holding such possession

- (7) *The proper officer may, after satisfying himself that the confiscated goods and conveyance are not required in any other proceedings under this Act and after giving reasonable time not exceeding three months to pay fine in lieu of confiscation, dispose such goods or conveyances and deposit the sale proceeds thereof with the Government.*

130.1 Introduction

This section provides for specific causes leading to confiscation of goods/conveyances. The nature of authorization to confiscate and opportunity to release goods/conveyances liable for such confiscation are detailed in this section.

130.2 Analysis

There are five precise causes for confiscation of goods and/or conveyances specified in this section and they are:

Action	Consequence
Supply or receive goods in contravention of the Act or rules made thereunder	Resulting in actual evasion of tax
Not accounting for goods	Carrying a liability to payment of tax
Supply of goods liable to tax	Without applying registration
Contravention of the provisions of Act or rules made thereunder	With intent to evade payment of tax
Use of conveyance as a means of transport/for carriage of taxable goods	In contravention of the Act or rules made thereunder

- In all the above cases, goods or conveyance shall be liable for confiscation. However the conveyance shall not be confiscated where the owner of the conveyance proves that it is without the connivance of owner himself, his agent or person in charge of the conveyance. Further, the person shall be liable to pay penalty under section 122 of the Act.
- If the goods or conveyance are liable to be confiscated under the provisions of this Act, the proper officer shall give the owner of the goods an option to pay fine in lieu of confiscation.
- The amount of fine shall not exceed the market value of goods as reduced by the amount of tax payable thereon. However, at the same time aggregate of fine and penalty leviable shall not be less than the amount of penalty as leviable under section 129(1) While section 129 is applicable on transporters, section 130 primarily covers the owner.

- Where the conveyance is used for transportation of goods or passenger on hire, the owner of the conveyance shall be given an option to pay in lieu of confiscation of the conveyance a fine equal to amount of tax payable on the goods transported on his conveyance. It is worthwhile to note that the amount of fine payable is in addition to any tax, penalty and other charges payable on confiscated goods or conveyance.
- The order for confiscation cannot be issued without giving the person an opportunity of being heard.
- The title of the confiscated goods or conveyance shall be vested upon the Government.
- The proper officer adjudging confiscation shall take and hold possession of the things confiscated on behalf of the Government and every officer of police shall assist in taking such hold and possession.
- If the proper officer is satisfied that the confiscated goods/conveyance are not required for any proceedings under the Act, then he shall after giving reasonable time not exceeding 3 months to pay fine in lieu of confiscation, dispose the goods and deposit the sale proceeds with the Government.

130.3 Comparative review

The provision as discussed above for confiscation of goods and levy of penalty is akin to erstwhile confiscation provisions under Sections 33 and 34 of the Central Excise Act, 1944.

130.4 Related provisions

Section / Rule / Form	Description	Remarks
Section 122	Offences and Penalties	Specifies penalty for certain offences under the Act
Section 126	General discipline related to penalty	The principles and disciplines related to impose of penalty

130.5 FAQs

- Q1. Are all cases of contraventions of any of the provisions of the Act or Rules liable for confiscation?
- Ans. No, only if the contravention of the provisions results in evasion of taxes or there lies an intent to evade the payment of tax, confiscation of goods/conveyance is permissible.
- Q2. What is the maximum amount of fine in lieu of confiscation that can be levied?
- Ans. The maximum amount of fine in lieu of confiscation shall not exceed the market price of the goods confiscated, less the tax chargeable thereon
- Q3. Can the option to pay redemption fine in lieu of confiscation of goods be given to any person other than the owner of the goods?

Ans. No, in terms of section 130(2) of GST Law,, the officer adjudging confiscation of any goods shall give to the owner of the goods an option to pay in lieu of confiscation such fine as thinks fit.

Q4. Can the option to pay fine in lieu of confiscation be exercised anytime?

Ans. The option to pay fine in lieu of confiscation shall be exercised within 3 months of confiscation.

Statutory provision

131. Confiscation or penalty not to interfere with other punishments

Without prejudice to the provisions contained in the Code of Criminal Procedure, 1973, no confiscation made or penalty imposed under the provisions of this Act or the rules made thereunder shall prevent the infliction of any other punishment to which the person affected thereby is liable under the provisions of this Act or under any other law for the time being in force.

131.1 Introduction

This is an administrative provision which empowers the Government to initiate other proceedings, as relevant, in addition to confiscation of goods or imposition or penalty.

131.2 Analysis

Normally, the inference is that where the goods are confiscated or where any penalty is imposed, no other proceedings which are punitive in nature should be initiated.

This Section provides that in addition to confiscation of goods or penalty already imposed, all / any other proceedings may also be initiated or continued under the GST law or any other law, as applicable. This could be prosecution, arrest, cancellation of registration etc., as applicable and provided for the relevant non-compliances.

131.3 Comparative review

This provision is similar to Section 34A of the Central Excise Act, 1944.

Statutory provision

132. Punishment for Certain Offences

(1) *Whoever commits any of the following offences namely: -*

- (a) *supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;*
- (b) *issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;*

- (c) *avails input tax credit using such invoice or bill referred to in clause (b);*
- (d) *collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;*
- (e) *evades tax, fraudulently avails input tax credit or fraudulently obtains refund and where such offence is not covered under clauses (a) to (d);*
- (f) *falsifies or substitutes financial records or produces fake accounts or documents or furnishes any false information with an intention to evade payment of tax due under this Act;*
- (g) *obstructs or prevents any officer in the discharge of his duties under this*
- (h) *acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with, any goods which he knows or has reasons to believe are liable to confiscation under this Act or the rules made thereunder;*
- (i) *receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reasons to believe are in contravention of any provisions of this Act or the rules made thereunder;*
- (j) *tampers with or destroys any material evidence or documents;*
- (k) *fails to supply any information which he is required to supply under this Act or the rules made thereunder or (unless with a reasonable belief, the burden of proving which shall be upon him, that the information supplied by him is true) supplies false information; or*
- (l) *attempts to commit, or abets the commission of any of the offences mentioned in clauses (a) to (k) of this section,*

shall be punishable –

- (i) *in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds five hundred lakh rupees, with imprisonment for a term which may extend to five years and with fine;*
- (ii) *in cases where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees but does not exceed five hundred lakh rupees, with imprisonment for a term which may extend to three years and with fine;*
- (iii) *in the case of any other offence where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds one hundred lakh rupees but does not exceed two hundred lakh rupees, 35 with imprisonment for a term which may extend to one year and with fine;*

- (iv) *in cases where he commits or abets the commission of an offence specified in clause (f) or clause (g) or clause (j), he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.*
- (2) *Where any person convicted of an offence under this section is again convicted of an offence under this section, then, he shall be punishable for the second and for every subsequent offence with imprisonment for a term which may extend to five years and with fine.*
- (3) The imprisonment referred to in clauses (i), (ii) and (iii) of sub-section (1) and sub-section (2) shall, in the absence of special and adequate reasons to the contrary to be recorded in the judgment of the Court, be for a term not less than six months.
- (4) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences under this Act, except the offences referred to in sub-section (5) shall be non-cognizable and bailable.
- (5) The offences specified in clause (a) or clause (b) or clause (c) or clause (d) of sub-section (1) and punishable under clause (i) of that sub-section shall be cognizable and non-bailable.
- (6) A person shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.
- Explanation.* — For the purposes of this section, the term “tax” shall include the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or refund wrongly taken under the provisions of this Act, the State Goods and Services Tax Act, the Integrated Goods and Services Tax Act or the Union Territory Goods and Services Tax Act and cess levied under the Goods and Services Tax (Compensation to States) Act.

132.1 Introduction

This section talks about cases of tax evasion and penal actions applicable on specific events subject to amount of tax sought to be evaded. This provision provides prosecution of offenders and the punishment initiated on them.

132.2 Analysis

- A. In this section the law makers have identified situations whereby there can be a leakage or revision of government revenue and have thus penned down 12 such situations of malafide intent which are as follows:
- (a) Supply of goods or services or both without the cover of invoice with an intent to evade tax;
 - (b) If any person issues any invoice or bill without actual supply of goods or services or both leading to wrongful input tax credit or refund of tax;
 - (c) Any person who avails input tax credit using invoice referred in point (b) above;
 - (d) Collection of taxes without payment to the government for a period beyond 3 months of due date;

- (e) Evasion of tax, availment of credit or obtaining refund with intent of fraud where such offence is not covered in clause (a) to (d) above.
- (f) Falsifying financial records or production of false records/ accounts/ documents/ information with an intent to evade tax;
- (g) Obstructs or prevents any officer from doing his duties under the act;
- (h) Acquires or transports or in any manner or deals with any goods which he knows or has reasons to believe are liable for confiscation under this Act or rules made thereunder;
- (i) Receives or in any way, deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this law;
- (j) Tamper with or destroys any material evidence or documents;
- (k) Fails to supply any information which he is required to supply under this law or supply false information;
- (l) Attempts or abets the commission of any of the offences mention above.

This section enables institution of prosecution proceedings against the offenders and the period of imprisonment and quantum of fine varies depending on the amount of tax evaded or seriousness of the offence listed below.

Amount of Tax evaded/ erroneous refund/ wrong ITC availed or utilized	Fine	Imprisonment
Exceeding ₹ 5 Crores	Yes	Upto 5 years
₹ 2 Crores – 5 Crores	Yes	Upto 3 years
₹ 1 Crores – 2 Crores	Yes	Upto 1 year

- B. If any person commits any offence specified in clause (f), (g) or (j) above, he shall be punishable with imprisonment for a term which may extend to six months or with fine or with both.
- C. In case of repetitive offences without any specific/special reason which is recorded in the judgment of the Court will entail an imprisonment term of not less than 6 months and which could extend to 5 years plus with a fine.
- D. All offences mentioned in this section are non-cognizable and bailable except the following cases:
 - a. Where the amount exceeds 5 Crores and
 - b. Instances covered by (a) to (d) in Para A.
- E. Every prosecution proceeding initiated requires prior sanction of the Commissioner.

132.3 Comparative Review

The old Central and State level indirect tax laws covers prosecution powers.

Statutory provision**133. Liability of Officers and certain other persons**

- (1) *Where any person engaged in connection with the collection of statistics under section 151 or compilation or computerisation thereof or if any officer of central tax having access to information specified under sub-section (1) of section 150, or if any person engaged in connection with the provision of service on the common portal or the agent of common portal, willfully discloses any information or the contents of any return furnished under this Act or rules made thereunder otherwise than in execution of his duties under the said sections or for the purposes of prosecution for an offence under this Act or under any other Act for the time being in force, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to twenty-five thousand rupees, or with both.*
- (2) *Any person—*
- (a) *who is a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Government;*
 - (b) *who is not a Government servant shall not be prosecuted for any offence under this section except with the previous sanction of the Commissioner.*

133.1 Introduction

This Section casts duties & obligations on the officers of the Goods and Service Tax Laws to keep the information collected either from the statistical data collected by the government or from the information furnished in the returns.

133.2 Analysis

Since the Officers of the department are dealing with sensitive information, the secrecy and security of such information is of utmost importance. If the officers who are dealing with the statistical data or data collected from the information returns, he has to maintain utmost secrecy of the same.

If the officer willfully discloses such information or contents by any reason other than by reason of his duties cast upon him under the Act, he shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to Rs. 25,000 or both.

Further any the prosecution under this section would be carried out with the prior sanction of the Government in case of prosecution of a Government Servant and with the sanction of Commissioner in case of others.

Statutory provision**134. Cognizance of offences**

No Court shall take cognizance of any offence punishable under this Act or the rules made thereunder except with the previous sanction of the Commissioner, and no court inferior to that of a Magistrate of the First Class, shall try any such offence.

134.1 Introduction

This provision sets out the manner of taking cognizance of offences.

134.2 Analysis

Any offence under the Act or Rules can be tried only before a Court not lower than the Court of Judicial Magistrate First Class. Further, previous sanctions of the Commissioner is mandatory in every such case.

Statutory provision**135. Presumption of Culpable Mental State**

In any prosecution for an offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation. —For the purposes of this section, —

- (i) *the expression “culpable mental state” includes intention, motive, knowledge of a fact, and belief in, or reason to believe, a fact;*
- (ii) *a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.*

135.1 Introduction

In this section, the framers of law have cast the responsibility upon the shoulders of the one who is alleged of culpable mental state to prove otherwise.

135.2 Analysis

Now, once the law has stated that in case of any prosecution which requires the existence of a culpable mental state, the Court would presume the existence of it.

Under the old revenue laws, the burden to prove was on the one who alleges it. The Hon'ble Supreme Court in the case of *Uniworth Textiles Limited vs. Commissioner of Central Excise, Raipur* [(2013) 31 taxmann.com 67 (SC)] stated that “*Burden to prove invocation of extended period on Department. The assessee cannot be asked to bring evidence to prove his bona fide. Similarly it is a cardinal postulate of law that the burden of proving any form of mala fide lies on the shoulders of the one alleging it.*”

The accused can prove that he had no such mental state in respect of a particular act for which he is charged. The expression “Culpable Mental State” is defined inclusively to cover “intent, motive, knowledge of fact, belief in or reason to believe”. It also covers facts which exist beyond a reasonable doubt and not based on probabilities.

Hence, a very landmark judgement of the Hon'ble Supreme Court would lose its relevance in the cases covered by this section.

135.3 Comparative Review

Section 9C of the Central Excise law has a identical provision. Under the old laws the onus to prove non-existence of Culpable Mental State is cast on the assessee only.

Statutory provision**136. Relevancy of statements under certain circumstances**

A statement made and signed by a person on appearance in response to any summons issued under section 70 during the course of any inquiry or proceedings under this Act shall be relevant, for the purpose of proving, in any prosecution for an offence under this Act, the truth of the facts which it contains, —

- (a) *when the person who made the statement is dead or cannot be found, or is incapable of giving evidence, or is kept out of the way by the adverse party, or whose presence cannot be obtained without an amount of delay or expense which, under the circumstances of the case, the court considers unreasonable; or*
- (b) *when the person who made the statement is examined as a witness in the case before the court and the court is of the opinion that, having regard to the circumstances of the case, the statement should be admitted in evidence in the interest of justice.*

136.1 Introduction

This provision deals with relevancy of statements and documents recorded or deposed during investigation proceedings.

136.2 Analysis

A Statement recorded during an investigation proceedings or inquiry will be relevant to prove the truthfulness of facts when:

- (a) It is made by a person who is not available in Court on account of his death, incapacity, prevention by another party or when he absconds; or when presence cannot be obtained without an amount of delay or expense which , under the circumstances of the case , the court considers unreasonable or
- (b) The Court consider the statement as an evidence on examination of the person as a witness.

136.3 Comparative review

Similar provisions was traceable to section 9D of the Central Excise Act, 1944.

Statutory provision**137. Offences by Companies**

- (1) *Where an offence committed by a person under this Act is a company, every person who, at the time the offence was committed was in charge of, and was responsible to, the company for the conduct of business of the company, as well as the company, shall*

be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

- (2) *Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any negligence on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.*
- (3) *Where an offence under this Act has been committed by a taxable person being a partnership firm or a Limited Liability Partnership or a Hindu undivided family or a trust, the partner or karta or managing trustee shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly and the provisions of sub-section (2) shall, mutatis mutandis, apply to such persons.*
- (4) *Nothing contained in this section shall render any such person liable to any punishment Provided in this Act, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.*

Explanation. —For the purposes of this section, —

- (i) *“company” means a body corporate and includes a firm or other association of individuals; and*
- (ii) *“director”, in relation to a firm, means a partner in the firm.*

137.1 Introduction

This section lowers down heavily on the persons who take shelter on the principle of separate legal status of artificial judicial persons and back out of their responsibility of payment of dues of the Government.

137.2 Analysis

This section states that where an offence is committed by companies, every person/director/manager/secretary or any other officer who at the time of commitment of the offence, was in charge of and was responsible to the company for the conduct of business of the company, as well as the company shall be deemed to be guilty of such offence and shall be liable to be proceeded against and punished accordingly.

Where such offences are committed by the person being Partnership Firm, LLP, HUF or trust, then the partner or Karta or Managing Trustee (as the case may be) shall be deemed to be guilty and liable to be proceeded against and punished.

Further, if the accused person proves that he was in no way related to the offence being committed or he had exercised all possible measures to prevent commission of such offences, then he is not punishable under this section.

137.3 Comparative Review

These provisions are comparable to section 9AA of the Central Excise Act, 1944 as well as several State level VAT legislations with few exemptions to persons who can be prosecuted. The provision as regards LLP, HUF, Trust are new developments.

Statutory provision**138. Compounding of Offences**

- (1) Any offence under this Act may, either before or after the institution of prosecution, be compounded by the Commissioner on payment, by the person accused of the offence, to the Central Government or the State Government, as the case be, of such compounding amount in such manner as may be prescribed:

Provided that nothing contained in this section shall apply to—

- (a) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f) of sub-section (1) of section 132 and the offences specified in clause (l) which are relatable to offences specified in clauses (a) to (f) of 35 the said sub-section;
- (b) a person who has been allowed to compound once in respect of any offence, other than those in clause (a), under this Act or under the provisions of any State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act or the Integrated Goods and Services Tax Act in respect of supplies of value exceeding one crore rupees;
- (c) a person who has been accused of committing an offence under this Act which is also an offence under any other law for the time being in force;
- (d) a person who has been convicted for an offence under this Act by a court;
- (e) a person who has been accused of committing an offence specified in clause (g) or clause (j) or clause (k) of sub-section (1) of section 132; and
- (f) any other class of persons or offences as may be prescribed:

Provided further that any compounding allowed under the provisions of this section shall not affect the proceedings, if any, instituted under any other law:

Provided also that compounding shall be allowed only after making payment of tax, interest and penalty involved in such offences.

- (2) The amount for compounding of offences under this section shall be such as may be prescribed, subject to the minimum amount not being less than ten thousand rupees or fifty per cent of the tax involved, whichever is higher, and the maximum amount not being less than thirty thousand rupees or one hundred and fifty per cent. of the tax, whichever is higher.

- (3) *On payment of such compounding amount as may be determined by the Commissioner, no further proceedings shall be initiated under this Act against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.*

138.1 Introduction

This provision deals with compounding of offences by payment of the prescribed compounding fees

138.2 Analysis

- (a) Compounding of an offence means payment of a sum of money in monetary terms instead of undergoing prosecution. Application for compounding of an offence can be either before or after institution of the prosecution proceedings.
- (b) Compounding of an offence is understood as a comparison between the offender and the tax department and is not an agreement or contract.
- (c) Specified offences can be compounded only once.
- (d) As per Rule 162 of the GST Law, the application of compounding shall be filed in FORM GST-CPD-01.
- (e) On receipt of the application, the commissioner shall call for a report from the concerned officer with reference to the particulars furnished in the application or any other relevant information for the examination of such application

After providing opportunity of being heard to the applicant and taking into account the contents of the application, if satisfied that the applicant has co-operated in the proceedings before him and has made full and true disclosure of facts relating to the case. Commissioner may by order in FORM GST-CPD-02 allow the application indicating the compounding amount and grant him immunity from prosecution or reject such application within 90 days of the receipt of the application stating the grounds of rejection.

However, the application shall not be allowed unless the tax, interest and penalty liable to be paid in case for which the application has been made.

- (f) Immunity granted to applicant may , at any time be withdrawn by Commissioner , if he is satisfied that such person had, in the course of compounding proceedings , concealed any material particulars or had given false evidence . Thereupon such person may be tried of the offence with respect to which immunity was granted or for any other offence that appears to have been committed by him in connection with the compounding proceedings and the provision of the act shall apply as if no such immunity has been granted.
- (g) The applicant, within a period of 30 days from the date of receipt of order allowing compounding, shall pay the compounding amount as ordered by the commissioner and

shall furnish the proof of such payment to him. However, if the applicant fails to pay the compounding amount within the time specified then the order of commissioner shall be vitiated and be void.

- (h) On payment, the proceedings indicated will abate and no criminal proceedings can be launched.
- (i) The amount of compounding of offences under this section shall be such as may be prescribed, subject to
 - The minimum amount not being less than Rs. 1000 or 50% of tax whichever is higher and
 - The maximum amount not being less than Rs. 30000 or 150% of tax whichever is higher.
- (j) Compounding of offences is not permissible to the following offences:
 - (i) A person who has compounded once in respect of supply value exceeding Rs. One Crore.
 - (ii) A person who is convicted by a Court under this Act.
 - (iii) Prescribed class of persons,
 - (iv) A person permitted to compound offences in terms of section 132.
 - (v) A person who has been accused of committing an offence under this act which is also an offence under this Act which is also an offence under any other law for the time being in force ..
 - (vi) A person who has been accused of committing an offence in section 132(1) (g) or

Chapter-XX

Transitional Provisions

- 139. Migration of existing taxpayers
- 140. Transitional arrangements for input tax credit
- 141. Transitional provisions relating to job work
- 142. Miscellaneous transitional provisions

Statutory provision

139. Migration of existing Tax Payers

- (1) *On and from the appointed day, every person registered under any of the existing laws and having a valid Permanent Account Number shall be issued a certificate of registration on provisional basis, subject to such conditions and in such form and manner as may be prescribed, which unless replaced by a final certificate of registration under sub-section (2), shall be liable to be cancelled if the conditions so prescribed are not complied with.*
- (2) *The final certificate of registration shall be granted in such form and manner and subject to such conditions as may be prescribed.*
- (3) *The certificate of registration issued to a person under sub-section (1) shall be deemed to have not been issued, if the said registration is cancelled in pursuance of an application filed by such person that he was not liable to registration under section 22 or section 24.*

139.1 Introduction

This transitory provision deals with migration of existing registrants into the GST regime. All existing registrants having a valid Permanent Account Number will be issued provisional registration certificate. After furnishing the required information a final certificate of registration will be granted. If the information is not furnished, the registration is liable to be cancelled.

139.2 Analysis

As part of implementation of GST, the existing tax payers / registrants having a valid PAN would be granted provisional registration certificates under the GST law. The details are as follows:

- (i) The existing tax payer, other than a person deducting tax or an Input Service Distributor (ISD), who were registered under various earlier Indirect Tax Laws are liable to be registered under GST with effect from the appointed day, when the relevant sections of CGST Act came in to force. Such taxpayer shall declare his Permanent Account Number (PAN), mobile number, e-mail address, State or Union territory and shall enroll himself for getting the provisional registration certificate.

- (ii) On successful verification of the PAN, mobile number and e-mail address, an application reference number (ARN) shall be generated and communicated to the applicant on the said mobile number and e-mail address.
- (iii) Upon enrolment, the said person will be granted a provisional registration certificate in Form GST REG-25, incorporating the Provisional ID (GSTIN) and Password, which will be available on the GST common portal. (<https://www.gst.gov.in/>)
- (iv) A person having a single PAN in a State or UT shall be granted only one provisional registration certificate although he may hold multiple registrations under the erstwhile central and State laws
- (v) A person who holds a provisional certificate of registration is required to furnish certain information in Form GST REG-26, within a period of 3 months or as extended by the commissioner. The date has been extended till 31st Dec, 2017 vide order No. 6/2017 - GST dt. 28/10/2017.
- (vi) If the information furnished is correct and complete, Final Registration Certificate in Form GST REG 06 will be issued, within 6 months of the appointed day.
- (vii) If the and/or information has not been furnished or not found to be correct or complete, the proper officer shall cancel the provisional registration and issue an order in Form GST REG-28 cancelling the registration after serving a show cause notice in Form GST REG-27 and affording the person concerned a reasonable opportunity of being heard.
- (viii) Once the information specified in sub rule 2C has been furnished and no notice has been issued sub rule 3 within a period of 15 days from the period of furnishing of the information, the registration shall be deemed to have been granted and the registration certificate will be made available on the common portal. The SCN issued in form 27 can be withdrawn by an order in Form GST REG 20, if it is found subsequently, after affording the person an opportunity of being heard, that no cause as specified in the notice exists.
- (ix) Every existing taxpayer / registrant, who is not liable to be registered under the Act, may at his option, on or before 31st December, 2017, ¹ file electronically an application in Form GST REG-29 at the Common Portal for cancellation of the registration granted provisionally to him and the proper officer shall, after conducting such enquiry as deemed fit, cancel the said provisional registration.
- (x) A person to whom provisional certificate is issued and who is eligible to pay tax under composition, may opt to do so by filing electronically an intimation, in Form GST CMP-01 within 30 days after the appointed day, or such further period as may be extended by the Commissioner in this behalf. This period was extended to 16th August, vide *Notification no. 1/2017- GST dated 21-07-2017*. In case the said person does not file Form GST CMP-01 within the above specified time and if he wants to opt for composition under section 10, subsequently during the year 2017-18, he shall electronically file an intimation in Form GST CMP-02 before 31st March, 2018. He can

¹ Notification No. 51/2017 CT dt. 28.10.2017

opt to pay tax under section 10 w.e.f. the 1st day of the next month on wards. Such persons shall furnish statement of stock in Form GST ITC-03 within a period of 90 days from the day on which he commences to pay tax under section 10. The above persons who have filed the intimation and statement as above shall not be allowed to file Form GST TRAN-01, after furnishing Form GST ITC-03.

- (xi) It is pertinent to note here that as per Rule 5(1)(b), the person who prefers to file CMP-01 shall not hold any goods in stock on the appointed day;
- i. that have been purchased in the course of interstate trade or;
 - ii. imported from outside India, or
 - iii. received from his branch, agent or principal situated outside the state;

However, this restriction regarding the holding the stock received from outside the state is not applicable in the case of persons opting to pay tax under Section 10 by filing Form GST CMP-03

- (xii) A Special Economic Zone Unit or a Special Economic Zone Developer shall make a separate application for registration as a business vertical distinct from its other units located outside the SEZ.
- (xiii) Person desiring multiple business vertical registration must also follow the above steps of migrating to GST and then apply for separate registration of the other business vertical. In case one line of business is exempt and another taxable, it is not possible to obtain business vertical registration for the taxable business only and to leave the exempt business from registration and thereby from compliances requirements (including reverse charge). Business vertical registration refers to the 'subsequent' registration of a taxable person who is registered in the first place.

139.3 Comparative review

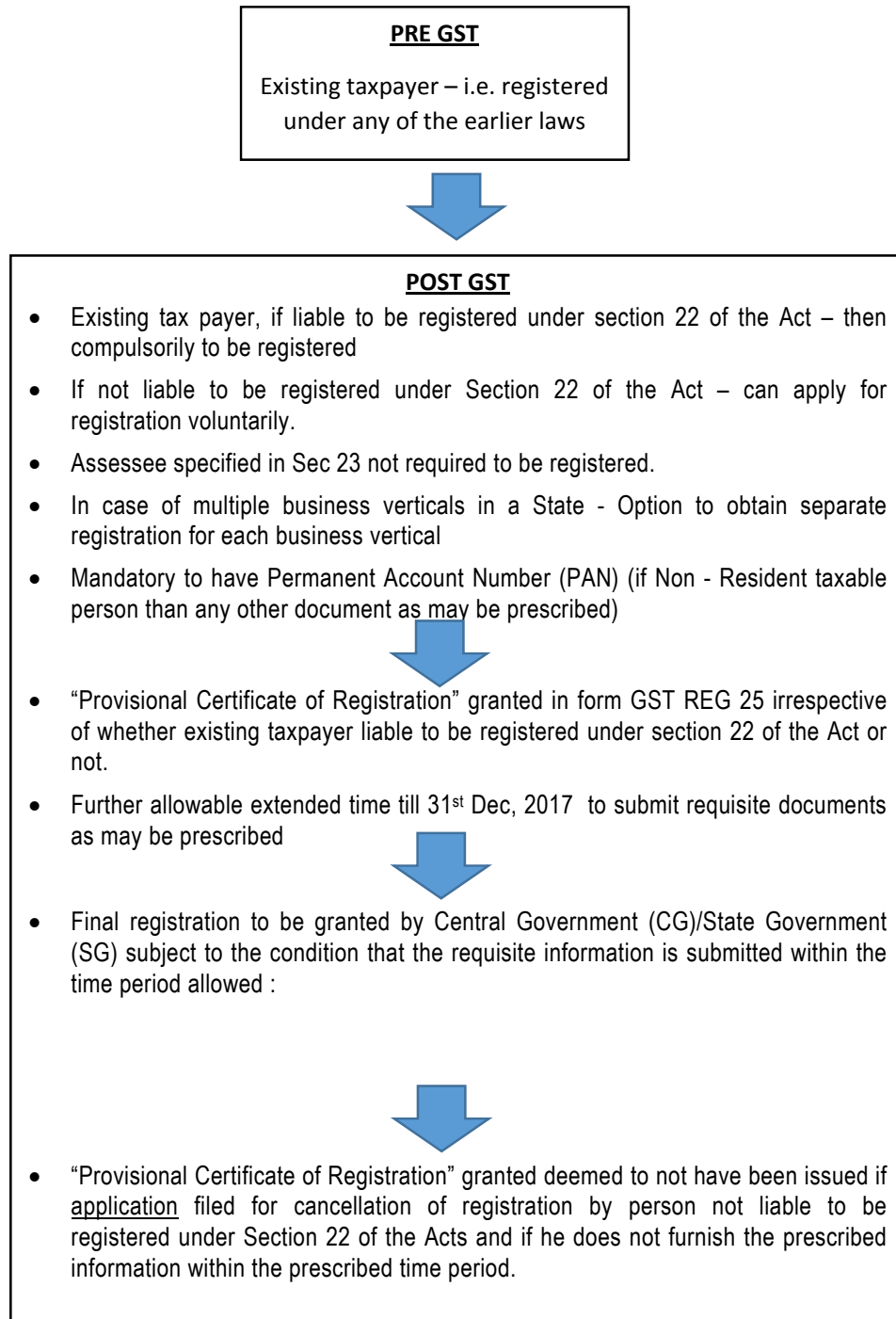
This provision is broadly comparable to the provisions relating to migration of registrations from the erstwhile Sales Tax to the Value Added Tax at the time of introduction of VAT law, in 2004/2005.

139.4 Related provisions

Section	Description	Remarks
Section 22	Registration	Persons liable for registration
Section 23	Registration	Persons not liable for registration
Section 24	Registration	Compulsory registration in certain cases; irrespective of the threshold limit specified under section 22.
Section 28	Amendment of registration	Every registered taxable person shall inform the proper officer of any changes in the information furnished at the time of registration, or furnished subsequently, in the manner and within such period as may be prescribed.

Section	Description	Remarks
		The proper officer may, on the basis of information furnished under sub-section (1) or as ascertained by him, approve or reject amendments in the registration particulars in the manner and within such period as may be prescribed: Provided that approval of the proper officer shall not be required in respect of amendment of such particulars as may be prescribed.
Section 29	Cancellation of Registration	The proper officer may, either on his own motion or on an application filed by the registered person or by his legal heirs, in case of death of such person, cancel the registration, in such manner and within such period as may be prescribed.
Section 30	Revocation of cancellation of registration	The registered person whose registration is cancelled by the proper officer, may apply to such officer for revocation of cancellation of the registration in the prescribed manner within thirty days from the date of service of the cancellation order.
Rule 3 of CGST Rules, 2017	Intimation for Composition levy	The migrated person may file Form GST CMP-01 or CMP-02 to opt for payment of tax under section 10.
Rule 24 of CGST Rules, 2017	Migration of persons registered under the erstwhile law.	Every person registered under the erstwhile indirect tax laws shall be provided with a provisional certificate of registration after enrolling under GST.

Pictorially, an analysis of this transitional provision can be presented as follows:



139.5 FAQs

- Q1. What is the criteria for issuing provisional registration?
- Ans: Every person registered under any of the earlier laws and having a valid PAN will be issued a certificate of registration, provisionally.
- Q2. When is the final registration certificate issued replacing the provisional one?
- Ans: The holder of the provisional certificate is required to furnish application in form GST REG 26 within a period of three months, along with all documents as mentioned in form REG 26.
- Q3. What happens if the prescribed documents are not furnished within the prescribed time?
- Ans: If the person fails to furnish the prescribed information/documents within the specified time, the certificate of registration provisionally issued may be cancelled.
- Q4. Whether the GST Registration for existing registered dealer shall be taken by submission of required documents or will it be done automatically?
- Ans: Requisite data has to be submitted on GSTN portal and only then registration will be granted. A provisional registration will be granted which will be made final upon submission of additional information/documents after the appointed date. Refer Rule 24 of CGST Rules 2017
- Q5. Can a person who is registered under the earlier law opt out of GST voluntarily?
- Ans: Yes, by making an application in Form GST REG 29 within 30 days from appointed date, a person can opt out of GST. Refer Rule 24(4) of CGST Rules, 2017.
- Q6. What will happen to the provisional registration if the person claims to be not liable for registration under GST?
- Ans: The provisional certificate shall be deemed to have not been issued if the said registration is cancelled in pursuance of an application filed by such person stating that he was not liable to registration.
- Q7. What will be the position of the provisional registration of a composite dealer? Will he remain as composite dealer even after the appointed day?
- Ans: No. Even existing composite taxpayer has to specifically apply for composition tax within 30 days from the appointed date and the receipt of provisional certificate will not be considered as automatic transition to composite scheme.
- Q8. Can a VAT dealer opt for composition scheme after the time prescribed?
- Ans: If a registered taxable person does not opt to pay tax under composition scheme within the specified time, he shall be liable to pay tax under regular scheme.
- Q9. What happens if the tax payer has distinct VAT registrations in the same State?
- Ans: The transitional provisions will allot only one registration certificate in each state based on single PAN even though such person had multiple registrations in the state. He can have distinct registrations in the same State by way of an option only if the business units qualify as business verticals under the GST law.

Q10. What happens to the distinct registrations obtained under the Central Excise and Service Tax laws for the different business premises and units in the same state?

Ans: All business units/ premises registered either under the Central Excise or Service Tax law will be consolidated into a single CGST registration for that State, unless these units qualify as distinct business verticals under the GST law.

139.6 MCQs

Q1. Should an existing tax payer surrender his registration certificate for obtaining the GST registration?

- (a) Yes, all registration certificates shall be surrendered;
- (b) No. Provisional registration is automatic;
- (c) Migrated to provisional registration only on verification of documents;
- (d) No. Final registration is automatic.

Ans: (b) No. Provisional registration is automatic

Q2. Is PAN mandatory for migration to provisional GST registration?

- (a) Yes
- (b) No
- (c) PAN application is sufficient
- (d) Exempted may be given by the proper officer

Ans: (a) Yes

Q3. Should the composition dealer under the old law require to obtain final GST registration?

- (a) Yes, mandatory for all composition dealers
- (b) Yes, subject to his turnover crossing the threshold under GST
- (c) No, the old number will continue
- (d) No, will be governed by old law.

Ans: (b) Yes, subject to his turnover crossing the threshold under GST

Statutory Provision

Section	Particulars
140 (1)	<i>Carry forward of tax credit claimed in the tax returns</i>
140 (2)	<i>Carry forward of unavailed tax credit in relation to capital goods</i>
140 (3)	<i>Carry forward of tax credit by a registered person, who was not liable to be registered under the erstwhile law like dealing in exempted goods under erstwhile law but the same has become liable under GST.</i>
140 (4)	<i>Carry forward of tax credit by a registered person, who was engaged in the manufacture of taxable as well as exempted goods or provision of taxable as well as exempted service but which are liable to tax under GST.</i>
140 (5)	<i>Tax credit in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the erstwhile law.</i>
140 (6)	<i>Carry forward of tax credit by a registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the erstwhile law.</i>
140 (7)	<i>Tax credit on account of any services received prior to the appointed day by an ISD.</i>
140 (8)	<i>Carry forward of tax credit in case of service provider registered on centralised basis</i>
140 (9)	<i>Tax credit reversed due to non-payment of the consideration within a period of three months under Finance Act, 1994</i>
140 (10)	<i>The amount of credit under sub-sections (3), (4) and (6) shall be calculated in such manner as may be prescribed.</i>

140(1)-Amount of CENVAT credit carried forward in the return allowed as input tax credit.

A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, furnished by him under the erstwhile law in such manner as may be prescribed.

Provided that the registered person shall not be allowed to take credit in the following circumstances, namely:—

- (i) where the said amount of credit is not admissible as input tax credit under this Act; or*
- (ii) where he has not furnished all the returns required under the existing law for the period of six months immediately preceding the appointed date; or*

(iii) where the said amount of credit relates to goods manufactured and cleared under such exemption notifications as are notified by the Government

140.1.1 Introduction

This transition provision enables a taxable person to carry forward unutilized input credit under the CENVAT Credit Rules, 2004.

140.1.2 Analysis

The amount of any input credit carried forward in a return, which is unutilized under the erstwhile tax regime may be carried forward into the GST regime except in the case of a person who opts to pay tax under composition scheme in a GST regime.

- The said credit will be allowed to be carried forward to the GST regime, if the following conditions are satisfied:
 - (1) The said credit is admissible as input tax credit under the provisions of the CGST Act;
 - (2) The registered person has furnished all the returns required under the erstwhile law for the period of six months immediately preceding the appointed date.
 - (3) Input tax credit does not relate to goods manufactured and cleared under exemption notifications as are notified by the Government.
 - (4) Input tax credit carried forward will not be allowed if such credit relates to goods manufactured and cleared under exemption notifications as notified by the government. No such list of notification are identified (as yet) by the Government.

Rule 117(1) prescribes the manner of claiming transition credit by filing the prescribed information on the Common Portal

Particulars	CGST
Credit to be carried forward	CENVAT credit
Relevant law	CENVAT Credit Rules, 2004
Laws to be subsumed and the relevant credit	Central Excise Service tax
Input Tax Credit to be carried forward	<ul style="list-style-type: none"> — Central Excise paid on 'inputs' /capital goods — Countervailing duty paid on 'inputs'/capital goods — Special Additional Duty paid on 'inputs' /capital goods in case of manufacturers — Service tax paid on 'input services' – both direct or reverse charge
Conditions	<ul style="list-style-type: none"> — The said credit is admissible as input tax credit under the provisions of the CGST Act ; — The registered person has furnished all the returns required under the erstwhile law for the

Particulars	CGST
	<p>period of six months immediately preceding the appointed date;</p> <p>— The said credit does not relate to goods manufactured and cleared under such exemption notifications as are notified by the Government;</p> <p>— Must have been reflected as input credit carried forward in the return filed for the last month / period under the erstwhile law, viz., last monthly return or quarterly return or the half yearly return, as the case may be.</p>
Form in which the credit would be availed under the GST Law	Would be available as a credit in the CGST Electronic Credit Ledger of the tax payer.
Procedure for claiming the credit [Rule 117(1)]	<p>i) Submit declaration in Form GST TRAN-1 electronically;</p> <p>ii) Due date for filing TRAN-1 is within 90 days of the appointed day;</p> <p>iii) Provided that the Commissioner may extend the period of 90 days by a further period of not exceeding 90 days.</p> <p>iv) Accordingly, the Commissioner has extended period of filing TRAN-1 by 27/12/2017 vide order No. 9/2017-GST dt. 15.11.2017.</p> <p>v) TRAN-1 may be revised once [Rule No. 120A] within the prescribed time limit.</p> <p>vi) By order No.10/2017-GST dt. 15/11/2017, the Commissioner has prescribed the time limit for revision as 27th, December, 2017.</p>

Illustration 1: GST is applicable from 1st July, 2017 and the amount of credit as per the return for the period ending 30th June, 2017 is as follows:

Particulars of Input tax Credit	Credit amount as per return
Central Excise	200,000
Service Tax	100,000
Education Cess	10,000
Secondary and Higher Education Cess	5,000
Krishi Kalyan Cess	5,000
Swachh Bharat Cess	5000
Additional Duty u/s 3(1) of CTA – CVD	40,000

Additional Duty u/s 3(5) of CTA – SAD	30,000
Input Tax Credit under VAT	50,000
Total	445,000

What will be the amount of CGST to be brought forward as per the GST Law as on 1st July, 2017?

Ans. The amount of CGST to be brought forward on 1st July, 2017 will be calculated as follows:

A. If the tax payer is a Manufacturer

CGST Components	CGST Value
Central Excise	200,000
Service Tax	100,000
Education Cess	-
Secondary and Higher Education Cess	-
Additional Duty u/s 3(1) of CTA	40,000
Additional Duty u/s 3(5) of CTA	30,000
Krishi Kalyan Cess	-
Total CGST	370,000

Note:

1. Swachh Bharat Cess and Krishi Kalyan Cess will not be allowed to be carried forward.
2. Input credit under VAT will not be allowed to be carried forward as CGST, but allowed as SGST.
3. Credit of EC and SHEC shall not be allowed to be carried forward.

Explanation:

For the purposes of this Chapter, the expressions “capital goods”, “Central Value Added Tax (CENVAT) Credit”, “first stage dealer”, “second stage dealer” or “manufacture” shall have the same meaning as respectively assigned to them in the Central Excise Act, 1944 (1 of 1944) or the rules made thereunder.

Considering the above explanation, the term CENVAT Credit shall have the same meaning as has been assigned under the provisions of Central Excise Act, 1944 or rules made thereunder. In view of Rule 3 of CENVAT Credit Rules, 2004, the term ‘CENVAT Credit’ also includes Krishi Kalyan Cess. Accordingly, on a combined reading of aforesaid Explanation and Rule 3 of CENVAT Credit Rules, 2004, it appears that Credit of KKC may be carried forward. However, at the same time it will be pertinent to highlight that there is a restriction that credit of KKC can be utilized for payment of KKC only and since such KKC is not being separately levied under GST, thus the availment of same can be doubtful. Further, there is doubt whether KKC and SBC form part of

'Cenvat Credit' would be denied as it is not included in list of "eligible duties and taxes" as provided in Explanation to section 140. Please see response on the twitter handle of Government:



KKc credit not available after 30th June

MoHiT PoRwAL @porwalmohit

@askGST_Gol what will the position of credit available towards Krishi Kalyan Cess as on 30 June 2017?

Source: https://twitter.com/askGST_Gol/status/885325386715774976

Thus, in view of the aforesaid interpretations being considered by various experts, registered persons who were registered under erstwhile laws and are required to file their last returns under those laws and take note only the closing balance of credit in the said last returns will only be available to be brought forward into GST regime. It appears there is a good argument against bifurcating this brought forward balance of credit into the various sources – ED, ST, KKC, SBC, EC, SHEC – as all of them as 'Cenvat Credit' according to the last returns under the earlier laws. Caution is advisable in view of the implications of the alternate view being taken by the tax administration.

B. If the tax payer is a Service Provider

CGST Components	CGST Value
Central Excise	200,000
Service Tax	100,000
Education Cess	-
Secondary and Higher Education Cess	-
Krishi Kalyan Cess	-
Additional Duty u/s 3(1) of CTA-CVD	40,000
Total CGST	3,40,000

Note:

1. Service Provider not entitled to avail credit of SAD, Swachh Bharat Cess.
2. Additional Duty u/s 3(1) of CTA – CVD will be available if it is paid on import purchase of specified goods.
3. Credit of EC and SHEC shall not be allowed to be carried forward.

140.1.3 FAQ

Q1. A person who is registered under service tax as well as under Central Excise and having unavailed cenvat credit in central excise return, has not filed his service tax returns. Whether he can carry forward the unavailed cenvat credit as per the last central excise return to GST regime?

Ans: No. Credit cannot be taken unless he has furnished all the returns required under the erstwhile law for the period of six months immediately preceding the appointed date.

140.1.4 Related provisions

Section	Description
Section 2(107)	Meaning of taxable person
Section 2(46)	Definition of Electronic Credit Ledger
Section 16 to 21	Input tax credit
Section 2(48)	Meaning of Existing law

Statutory Provision

140(2). Credit of unavailed CENVAT credit in respect of capital goods, not carried forward in a return, shall be allowed.

A registered person, other than a person opting to pay tax under section 10, shall be entitled to take, in his electronic credit ledger, credit of the unavailed CENVAT credit in respect of capital goods, not carried forward in a return, furnished under the existing law by him, for the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that the registered person shall not be allowed to take credit unless the said credit was admissible as CENVAT credit under the existing law and is also admissible as input tax credit under this Act.

Explanation - For the purposes of this sub-section, the expression "unavailed cenvat credit" means the amount that remains after subtracting the amount of CENVAT credit already availed in respect of capital goods by the taxable person under the existing law from the aggregate amount of CENVAT credit to which the said person was entitled in respect of the said capital goods under the existing law.

140.2.1 Introduction

This transition provision enables a person to avail CENVAT credit of the balance amount (unavailed portion) in respect of capital goods, that has not been availed under the erstwhile laws. The unavailed portion of credit relating to capital goods under the erstwhile laws not carried forward through a return can be availed, provided such credits are admissible under the GST laws.

140.2.2 Analysis

A registered person (except person opting for composition scheme) shall be allowed to take the amount of CENVAT Credit on capital goods not carried forward in the return. However, the said credit should be admissible under the erstwhile law as well as under the provisions of the CGST Act. Rule 117(2) of CGST Rules, 2017 requires the information to be submitted in FORM GST TRAN-1 regarding the amount tax or duty availed and yet to be availed till the appointed day.

“Unavailed CENVAT credit” means the amount that remains after subtracting the amount of Cenvat credit already availed in respect of capital goods by the taxable person under the erstwhile law from the aggregate amount of Cenvat credit to which the said person was entitled to, in respect of the said capital goods under the erstwhile law.

- Under the CENVAT Credit Rules, 2004, in respect of eligible capital goods, credit is required to be claimed in 2 parts of 50% each. Credit to the extent of 50% maximum of the central excise duty paid ought to be claimed in the same financial year in which the capital goods are received and the balance 50% can be claimed in any subsequent years.
- Further, it needs to be noted that the capital goods referred above, means the goods as defined under Clause (a) of Rule 2 of CENVAT Credit Rules, 2004 and under GST Laws.

Eg 1: A manufacturer purchased a capital asset worth ₹ 11,25,000 (including excise duty of ₹ 1,25,000) on 5th May, 2017. In the month of June, 2017, he could avail CENVAT Credit to the extent of 50% only i.e. ₹ 62,500. The unavailed CENVAT Credit on capital goods as on 1st July, 2017 (appointed day) will be ₹ 125,000 – 62,500 = ₹ 62,500, which he will be eligible to claim under section 140(2).

Eg 2: CENVAT Credit on Capital Goods used outside the factory of manufacturer is not allowable². So, it will not be admissible as input tax credit in the GST Law either.

In terms of Rule 117 of CGST Rules, 2017 particulars relating to every item of capital goods in respect of tax/duty availed or utilised by way of credit under the erstwhile law shall be indicated. Similar details in respect of unavailed portion under the erstwhile laws shall also be stated. The details, conditions and documentation are as follows:

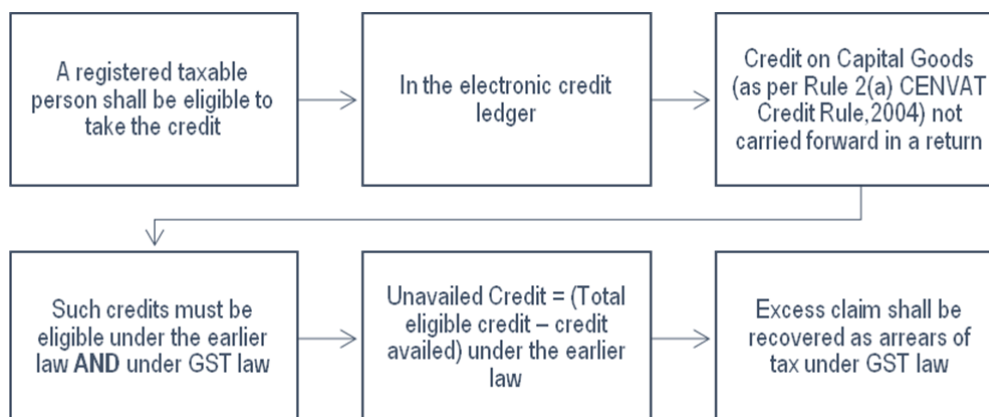
Particulars	CGST
Credit to be carried forward	CENVAT credit
Relevant law	CENVAT Credit Rules, 2004

² Madras Cement v. CCE (2003) 158 ELT 293 = 56 RLT 978 (CESTAT 3 member bench)

Particulars	CGST
Details of credit to be carried forward	<ul style="list-style-type: none"> — Central Excise paid on 'capital goods' — Countervailing duty paid on 'capital goods' — Special Additional Duty paid on 'capital goods'
Conditions	<ul style="list-style-type: none"> — Should qualify for eligible input credit under both, the erstwhile law and the GST law — Would be in respect of input credit which is not carried forward in the return filed for the last period under the erstwhile law
Form in which the credit would be availed under the GST law	<ul style="list-style-type: none"> — Would be available as a balance in the CGST electronic credit ledger of the tax payer.
Procedure for claiming the credit [Rule 117(1) & (2)]	<ul style="list-style-type: none"> (i) Submit declaration in Form GST TRAN1 electronically; (ii) Due date for filing TRAN-1 is within 90 days of the appointed day; (iii) Provided that the Commissioner may extend the period of 90 days by a further period of not exceeding 90 days. (iv) Accordingly, the Commissioner has extended period of filing TRAN-1 by 27/12/2017 vide order No. 9/2017-GST dt. 15.11.2017. (v) TRAN-1 may be revised once [Rule No. 120A] within the prescribed time limit. (vi) By order No.10/2017-GST dt. 15/11/2017, the Commissioner has prescribed the time limit for revision as 27th, December, 2017.

It must be clearly understood that CENVAT Credit can only be availed as CGST Credit in the respective Electronic Credit Ledger.

Pictorially this provision can be depicted as follows:



140.2.3 Related provisions

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 16 - 21	Manner of taking input tax credit
Section 79	Recovery of tax
Section 2(48)	Definition of Existing law
Central Tax Rules 117(1) & (2)	Tax or duty credit carried forward
Central Tax Rule 120A	Revision of declaration in TRAN-1

Statutory Provision

140(3). Credit of eligible duties in respect of inputs held in stock allowed in certain situations

A registered person, who was not liable to be registered under the existing law, or who was engaged in the manufacture of exempted goods or provision of exempted services, or who was providing works contract service and was availing of the benefit of Notification No. 26/2012-Service Tax, dated 20.06.2012 or a first stage dealer or a second stage dealer or a registered importer, or a depot of a manufacturer, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:-

- (i) *such inputs and / or goods are used or intended to be used for making taxable supplies under this Act;*
- (ii) *the said registered person is eligible for input tax credit on such inputs under this Act;*
- (iii) *the said registered person is in possession of invoice and/or other prescribed documents evidencing payment of duty under the existing law in respect of such inputs;*

(iv) such invoices and /or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day; and

(v) the supplier of services is not eligible for any abatement under the Act:

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.

Explanation. —The expression “eligible duties” means—

(i) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;

(ii) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;

(iii) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975

(iv) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;

(v) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;

(vi) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and

(vii) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001,

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day

140.3.1 Introduction

This transition provision sets out the conditions and procedure for availing input credit in respect of stock held on appointed day by certain registered taxable persons under the GST Law. Inputs which are held in stock and inputs contained in semi-finished / finished goods held in stock which were for manufacture of exempted goods under the earlier law have also been dealt with.

Registration under the GST law is mandatory to claim such credits.

140.3.2 Analysis

The following persons shall be entitled to take credit of eligible duties and taxes on inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the date on which this provision is made effective:

- not liable to be registered under the earlier law, or
- was engaged in the manufacture of exempted goods, or
- was engaged in the provision of exempted services, or
- was providing works contract service and was availing the benefit of notification No. 26/2012-Service Tax, dated 20.06.2012, or
- a first stage dealer or a second stage dealer or a registered importer or a depot of a manufacturer

The credit shall be allowed to the aforesaid taxable persons subject to the following conditions:

- Such inputs and/or goods are used or intended to be used for making taxable supplies under CGST Act.
- He is eligible for input tax credit on such inputs under CGST Act.
- He is in possession of invoice and/or other prescribed documents evidencing payment of duty under the earlier law in respect of such inputs,
- Which were issued not earlier than twelve months immediately preceding the date on which these provisions come into effect.
- That the supplier of services is not eligible for any abatement under the CGST Act.
- In terms of Rule 117(2)(b) of the CGST Rules, 2017 the application in Form GST TRAN-01 shall specify separately the details of stock held on the appointed day..

Availability of Credit to Trader who is not in possession of invoice evidencing payment of Central Excise Duty

- As per proviso to sub section (1), credit may be allowed to a trader even if he is not in a possession of such invoice/document disclosing payment of duty/tax.
- However, in such cases the person will have to follow the conditions specified below:-
- Credit shall be allowed at the rate of 40% (when GST Rate is less than 18%)/ 60% (when GST Rate is 18% or more), of the central tax applicable on supply of such goods after the appointed date and shall be credited after the central tax payable on such supply has been paid. This situation arises when invoice is raised under the erstwhile tax regime and supply happens in a GST regime.

Type of Supply from such Stock	Rate of Tax applicable	Quantum of credit* allowed
Intra-State Outward Supply	CGST @ 9% or more CGST @ below 9%	60% of the CGST paid 40% of the CGST paid
Inter-State Outward Supply	IGST @ 18% or more IGST @ below 18%	30% of the IGST paid 20% of the IGST paid

Amount shall be credited after the CGST payable on such supply has been paid (Rule 117(4)(a) of CGST)

The SGST Law of respective states also contain similar provisions, providing that a registered person, holding stock of goods which have suffered tax at the first point of their sale in the State and the subsequent sales of which are not subject to tax in the State, can avail credit on goods held in stock on the appointed day in respect of which he is not in possession of any document evidencing payment of VAT in accordance with the proviso to sub-section (3) of section 140.

Type of Supply from such Stock	Rate of Tax applicable	Quantum of credit* allowed
Intra-State Outward Supply	SGST @ 9% or more SGST @ below 9%	60% of the SGST paid 40% of the SGST paid
Inter-State Outward Supply	IGST @ 18% or more IGST @ below 18%	30% of the IGST paid 20% of the IGST paid

** Amount shall be credited after the SGST payable on such supply has been paid (Rule 117(4)(a) of SGST)*

Example:

Let us take an example of a trader 'D', who is the final dealer in the chain of supply.

A \Rightarrow B \Rightarrow C \Rightarrow D

(Paid VAT)

(Has VAT Paid Stock)

'D' holds the duty paid stock but does not have the duty paying documents for the same. In this case, 'D' can claim credit of such duty paid goods under Rule 117(4)(a) of SGST

- Such goods were not wholly exempt from duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985 or were not nil rated.
- The registered person is in possession of documents relating to procurement of goods.
- The stock of goods on which the credit is availed must be stored in a way that it can be easily identified.
- The scheme shall be available for six tax periods from the appointed date
- Registered person availing this scheme must furnish the details of stock held by him and submit a statement in FORM GST TRAN 2 at the end of each of the six tax periods during which the scheme is in operation indicating the details of supplies of such goods effected during the tax period.
- The amount of credit allowed shall be credited to the electronic credit ledger.
- Eligible Duties in respect of inputs held in stock and inputs contained in semi-finished or

finished goods held in stock on the day on which the CGST Act comes into force shall include the laws cited in the Section supra

Explanation

The expressions “Central Value Added Tax (CENVAT) credit” “first stage dealer”, “second stage dealer”, or “manufacture” shall have the same meaning assigned to them in the Central Excise Act, 1944 or the rules made there under.

Particulars	CGST
Credit to be carried forward	CENVAT credit
Relevant law	CENVAT Credit Rules, 2004
Specified duties which would be allowed as transitional credit	<ul style="list-style-type: none"> — Central Excise paid on ‘inputs’ specified in schedules I and II of CETA, 1985 — Countervailing duty paid on ‘inputs’ under Customs Tariff Act — Special Additional Duty paid on ‘inputs’ — National Calamity Contingent Duty paid on ‘inputs’ — AED paid under AED (Textile & Textile Articles) Act, 1978 on ‘inputs’ — AED paid under AED (Goods of Special Importance) Act, 1957 on ‘inputs’

It must be clearly understood that CENVAT Credit can only be availed as CGST Credit in the Electronic Credit Ledger. Details of stock held on the appointed date is required to be reported on the Common Portal.

It is important to note that use of the word ‘goods’ while referring to semi-finished and finished ‘goods’ in stock appears to restrict credit under section 140(3) only to ‘movable’ items of inventory. As a result, works contractors carrying WIP in the form of incomplete building or road or other immovable structure may not be allowed transition credit. There are two alternatives that may be considered (a) to pursue transition credit even in respect of such WIP citing the reference to ‘goods’ as being unintended error that undermines the substantive benefit sought to be allowed by the main provision or (b) accelerate the billing in respect of all WIP so as to discharge taxes under the earlier laws and pass on credit, where possible, to the customer (refer discussion under section 142(11) in respect of levy of taxes under earlier laws).

Similar provisions in the respective SGST Act may be followed in respect of credit of SGST.

Credit of eligible duties and taxes on input held in stock

140.3.3

Person eligible for input tax credit	Credit available on	Conditions
<ul style="list-style-type: none"> Person not liable to be registered under the earlier law 	<ul style="list-style-type: none"> Inputs held in stock and inputs contained in semi-finished goods or finished goods held in stock as on appointed day 	<ul style="list-style-type: none"> Goods must be used for taxable supply
<ul style="list-style-type: none"> Person engaged in manufacture/sale of exempted goods, provision of exempted services 	<ul style="list-style-type: none"> Above benefit not available for input services 	<ul style="list-style-type: none"> Eligible to take the credit under GST law
<ul style="list-style-type: none"> Person providing works contract service and availing abatement under notification no. 26/2012 	<ul style="list-style-type: none"> Such credit can be taken in the electronic credit ledger 	<ul style="list-style-type: none"> Such person should be in possession of invoice or other prescribed document
<ul style="list-style-type: none"> First/ Second stage dealer, 		<ul style="list-style-type: none"> Invoice or other document should be within 12 months from the appointed day
<ul style="list-style-type: none"> importer or 		<ul style="list-style-type: none"> Excess claims will be recovered as arrears of tax under GST law
<ul style="list-style-type: none"> a depot of a manufacturer 		

Related provisions

Section	Description	Remarks
Section 2(46) CGST Law	Definition of 'Electronic Credit Ledger'	Input tax credit will be taken in this document.
Section 2(108) CGST Law	Definition of Taxable supply	Only inputs intended to be used for taxable supplies are allowed as credit.
Section 16 to 21 CGST Law	Input tax credit	This is for determining the admissibility of Input tax credit under the GST law
Section 79 CGST Law	Recovery of tax	For recovery of arrears of tax under GST for demand arising from proceedings under earlier law

Rule 9(1) CENVAT Credit Rules 2004	Documents and Accounts	Contains the list of documents on the basis of which CENVAT Credit can be availed
Rule 2(d) CENVAT Credit Rules 2004	Definition of exempted goods	One of the possible pre-conditions in respect of category of person is engaged in manufacture/sale of exempted goods
Proviso to Rule 4(7) CENVAT Credit Rules 2004	Time limit for admissibility of CENVAT Credit	Similar time limit prescribed as one of the conditions for availment of credit under GST law
Rule 9 Central Excise Rules 2002	Registration under Central Excise	One of the possible preconditions in respect of category of persons is non-registration in earlier law.
Section 69(1) and Rule 4 Finance Act 1994 & Service Tax Rules	Registration under Service Tax	One of the possible preconditions in respect of category of persons is non-registration in earlier law.
Procedure for claiming the credit [Rule 117(1) (2) & (4)]		<p>(i) Submit declaration in Form GST TRAN-1 electronically;</p> <p>(ii) Due date for filing TRAN-1 is within 90 days of the appointed day;</p> <p>(iii) Provided that the Commissioner may extend the period of 90 days by a further period of not exceeding 90 days.</p> <p>(iv) Accordingly the Commissioner has extended period of filing TRAN-1 by 27/12/2017 vide order No. 9/2017-GST dt. 15.11.2017.</p> <p>(v) TRAN-1 may be revised once [Rule No. 120A] within the prescribed time limit.</p> <p>(vi) By order No.10/2017-GST dt. 15/11/2017, the Commissioner has prescribed the time limit for revision as 27th December, 2017.</p> <p>(vii) Submit statement in FORM GST TRAN-2 at the end of each of the tax periods during which the scheme is in operation.</p> <p>(viii) Amount of credit shall be credited to Electronic Credit Ledger maintained in the common portal in FORM GST PMT-2.</p>

Statutory Provision**140(4) Credit of eligible duties and taxes in respect of inputs held in stock allowed in certain situations**

- (1) *A registered person, who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of Finance Act, 1994, but which are liable to tax under this Act shall be entitled to take, in his electronic credit ledger,*
- (a) *the amount of Cenvat credit carried forward in a return furnished under the existing law by him in accordance with the provisions of sub-section (1); and*
 - (b) *the amount of Cenvat credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to such exempted goods or services, in accordance with the provisions of sub-section (3).*

Explanation. —The expression “eligible duties” means—

- (i) *the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;*
- (ii) *the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;*
- (iii) *the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975*
- (iv) *the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;*
- (v) *the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;*
- (vi) *the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and*
- (vii) *the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001,*

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day

140.4.1 Introduction

This transition provision sets out the provisions for availing input credit by a taxable person who was engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or engaged in provision of taxable as well as exempted services under Chapter V of Finance Act, 1994.

140.4.2 Analysis

This provision is applicable only for inputs (not capital goods) held in stock or in respect of

inputs contained in semi-finished goods or finished goods held in stock on the appointed day on 'ELIGIBLE DUTIES and the amount of cenvat credit carried forward in a return furnished under the erstwhile law by him.

This section mirrors the provisions of section 140(1) and 140(3) in respect of goods that were not taxable under the earlier law and become taxable in GST.

The definition of 'Eligible Duties' as stated in explanation 1 to Section 140 (10) cited supra is applicable here.

The claim of transitional credit under this Section is subject to the following conditions:

- (i) The person must be a registered person under the GST Laws.
- (ii) The taxable person must have been engaged in the manufacture of taxable as well as exempted goods under the Central Excise Act, 1944 or provision of taxable as well as exempted services under Chapter V of Finance Act, 1994.
- (iii) In terms of Sub Rule 2(b) of the Transition Provision Rules the application in Form GST TRAN -01 shall specify separately the details of stock held on the appointed day up to 6 tax periods indicating the details of supplies effected during each tax period.

The details of credit availment is as follows:

Particulars	CGST
Credit to be carried forward	Amount of CENVAT credit carried forward in a return furnished under earlier law in terms of section 140(1) Amount of Cenvat credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day, relating to exempted goods or services, in terms of section 140(3). Reference may be made in Section 140(3) for better understanding.
Relevant law	CENVAT Credit Rules, 2004
Form in which the credit would be available under the GST law	- Would be available as a balance in the electronic credit ledger of the tax payer.
Procedure for claiming the credit [Rule 117(1) & (2)]	(i) Submit declaration in Form GST TRAN-1 electronically; (ii) Due date for filing TRAN-1 is within 90 days of the appointed day; (iii) Provided that the Commissioner may extend the period of 90 days by a further period of not exceeding 90 days. (iv) Accordingly the Commissioner has extended period of filing TRAN-1 by 27/12/2017 vide order No. 9/2017-GST dt. 15.11.2017.

Particulars	CGST
	(v) TRAN-1 may be revised once [Rule No. 120A] within the prescribed time limit. (vi) By order No.10/2017-GST dt.15/11/2017, the Commissioner has prescribed the time limit for revision as 27th December, 2017.

140.4.3 Related provisions

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 16 to 21	Manner of taking input tax credit
Section 79	Recovery of tax
Central Tax Rules 117(1) & (2)	Tax or duty credit carried forward
Central Tax Rule 120A	Revision of declaration in TRAN-1

Statutory Provision**140(5). Credit of eligible duties and taxes in respect of inputs or input services during transit**

<p>(1) <i>A registered person shall be entitled to take, in his electronic credit ledger, credit of eligible duties and taxes in respect of inputs or input services received on or after the appointed day but the duty or tax in respect of which has been paid by the supplier under the existing law, subject to the condition that the invoice or any other duty or tax paying document of the same was recorded in the books of accounts of such person within a period of thirty days from the appointed day:</i></p> <p><i>Provided that the period of thirty 30 days may, on sufficient cause being shown, be extended by the commissioner for a further period not exceeding thirty days.</i></p> <p><i>Provided Further that said registered person shall furnish a statement, in such manner as may be prescribed, in respect of credit that has been taken under this sub-section.</i></p> <p><i>Explanation 2. —The expression “eligible duties and taxes” means—</i></p> <p>(i) <i>the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;</i></p> <p>(ii) <i>the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;</i></p> <p>(iii) <i>the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975;</i></p> <p>(iv) <i>the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;</i></p>
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- (v) *the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;*
 - (vi) *the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985;*
 - (vii) *the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001; and*
 - (viii) *the service tax leviable under section 66B of the Finance Act, 1994,*
- in respect of inputs and input services received on or after the appointed day.*

140.5.1 Introduction

This transition provision sets out the conditions and procedure for availing input credit in case of transactions that are spread over the transition period.

140.5.2 Analysis

(i) In any given business scenario it is possible that invoices are raised in the erstwhile tax regime and applicable taxes are also remitted under the erstwhile laws. However, inputs or input services in respect of such transactions are received in a GST regime. This provision removes the difficulty in clearing credits in such instances. In order to avail such credits in the Electronic Credit Ledger the following conditions need to be satisfied:

- (a) Invoices/duty paid documents must be recorded in the books within 30 days for the appointed date which may be extended by the commissioner for another 30 days on showing sufficient cause.
- (b) The recipient of inputs or input services must furnish a statement as follows:

In terms of Rule 117(2)(c) the said taxable person shall furnish the following details, vide FORM GST TRAN-1.

- (i) A statement indicating the name and address of the supplier together with invoice details.
- (ii) Description, quantity and value of goods or services.
- (iii) The amount of taxes, duties, VAT, Entry tax charged by the supplier.
- (iv) The date at which receipt of goods or services are entered in the books of the recipient.

The provision is saving clause in respect of 'goods in transit'.

Explanation – As per sec 140(10)

For the purpose of this sub section, the expression “eligible duties and taxes” means

- (1) the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985(5 of 1986);
- (2) the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985(5 of 1986);
- (3) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978 (40 of 1978);

- (4) the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957(58 of 1957);
- (5) the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001(14 of 2001);
- (6) the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);
- (7) the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975 (51 of 1975);
- (8) the service tax leviable under section 66B of the Finance Act, 1994.

140.5.3 Related provisions

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 16 to 21	Manner of taking input tax credit
Section 79	Recovery of tax
Central Tax Rules 117(1), (2c),	Tax or duty credit carried forward
Central Tax Rules 120A	Revision of declaration in TRAN-1
Central Tax Rules 121	Recovery of credit wrongly availed.

Statutory Provision**140(6). Credit of eligible duties and taxes on inputs held in stock to be allowed to a taxable person switching over from composition scheme**

- (1) *A registered person, who was either paying tax at a fixed rate or paying a fixed amount in lieu of the tax payable under the existing law, shall be entitled to take, in his electronic credit ledger, credit of eligible duties in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day subject to the following conditions, namely:*
- (i) *such inputs or goods are used or intended to be used for making taxable supplies under this Act;*
 - (ii) *the said registered person is not paying tax under section 10;*
 - (iii) *the said registered person is eligible for input tax credit on such inputs under this Act;*
 - (iv) *the said registered person is in possession of invoice or other prescribed documents evidencing payment of duty under the existing law in respect of inputs; and*

- (v) *such invoices or other prescribed documents were issued not earlier than twelve months immediately preceding the appointed day.*

Explanation. —The expression “eligible duties” means—

- (i) *the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957;*
- (ii) *the additional duty leviable under sub-section (1) of section 3 of the Customs Tariff Act, 1975;*
- (iii) *the additional duty leviable under sub-section (5) of section 3 of the Customs Tariff Act, 1975*
- (iv) *the additional duty of excise leviable under section 3 of the Additional Duties of Excise (Textile and Textile Articles) Act, 1978;*
- (v) *the duty of excise specified in the First Schedule to the Central Excise Tariff Act, 1985;*
- (vi) *the duty of excise specified in the Second Schedule to the Central Excise Tariff Act, 1985; and*
- (vii) *the National Calamity Contingent Duty leviable under section 136 of the Finance Act, 2001,*

in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock on the appointed day

140.6.1 Introduction

This transition provision sets out the conditions and procedure for availing input credit by a registered person who is switching over from composition scheme (paying tax at fixed rate or fixed amount) under the erstwhile laws to a regular scheme under the GST law.

140.6.2 Analysis

This provision is applicable only for inputs (not capital goods) held in stock or in respect of inputs contained in semi-finished goods or finished goods held in stock on the appointed day on ‘ELIGIBLE DUTIES’ The claim of transitional credit under this section is subject to the following conditions:

- (i) The person must be a registered person under the erstwhile law as well as GST Laws.
- (ii) He should have opted for payment of tax at a fixed rate or fixed amount in lieu of tax payable under the erstwhile law. Eg. Compounded Levy Scheme under central excise in case of aluminium/steel pattas/pattis, special service tax rates in case of insurers carrying on life insurance business, persons providing services in relation to purchase/sale of foreign currency including money changers
- (iii) Specified duties paid on ‘inputs’ would be allowed as input tax credit, in his Electronic Credit Ledger.

- (iv) The person should opt for payment of tax under the regular scheme under the GST law (cannot be a composition taxpayer u/s 10 of CGST Law).
- (v) The relevant inputs should be held in stock on the date of introduction of GST.
- (vi) Inputs may take any of the following forms –
 - (i) inputs as such (in the same form as it was procured / received – may be raw materials, consumables, packing materials, traded goods etc.),
 - (ii) may be contained in WIP or semi- finished goods or
 - (iii) may be contained in the finished goods.
- (vii) Such inputs must be used or intended to be used for making taxable supplies under the GST Laws.
- (viii) Such goods should qualify as eligible inputs under the GST law.
- (ix) The registered person should be in possession of the invoice and such other documents (as may be prescribed) that shall satisfy the following conditions:
 - (a) The invoice / other document should evidence the payment of duty / tax on such goods.
 - (b) The invoice should not be more than 12 months prior to the date of introduction of GST.
- (x) In terms of Rule 117(2) of CGST Rules, 2017 the application in FORM GST TRAN-1 shall specify separately the details of stock held on the appointed day.

140.6.3 Related provisions

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 10	Composition Dealer
Section 16 to 21	Manner of taking input tax credits
Rule 117(2) (b)	Transition Provision Rules under GST Laws
Central Tax Rules 117(1)	Tax or duty credit carried forward
Central Tax Rules 120A	Revision of declaration in TRAN-1
Central Tax Rules 121	Recovery of credit wrongly availed.

Statutory provisions

140(7). Credit distribution of service tax by Input Service Distributor.

Notwithstanding anything to the contrary contained in this Act, the input tax credit on account of any services received prior to the appointed day by an Input Service Distributor shall be eligible for distribution as credit under this Act even if the invoices relating to such services are received on or after the appointed day.

140.7.1 Introduction

- (i) This provision has an overriding effect over all other provisions under the GST law.

- (ii) This provision is applicable when:
 - (a) The services are received by the Input Service Distributor before the date of applicability of GST and
 - (b) Tax on such services have not yet been distributed by the Input Service Distributor on the date of applicability of GST.
 - (c) Invoices relating to such services are received on or after the appointed date.
- (iii) Such services will be eligible for distribution as credit under the GST law.
- (iv) Such provision will be applicable irrespective of the date of receipt of invoice by the Input Service Distributor.

140.7.2 Analysis

Input Service Distributor: This term has been defined under Section 2(61) of the CGST Law to mean “an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office.”

Explanation. - For distributing the credit of CGST (SGST in State Acts) and / or IGST or UTGST, Input Service Distributor shall be deemed to be a supplier of services.

Services: This term has been defined under Section 2(102) of the CGST law to mean “anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.”

Date of receipt of invoice is immaterial: In respect of the services received by the Input Service Distributor before the date of applicability of GST, the invoice can be received by the Input service distributor:

- (a) either before the date of applicability of GST; or
- (b) on the date of applicability of GST
- (c) after the date of applicability of GST

This section seeks to cover all the cases.

Date of receipt of services is crucial: For the purposes of this section, it is important that the underlying services must have been received prior to the appointed date.

Distribution of credit under GST Law: If any input service distributor:

- receives services before the date of applicability of GST; and
- such services are yet to be distributed on the date of applicability of GST, for want of invoice

- then irrespective of the date of the receipt of invoices by the Input Service Distributor
- the distribution of credit will be as per the GST law.

Manner of distribution of credit by Input Service Distributor: Section 20 of the CGST law provides the manner in which the credit will be distributed. Following are the key points for consideration:

- If the invoice is received by the Input Service Distributor before the date of applicability of GST, he can distribute the CENVAT Credit under the old law and carry forward this credit as CGST on the date of applicability of GST under section 140(1) of the CGST law. If he distributes the credit on or after the applicability of GST, he can take it as CGST or IGST depending on the nature of supply being intra State or inter-state respectively.
- If the invoice is received by the Input Service Distributor on or after the date of applicability of GST, he can distribute the credit in the form of CGST or IGST depending on the nature of supply being intra State or inter-state.
- If the Input Service Distributor and the recipient of credit are located in two different States, then the input tax credit of both CGST and IGST will be distributed as IGST.
- If the Input Service Distributor and the recipient of credit are located in the same State, then the input tax credit of both CGST and IGST will be distributed as CGST.

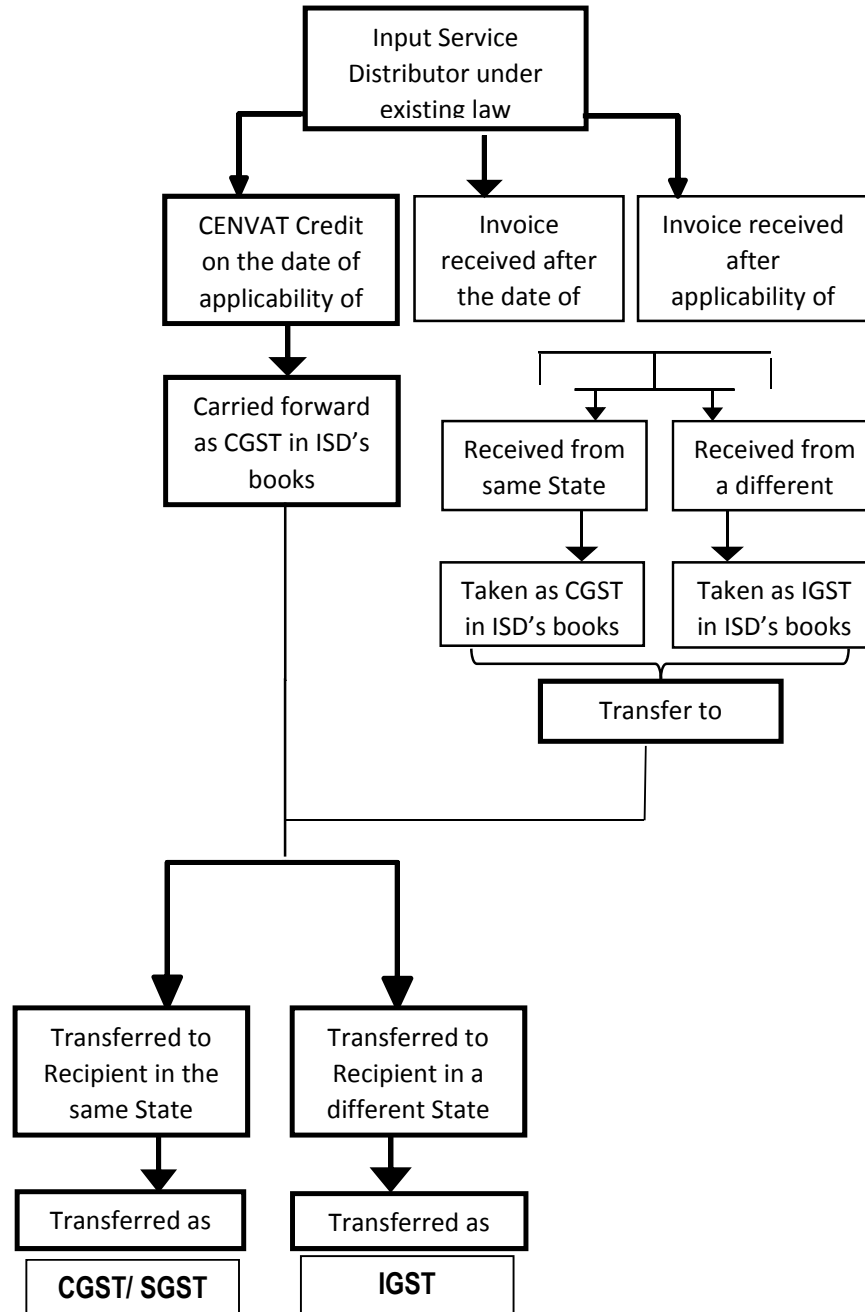
140.7.3 Comparative Review

This is a transitional provision for converging the provisions of the earlier law with the GST law. As this provision is temporary and only for the transition period, there are no comparative provisions in the earlier law which can be relatable to this section.

140.7.4 Related provisions

Section	Description	Remarks
Section 2(61)	Definition of Input Service Distributor	To know the meaning of Input Service Distributor under the GST law
Section 2(102)	Definition of Service	It is imperative to know the meaning of service to determine as to what will be distributed under the GST law
Section 20	Manner of distribution of Input Tax Credit by ISD	Section 20 acts as an extension of section 140(7). The eligibility of the credit is discussed as per Section 140(7) whereas the manner of distribution is under section 20.

Analysis of this transitional provision can be presented in the following flowchart:



Statutory provisions**140(8). Provision for transfer of unutilized Cenvat Credit by taxable person having centralized registration under the earlier law**

Where a registered person having centralized registration under the existing law has obtained a registration under this Act, such person shall be allowed to take, in his electronic credit ledger, credit of the amount of cenvat credit carried forward in a return, furnished under the existing law by him, in respect of the period ending with the day immediately preceding the appointed day in such manner as may be prescribed:

Provided that if the registered person furnishes his return for the period ending with the day immediately preceding the appointed day within three months of the appointed day, such credit shall be allowed subject to the condition that the said return is either an original return or a revised return where the credit has been reduced from that claimed earlier:

Provided further that the registered person shall not be allowed to take credit unless the said amount is admissible as input tax credit under this Act:

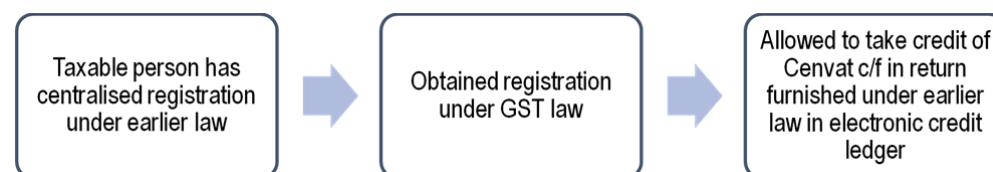
Provided also that such credit may be transferred to any of the registered persons having the same Permanent Account Number for which the centralized registration was obtained under the existing law.

140.8.1 Analysis

Under the erstwhile law where centralized registration is obtained and credit is lying in balance, it is provided that:

- Credit balance may be taken and carried forward in GST
- Such credit transfer will require filing of a return within 3 months
- Credit is required to be eligible under the GST law
- Credit is permitted to be transferred to other locations of the person which qualify as taxable persons in GST having the same PAN.

It is interesting that the provision does not lay down any criteria for such transfer of credit between various locations of the person and this is a welcome measure as part of the transition steps.

Transfer of unutilised Cenvat credit by a person having centralised registration**Note:**

1. Only those credits which are admissible under GST laws will be allowed

2. Credit may be transferred to any registered taxable person having the same PAN for which centralised registration was obtained under erstwhile law

In terms of Rule 117(2) of the CGST Rules 2017 the application in FORM GST TRAN-1 shall specify the said transactions.

Related Provisions:

Section of CGST	Description
Section 2(46)	Definition of 'Electronic Credit Ledger'
Section 16 to 21	Manner of taking input tax credit
Rule 117(2)	Transition Provision Rules under GST Laws
Central Tax Rules 117(1)	Tax or duty credit carried forward
Central Tax Rules 120A	Revision of declaration in FORM GST TRAN-1
Central Tax Rules 121	Recovery of credit wrongly availed.

Statutory Provisions

140(9) Reclaiming CENVAT credit reversed due to non-payment of consideration

Where any CENVAT credit availed for the input services provided under the existing law has been reversed due to non-payment of the consideration within a period of three months, such credit can be reclaimed subject to the condition that the registered person has made the payment of the consideration for that supply of services within a period of three months from the appointed day.

140.9.1 Introduction

This transition provision has been introduced with a view to enable the availment of credit in cases where CENVAT credit has been reversed in terms of second proviso to rule 4(7) of the CENVAT Credit Rules, 2004. In terms of the said proviso, CENVAT credit is reversed in case of input services, the payment of consideration for which is not made within a period of 3 months from the date of invoice/challan etc. Subsequently, such credit is allowed as and when the payment is made.

140.9.2 Analysis

This Section would apply in the following circumstances:

- (i) The CENVAT credit had been reversed by the manufacturer or the service provider in terms of second proviso to Rule 4(7) of the CENVAT Credit Rules, 2004.
- (ii) Such payment is then made after the appointed day.
- (iii) The payment is made within 3 months from the appointed day.

It provides that where the above conditions are fulfilled, the credit shall be allowed as CGST credit.

For the period ending with the day immediately preceding the appointed day, if the registered person files an original/revised return within 3 months of the appointed day.

Statutory Provision

Section	Particulars
141(1)	No tax payable if input removed to a job worker for further processing, testing etc. prior to the appointed day returned within a period of 6 months or extended period for further 2 months.
141(2)	No tax payable if semi-finished goods that had been removed to any other premises for carrying out certain manufacturing processes prior to the appointed day returned within a period of 6 months or extended period for further 2 months.
141(3)	No tax payable on manufactured excisable goods removed without payment of duty for carrying out tests etc. not amounting to manufacture as per erstwhile law prior to the appointed day returned within a period of 6 months or extended period for further 2 months.
141(4)	No tax payable under sub-section (1)/ (2) or (3) if the manufacturer and the job-worker declare the details of the inputs or goods held in stock.

141 Transitional provisions relating to job work

(1) Where any inputs received at a place of business had been removed as such or removed after being partially processed to a job worker for further processing, testing, repair, reconditioning or any other purpose in accordance with the provisions of existing law prior to the appointed day and such inputs are returned to the said place on or after the appointed day, no tax shall be payable if such inputs, after completion of the job work or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if such inputs are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142.

(2) Where any semi-finished goods had been removed from the place of business to any other premises for carrying out certain manufacturing processes in accordance with the provisions of existing law prior to the appointed day and such goods (hereafter in this section referred to as "the said goods") are returned to the said place on or after the appointed day, no tax shall be payable, if the said goods, after undergoing manufacturing processes or otherwise, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods to the premises of any registered person for the purpose of supplying therefrom on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

(3) Where any excisable goods manufactured at a place of business had been removed without payment of duty for carrying out tests or any other process not amounting to manufacture, to any other premises, whether registered or not, in accordance with the provisions of existing law prior to the appointed day and such goods, are returned to the said place on or after the appointed day, no tax shall be payable if the said goods, after undergoing tests or any other process, are returned to the said place within six months from the appointed day:

Provided that the period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that if the said goods are not returned within the period specified in this sub-section, the input tax credit shall be liable to be recovered in accordance with the provisions of clause (a) of sub-section (8) of section 142:

Provided also that the manufacturer may, in accordance with the provisions of the existing law, transfer the said goods from the said other premises on payment of tax in India or without payment of tax for exports within the period specified in this sub-section.

(4) The tax under sub-sections (1), (2) and (3) shall not be payable, only if the manufacturer and the job-worker declare the details of the inputs or goods held in stock by the job-worker on behalf of the manufacturer on the appointed day in such form and manner and within such time as may be prescribed.

141(1) Inputs removed for job work and returned on or after the appointed day

141.1.1 Introduction

This transition provision is with respect to inputs removed as such or after partial processing from a place of business for the purposes of carrying out any processing, repair, reconditioning or for any other purposes under the erstwhile laws but are returned / returnable after the date of implementation of GST.

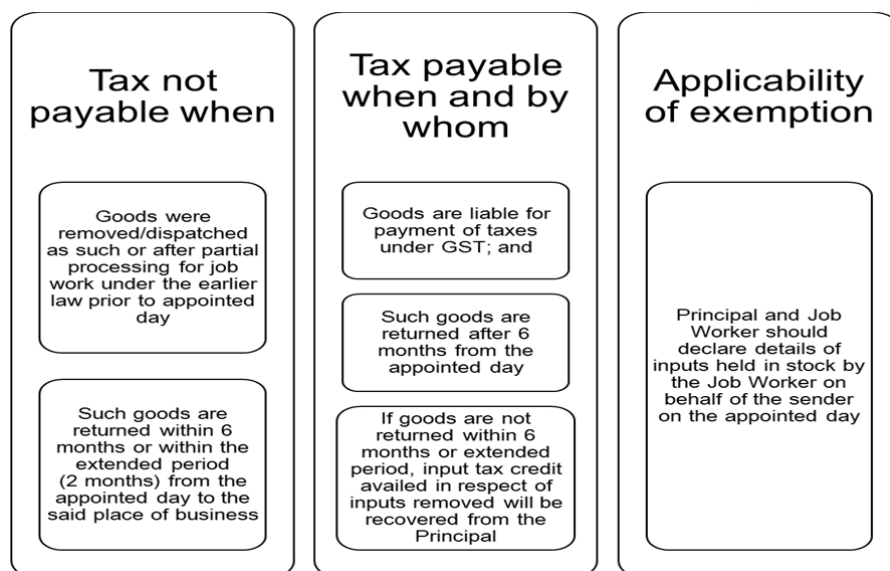
141.1.2 Analysis

- In case inputs removed by a Principal to a Job Worker's premises that are returned to the Principal within 6 months (or within an extended period of further 2 months), no tax shall be payable. However, if the inputs are not returned within 6 months or such

extended period of 2 months, then the input tax credit availed by the Principal shall be recovered as arrears of tax under CGST Law and no input tax credit of such tax paid shall be allowed under the CGST Law.

- Rule 119 prescribes that every Principal and the Job Worker shall file a declaration in FORM GST TRAN-1 specifying the stock held at job worker's premises. The time limit for furnishing the above declaration in TRAN-1 has been prescribed in Rule 117.
- **Eg 1:** A manufacturer had removed inputs worth ₹ 5,00,000 on 1st January, 2017 for job work. On 10th December, 2017, the inputs are returned by the job worker. Since, the inputs are returned within 6 months from the date of applicability of GST, no tax will be payable.
- **Eg 2:** In Eg 1 above, if the goods are not returned by the job worker within the period of 6 months from the applicability of GST i.e. by 31st December, 2017, then the input tax credit shall be liable to be recovered in terms of section 142 (8)(a); i.e., the input tax credit shall be liable to be recovered as an arrear of tax under the CGST Act and the amount so recovered shall not be admissible as input tax credit.

Inputs removed for Job work and returned on or after the appointed day



141.1.3 Related provisions

Section	Description
Section 2(68)	Definition of 'Job work'
Section 2(72)	Definition of 'Manufacturer'
Section 2(85)	Definition of 'Place of Business'

Section	Description
Section 142(8)(a)	Recovery of any amount in pursuance of assessment or adjudication proceedings under the existing laws
Section 79	Recovery of amount payable to Government
Rule 117	Time limit for filing FORM GST TRAN-1
Rule 119	Declaration of stock held by
Rule 120A	Revision of declaration in FORM GST TRAN-1

Statutory Provision

141(2) Semi-finished goods removed for job work and returned on or after the appointed day

141.2.1 Introduction

This transitional provision is with respect to semi-finished goods which were dispatched from a place of business for job work (for the purpose of carrying out any manufacturing processes) under the erstwhile laws but are returned / returnable after the date of implementation of GST.

141.2.2 Analysis

- In case Semi-finished goods removed by a Principal to a Job Worker's premises that are returned to the Principal within 6 months (or within an extended period of further 2 months), no tax shall be payable. However, if the semi-finished goods are not returned within 6 months or such extended period of an additional 2 months then the input tax credit availed by the Principal shall stand reversed under the erstwhile law or recovered as arrears under the CGST Law.
- Rule 119 prescribes that every principal and the job worker shall file a declaration in FORM GST TRAN-1 specifying the stock held at job worker's premises. The time limit for furnishing the above declaration in TRAN-1 has been prescribed in Rule 117.
- The manufacturer may, instead of bringing the said goods back to his place of business, transfer the said goods to the premises of any registered person for the purpose of supplying there from to places within India or for exports. The premises of any registered person may include premises like bonded warehouses where to goods manufactured can be removed from the place of manufacture without payment of excise duty by complying with the relevant provisions of the Central Excise Law. If the supplies from those premises are made within India, tax shall be paid on such supplies. If the said goods are exported no tax need to be paid on such supplies.

Eg 1: A manufacturer had removed semi-finished goods worth ₹ 5,00,000 on 1st January, 2017 for further processing. GST. On 10th October, 2017, these goods are returned by the job

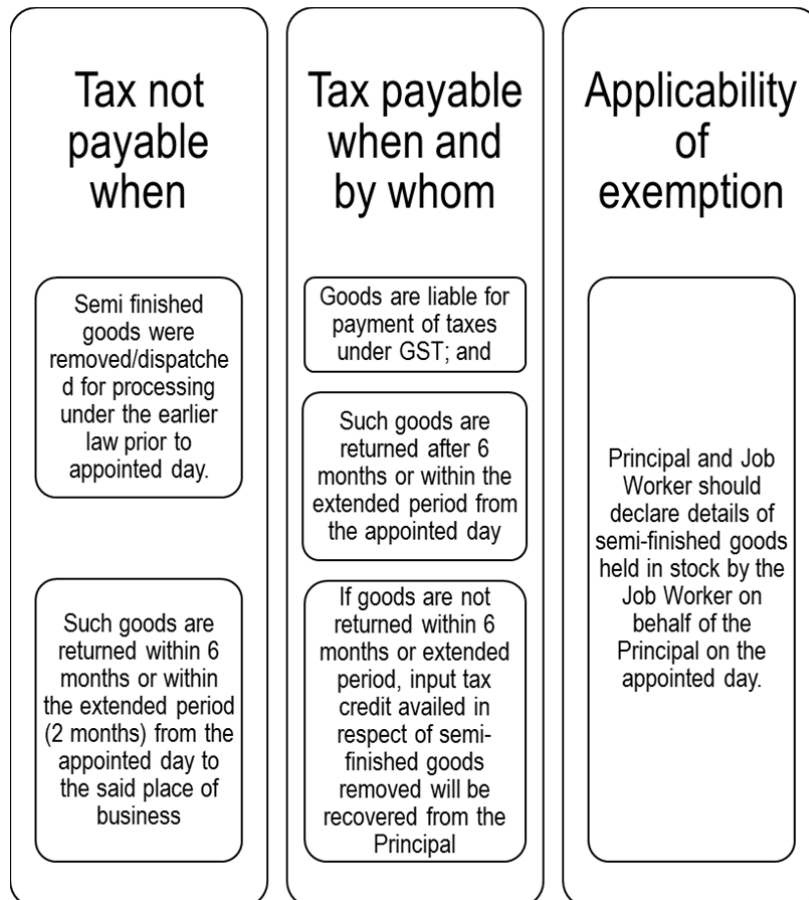
worker. Since the goods are returned within 6 months from the date of applicability of GST, no tax will be payable.

Eg 2: In Eg 1 above, if the goods are not returned by the job worker within the period of 6 months from the applicability of GST i.e. till 31st December, 2017, then the input tax credit shall be liable to be recovered in terms of section 142 (8)(a); i.e., the input tax credit shall be liable to be recovered as an arrear under the CGST Act.

Eg 3: In Eg 1 above, assume that the goods are directly transferred to a registered taxable person within 6 months from the applicability of GST i.e. till 31st December, 2017. In this case, tax will be payable under GST if the goods there from are supplied in India and tax will not be payable if the same is exported.

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

Semi-finished goods removed for Job work and returned on or after the appointed day



141.2.3 Related provisions

Section	Description
Section 2(68)	Definition of 'Job work'
Section 2(72)	Definition of 'Manufacturer'
Section 2(85)	Definition of 'Place of Business'
Section 142(8)(a)	Recovery of any amount in pursuance of assessment or adjudication proceedings under the existing laws
Rule 117	Time limit for filing FORM GST TRAN-1
Rule 119	Declaration of stock held by
Rule 120A	Revision of declaration in FORM GST TRAN-1

Statutory Provision
141.3 Finished goods removed for carrying out certain processes and returned on or after the appointed day
141.3.1 Introduction

This transition provision is with respect to excisable goods manufactured and removed from a place of business without payment of duty for the purposes of carrying out any tests or any other process and which are returned / returnable after the date of implementation of GST.

141.3.2 Analysis

- Excisable goods are manufactured and removed from the place of business without payment of duty for carrying out tests or any other process (not amounting to manufacture), to any other premises, whether registered or not, in terms of the earlier law prior to the appointed day. Subsequently such goods, are returned to the said place of business on or after the appointed day, then no tax shall be payable if the said goods, after undergoing the process, are returned to the said place within 6 months from the appointed day.
- The period of 6 months may be extended by the Commissioner for a further period not exceeding 2 months.
- If the said goods are not returned within 6 months or extended period, from the appointed day, the input tax credit shall be liable to be recovered under the erstwhile law. If the input tax credit is not recovered under the erstwhile law, it will be recovered as an arrear under the CGST Act.
- The manufacturer may, in terms of the provisions of the earlier law, transfer the said goods from the premises of the job worker on payment of tax if the supplies are made within India or without payment of tax for exports. The premises of the same registered person refers to premises like bonded warehouses to where goods manufactured can

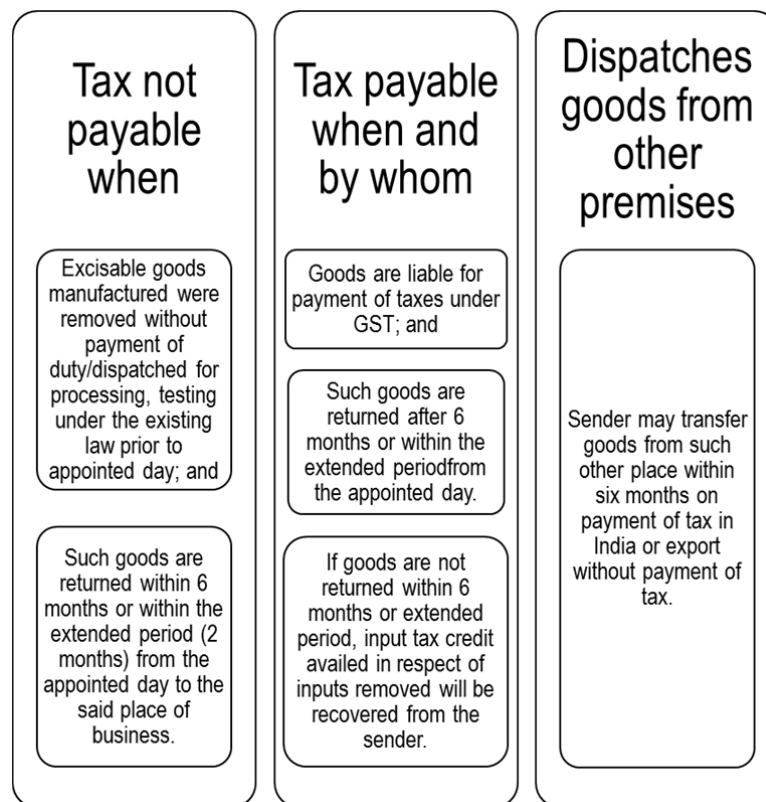
be removed from the place of manufacture without payment of excise duty by complying with the relevant provisions of the Central Excise Law. If the transfer from those premises are made within India, tax shall be paid on such transfers. If the said goods are exported no tax need to be paid on such transfers.

Eg 1: A manufacturer had removed finished goods worth ₹ 5,00,000 on 1st January, 2017 for testing. On 20th November, 2017, these goods are returned by the person after testing. Since the goods are returned within 6 months from the date of applicability of GST, no tax will be payable.

Eg 2: In Eg 1 above, assume that the goods are not returned directly from the premises of the tester within 6 months from the applicability of GST i.e. till 31st December, 2017. In this case, input tax credit shall be liable to be recovered in terms of section 142(8)(a).

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

Finished goods removed for carrying out certain processes and returned on or after the appointed day



141.3.3 Related provisions

Statute	Description
Section 2(68)	Definition of 'Job work'
Section 2(72)	Definition of 'Manufacturer'
Section 2(85)	Definition of 'Place of Business'
Section 142(8)(a)	Recovery of any amount in pursuance of assessment or adjudication proceedings under the existing laws
Rule 117	Time limit for filing FORM GST TRAN-1
Rule 119	Declaration of stock held by
Rule 120A	Revision of declaration in FORM GST TRAN-1

This provision stipulates that immunity from paying tax under section 141(1), 141(2) and 141(3) is available only if both the manufacturer and the job worker declare the details of inputs or goods held in stock by the job worker on behalf of the manufacturer.

141.3.4 FAQs

Q1. Can the benefit of sub sections 1, 2 & 3 be availed even if the date of removal of inputs, semi-finished goods or finished goods is falling beyond one year before the appointed date?

Ans. Yes. There are no restrictions in Sec 141 regarding the time period before the appointed date within which the date of removal of goods removed should fall in order to avail the benefit of Sec 141. The restriction regarding the time limit is only in respect of receiving back of the goods to the place of business from where those goods were originally removed.

Statutory Provision

Section	Particulars
142(1)	Refund of duty on any goods on which duty had been paid under the existing law at the time of removal thereof
142(2)(a)	The price of any goods or services or both is revised upwards on or after the appointed day, shall be deemed to be an outward supply made under this Act
142(2)(b)	The price of any goods or services or both is revised downwards on or after the appointed day, shall be deemed to be in respect of outward supply made under this Act
142(3)	Every claim for refund filed before, on or after the appointed day, under the existing law, shall be disposed of in accordance with the provisions of existing law
142(4)	Every claim for refund filed after the appointed day for refund of any duty

	or tax paid under existing law in respect of the goods or services exported before or after the appointed day shall be disposed of in accordance with the provisions of existing law
142(5)	Every claim of refund of tax filed after the appointed date paid under the existing law in respect of services not provided
142(6)(a)	Every proceeding of appeal, review or reference relating to a CLAIM for CENVAT credit initiated whether before, on or after the appointed day under the existing law
142(6)(b)	Every proceeding of appeal, review or reference relating to RECOVERY for CENVAT credit initiated whether before, on or after the appointed day under the existing law
142(7)(a)	Every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law and if any amount becomes recoverable from the claimant
142(7)(b)	Every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, and any amount found to be admissible to the claimant
142(8)(a)	In pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes RECOVERABLE from the person.
142(8)(b)	In pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes REFUNDABLE to the taxable person.
142(9)(a)	Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of CENVAT credit is found to be inadmissible
142(9)(b)	Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or CENVAT credit is found to be admissible
142(10)	Goods or services or both supplied (in pursuance of a contract entered into prior to the appointed day) i.e., ongoing contracts on or after the appointed day shall be liable to tax
142(11)(a)	No tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State
142(11)(b)	No tax shall be payable on services under this Act to the extent the tax

	was leviable on the said services under Chapter V of the Finance Act, 1994
142(11)(c)	Where tax was paid on any supply both under the Value Added Tax and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act to the extent of supplies made after the appointed day i.e., supply of goods or services or both supplied after the appointed day
142(12)	Any goods sent on approval basis, not earlier than six months before the appointed day, are rejected and returned to the seller on or after the appointed day
142(13)	No deduction of tax at source under section 51 shall be made by the deductor on sale made under existing law which is subject to TDS and has also issued an invoice before the appointed day – Section 142(13)

142(1) Duty paid Goods returned to the place of business on or after the appointed day

Where any goods on which duty, if any, had been paid under the existing law at the time of removal thereof, not being earlier than six months prior to the appointed day, are returned to any place of business on or after the appointed day, the registered person shall be eligible for refund of the duty paid under the existing law where such goods are returned by a person, other than a registered person, to the said place of business within a period of six months from the appointed day and such goods are identifiable to the satisfaction of the proper officer.

Provided that if the said goods are returned by a registered person, the return of such goods shall be deemed to be a supply.

142.1.1 Introduction

This transitional provision provides for refund of duties paid on goods under erstwhile law when returned to the place of business.

142.1.2. Analysis

This section provides for refund in respect of sales returns, viz., where the sale was under the erstwhile law and the return is under the GST law. The section provides that the person receiving the said goods back under the GST regime would be eligible to refund of the duty paid under the erstwhile law at the time of removal of goods, if the person returning the goods is not a registered person, return of goods by a person registered would tantamount to be a deemed supply.

This provision would be applicable in the following circumstances:

- (i) **Duty was paid at the time of removal:** Central Excise duty, should have been paid when the goods were removed/sold under the erstwhile law.
- (ii) **Sales return should be to any place of business:** While the law provides that the return can be to any place of business (in the same state by a person other than a registered person) and not necessarily to the same place of business from where it was removed, it is essential that the return should be to the same taxable person.

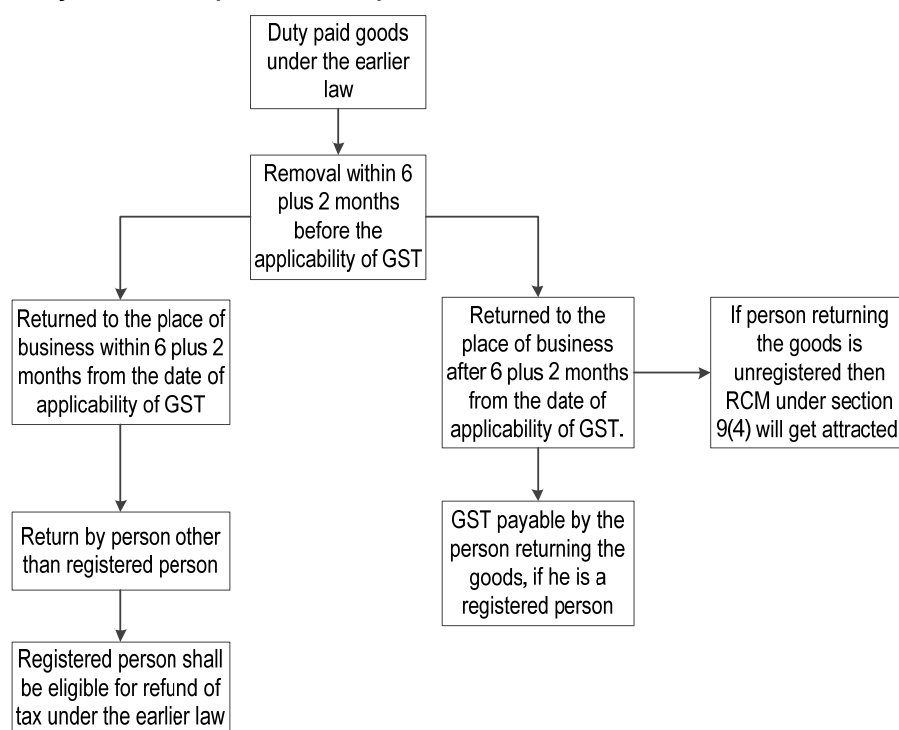
- (iii) Return of goods by a registered person shall be deemed to be a supply of goods.
- (iv) **Time period:** The Section provides for time lines for both, the removal and the return.
 - (a) **Removal:** It should have taken place not earlier than 6 months from the date of introduction of GST.
 - (b) **Return:** It should be within 6 months from the date of introduction of GST.

If the goods are not returned within the time line, the supplier shall not be eligible for the said refund.

- (v) Also, please note that similar provision would find place in the SGST Act so that the full incidence of GST flows to these transaction.

Eg 1: A manufacturer had removed goods for sale worth ₹ 5,00,000 on 1st March, 2017 after paying the necessary duty under Central Excise law. These goods are also taxable under GST. GST applicable from 1st July, 2017. On 10th July, 2017, goods worth ₹ 1,00,000 are returned by the buyer. Since, the goods are returned within 6 months from the date of applicability of GST, the supplier shall be eligible for refund of Central Excise Duty paid by him.

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



Statutory Provision**142(2) Issue of supplementary invoices, debit or credit notes where price is revised in pursuance of a contract**

- (a) *Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised upwards on or after the appointed day, the registered person who had removed or provided such goods or services or both shall issue to the recipient a supplementary invoice or debit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such supplementary invoice or debit note shall be deemed to have been issued in respect of an outward supply made under this Act.*
- (b) *Where, in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised downwards on or after the appointed day, the registered person who had removed or provided such goods or services or both may issue to the recipient a credit note, containing such particulars as may be prescribed, within thirty days of such price revision and for the purposes of this Act such credit note shall be deemed to have been issued in respect of an outward supply made under this Act:*

Provided that the registered person shall be allowed to reduce his tax liability on account of issue of the credit note only if the recipient of the credit note has reduced his input tax credit corresponding to such reduction of tax liability.

142.1.1 Introduction

This is a transition provision with respect to **goods or services or both** in respect of which there is either an upward or a downward revision of price under a contract which was entered into prior to the date of introduction of GST.

142.1.2 Analysis

In cases where there is a price revision, either upward or downward, the CGST Act provides that the amount to the extent of such revision is deemed to be an outward supply under the CGST Act. Consequently, all the CGST provisions including issue of invoices (debit or credit notes) and payment of taxes would apply to such revision. This would apply to the provisions of supply of goods and services, respectively.

This provision would apply as follows:

- (i) **For upward revisions:** The taxable person shall issue a supplementary invoice or a debit note within 30 days from the date of such revision.

The amount of tax involved therein would be deemed to be the tax payable on such supplies under the CGST Act.

It would be deemed to be a supply in the month in which the supplementary invoice / debit note is issued and the provisions relating to disclosure in the return and payment of tax would apply accordingly.

The supplementary invoice / debit note would have to comply with the requirements as prescribed under the CGST Act.

Eg 1: A contract for supply of manpower was entered on 10th June, 2017 for ₹ 5,00,000. Due to certain re-negotiations, this price was revised to ₹ 5,50,000 on 15th July, 2017. The supplier should issue a supplementary invoice/debit note for ₹ 50,000 within 30 days of 15th July, 2017 i.e. 15th August, 2017. This supplementary invoice/debit note will be assumed to be for outward supply of ₹ 50,000 with GST charged on the same

(ii) **For downward revisions:** The taxable person shall issue a credit note within 30 days from the date of such revision.

In terms of the credit note, the supplier of goods would be allowed to reduce the tax liability as if the adjustment is under the CGST Act.

It would be deemed that the credit note is issued in respect of an outward supply made under the GST Law and the provisions relating to disclosure in the return and adjustment to tax would apply accordingly. The adjustment of reduction in the tax liability would be allowed only if the recipient of the credit note also reduces his input credit correspondingly.

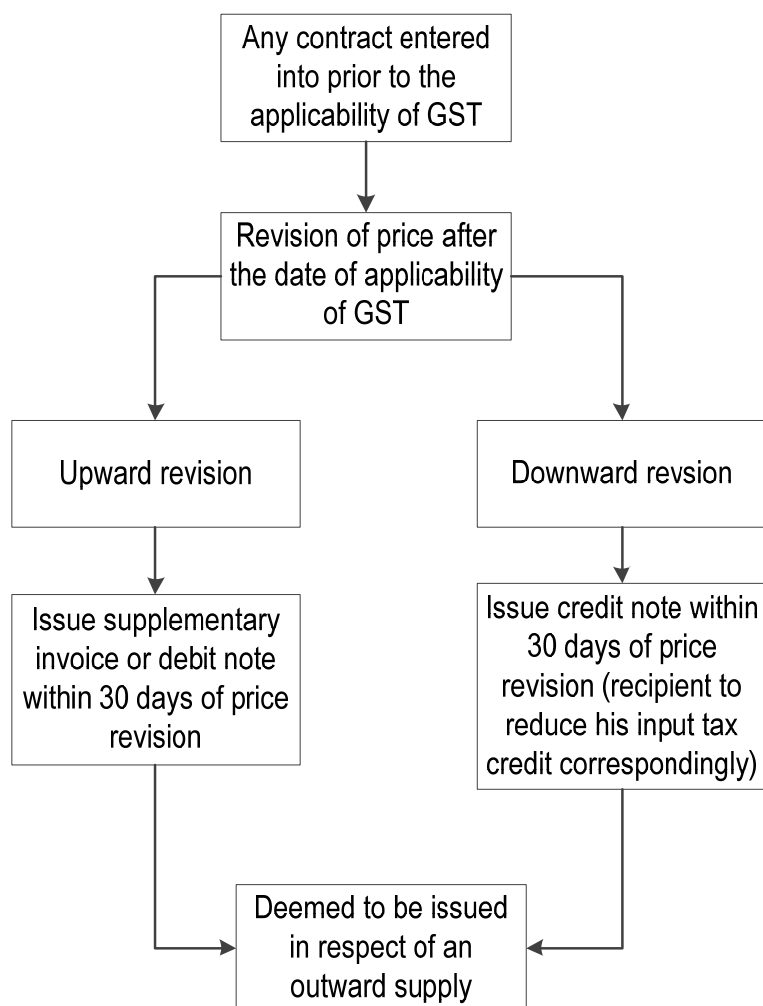
The credit note would have to comply with the requirements as prescribed under the CGST Act.

Eg 2: A contract for supply of manpower was entered on 10th June, 2017 for ₹ 5,00,000. Due to certain re-negotiations, this price was revised downwards to ₹ 4,00,000 on 15th July, 2017. The supplier should issue a credit note for ₹ 1,00,000 within 30 days of 15th July, 2017 i.e. 15th August, 2017. This credit note will be assumed to be for outward supply of ₹ 1,00,000 and accordingly the tax liability would be reduced. However, the said reduction shall be allowed only if the recipient of the credit note has reduced his corresponding input tax credit.

142.1.3 Comparative review

Rule 6(3) of Service Tax Rules, 1994: Where an assessee has issued an invoice or received any payment, against a service to be provided which is not so provided by him either wholly or partially for any reason (or when the invoice amount is re-negotiated due to deficient provision of service, or any terms contained in a contract) **the assessee may take the credit of such excess service tax paid by him**, if the assessee has refunded the payment or part received for the service provided or has issued a credit note for the value of the service not so provided to the person to whom an invoice had been issued.

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



Statutory Provisions**142(3) Refund claims for amount paid under existing law to be disposed of under existing law**

Every claim for refund filed by any person before, on or after the appointed day, for refund of any amount of CENVAT credit, duty, tax or interest or any other amount paid under the existing law, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944:

Provided that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse:

Provided further that no refund claim shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

142(4) Refund claims filed after the appointed day for goods cleared or services Provided and exported before or after the appointed day to be disposed of under existing law

Every claim for refund filed after the appointed day for refund of any duty or tax paid under existing law in respect of the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of existing law:

Provided that where any claim for refund of Cenvat credit is fully or partially rejected, the amount so rejected shall lapse:

Provided Further that no refund claim shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

142.3.1. Introduction

This transition provision is with respect to

- Refund claims/applications under the erstwhile law.
- Refund claims/applications under the erstwhile laws filed after the appointed day for the goods or services exported before or after the appointed day.

It provides that the claim for such refund should be processed as prescribed under the relevant erstwhile law.

142.3.2. Analysis

The section provides that where any person has made an application for refund of CENVAT credit, duty, tax or interest paid, the same would have to be processed in terms of the provisions contained in the respective erstwhile laws. The provisions of GST law would have no bearing on the same.

Therefore, refund application under the erstwhile laws can continue to be filed under this section, even after the introduction of GST.

It also provides the following:

- (i) The refund, if allowed, would accrue in cash under the erstwhile law and would not be credited to the electronic credit ledger or electronic cash ledger.
- (ii) The refund if rejected, fully or partially would lapse.
- (iii) No refund claim shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

Eg 1: An export manufacturer files a claim for refund of ₹ 5,00,000 on 15th June, 2017. The refund claim will be processed under the provision of the earlier law i.e. Central Excise law itself. If the refund is considered as admissible by the Department, then the same will be paid in cash subject to the Doctrine of Unjust Enrichment.

Eg 2: If the refund claim is rejected, then the amount so rejected will lapse and would not be available as credit.

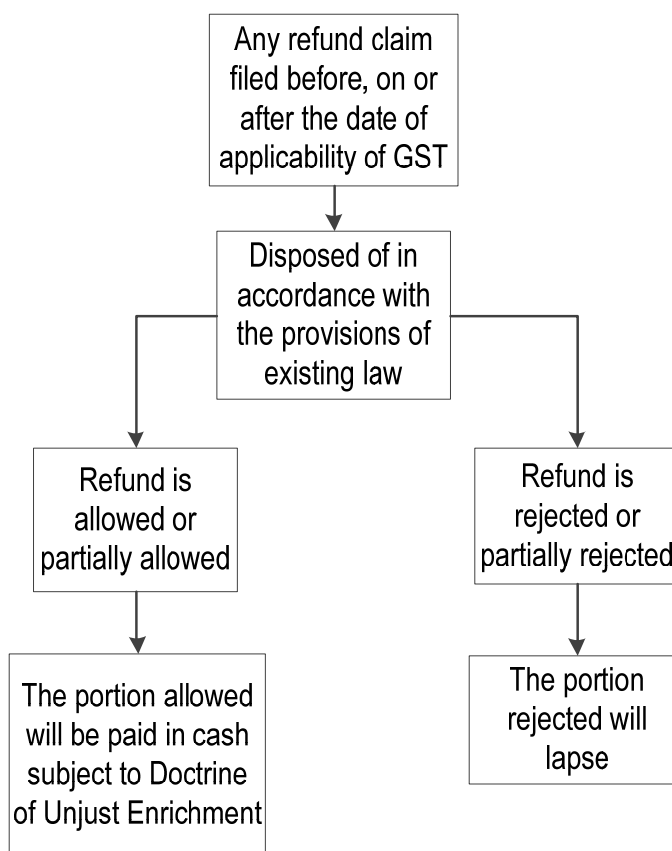
142.4.1. Analysis

The section provides that every claim for refund of any duty or tax paid under erstwhile law, filed after the appointed day, for the goods or services exported before or after the appointed day, shall be disposed of in accordance with the provisions of the erstwhile law.

It also provides the following:

- (i) The refund, if rejected, fully or partially would lapse.
- (ii) No refund claim shall be allowed of any amount of Cenvat credit / input tax credit where the balance of the said amount as on the appointed day has been carried forward under this Act.

Analysis of this transition provision can be presented through a flowchart as under:



Statutory provision

142(5) Refund claims filed after the appointed day for payments received and tax deposited before the appointed day in respect of services not provided.

Every claim filed by a person after the appointed day for refund of tax paid under the existing law in respect of services not provided, shall be disposed of in accordance with the provisions of existing law and any amount eventually accruing to him shall be paid in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of subsection (2) of section 11B of the Central Excise Act, 1944

142.5.1 Introduction

This transition provision is with respect to refund claims in respect of services not provided, filed after the appointed day.

142.5.2 Analysis

The section provides that every claim for refund of any tax deposited under the erstwhile law in respect of **services not provided**, filed after the appointed day, shall be disposed of in accordance with the provisions of the erstwhile law and any amount eventually accruing to him shall be paid in cash.

142.5.3 Related provisions

Statute	Section	Description
Central Excise Act, 1944	Section 11B (2)	Provision for unjust enrichment

Statutory provision

142(6) Claim of CENVAT credit to be disposed of under the existing law	
(a)	<i>Every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after the appointed day under the existing law shall be disposed of in accordance with the provisions of existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act:</i> <i>Provided that no refund shall be allowed of any amount of Cenvat credit where the balance of the said amount as on the appointed day has been carried forward under this Act.</i>
(b)	<i>every proceeding of appeal, review or reference relating to recovery of CENVAT credit initiated whether before, on or after the appointed day, under the existing law shall be disposed of in accordance with the provisions of existing law, and if any amount of credit becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.</i>

142.6.1 Introduction

This transition provision is with respect to claim of CENVAT Credit initiated under the erstwhile law and disposal of appeals, reviews or reference proceedings pertaining thereto.

142.6.2 Analysis

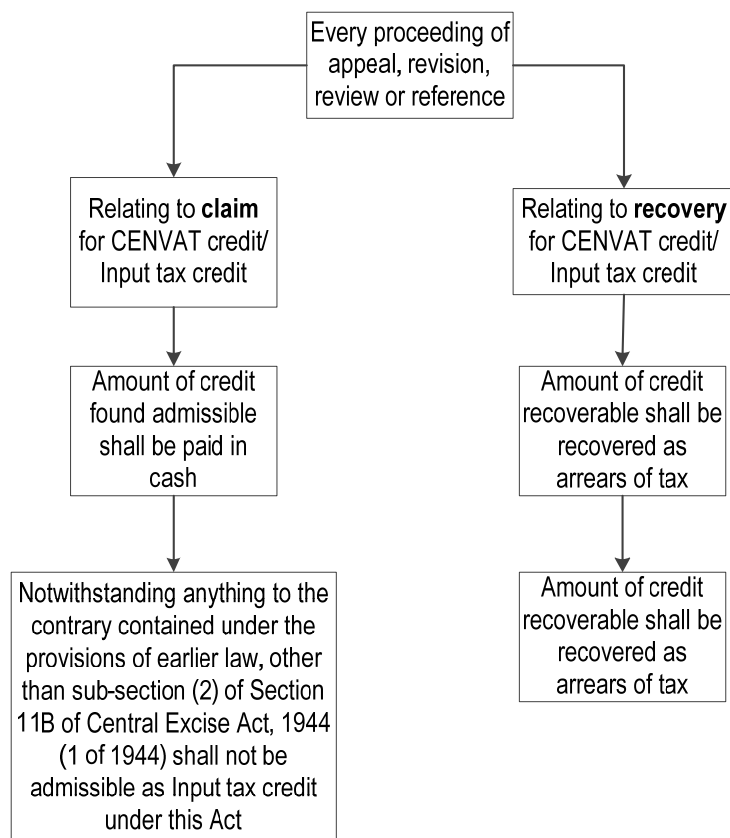
The Section applies where any matter in respect of CENVAT credit is pending in an appeal or review or reference under any of the erstwhile laws.

It provides that the provisions of CGST would have no bearing on the same and should be dealt with in accordance with the provisions of erstwhile laws as follows:

— **If the input credit are finally allowed:** A refund would accrue to the claimant in cash.

- **If the input credit is disallowed:** It would become recoverable as an arrear of tax under the CGST.
- The amount so recovered would not be allowed as input tax credit under the CGST law.

Analysis of this transitional provision can be presented as a flowchart as under:



Statutory provision

142(7) Finalization of proceedings relating to output duty or tax liability

- (1) Every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and if any amount becomes recoverable as a result of such appeal, review or reference, the same shall, unless recovered under the existing law, be recovered as an arrear of duty or tax under this Act and amount so recovered shall not be admissible as input tax credit under this Act.

- (2) *Every proceeding of appeal, review or reference relating to any output duty or tax liability initiated whether before, on or after the appointed day under the existing law, shall be disposed of in accordance with the provisions of the existing law, and any amount found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of existing law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.*
- 142(8)** (a) *where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes recoverable from the person, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act;*
- (b) *where in pursuance of an assessment or adjudication proceedings instituted, whether before, on or after the appointed day, under the existing law, any amount of tax, interest, fine or penalty becomes refundable to the taxable person, the same shall be refunded to him in cash under the said law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and the amount rejected, if any, shall not be admissible as input tax credit under this Act.*

142.8.1 Introduction

This transition provision is with respect to output tax / duty liabilities pending in appeal, review, or reference proceedings under any of the erstwhile law.

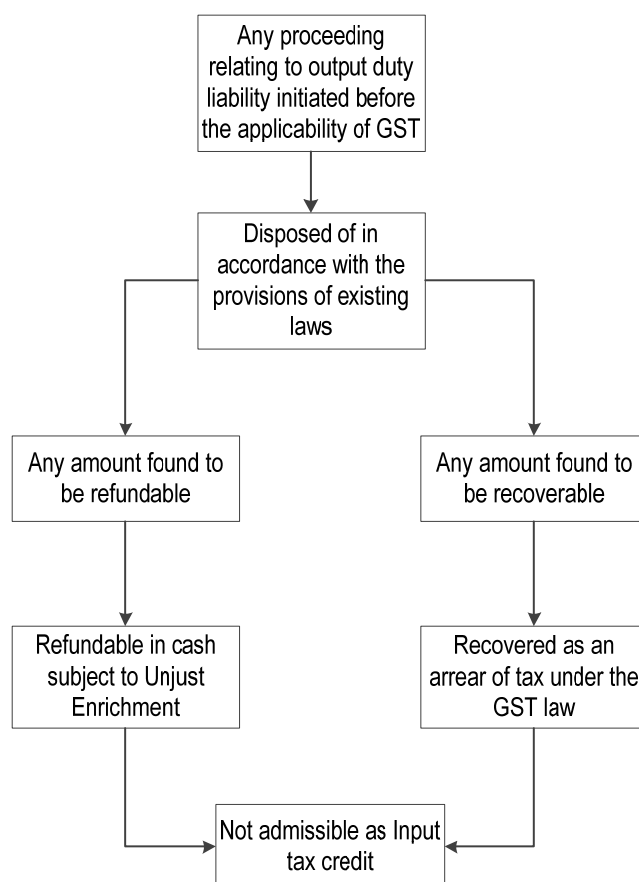
142.8.2 Analysis

The section applies where any matter in respect of output tax / duty liabilities are pending in appeal, review or reference proceedings under any of the erstwhile law.

It provides as follows:

- **If the output liability is finally payable:** It should be recovered as an arrear of tax under CGST Act.
- The amount so recovered would not be allowed as input tax credit under the CGST laws.
- **If the output liability is finally allowable to the claimant:** It would accrue to the claimant as refund in cash under the erstwhile law. If any amount is rejected, the same shall not be available as input tax credit under CGST.

Analysis of this transition provision can be presented in the following flowchart:



Statutory Provisions

142(9) Treatment of the amount recovered or refunded pursuant to revision of returns

- (a) Where any return, furnished under the existing law, is revised after the appointed day and if, pursuant to such revision, any amount is found to be recoverable or any amount of cenvat credit is found to be inadmissible, the same shall, unless recovered under the existing law, be recovered as an arrear of tax under this Act and the amount so recovered shall not be admissible as input tax credit under this Act.
- (b) Where any return, furnished under the existing law, is revised after the appointed day but within the time limit specified for such revision under the existing law and if, pursuant to such revision, any amount is found to be refundable or cenvat credit is found to be admissible to any taxable person, the same shall be refunded to him in cash under the existing law, notwithstanding anything to the contrary contained in the said law other than the provisions of sub-section (2) of section 11B of the Central Excise Act, 1944 and amount rejected, if any, shall not be admissible as input tax credit under this act.

142.9.1 Introduction

This transition provision deals with a situation where tax becomes payable or refundable by virtue of revision of returns under erstwhile law.

142.9.2 Analysis

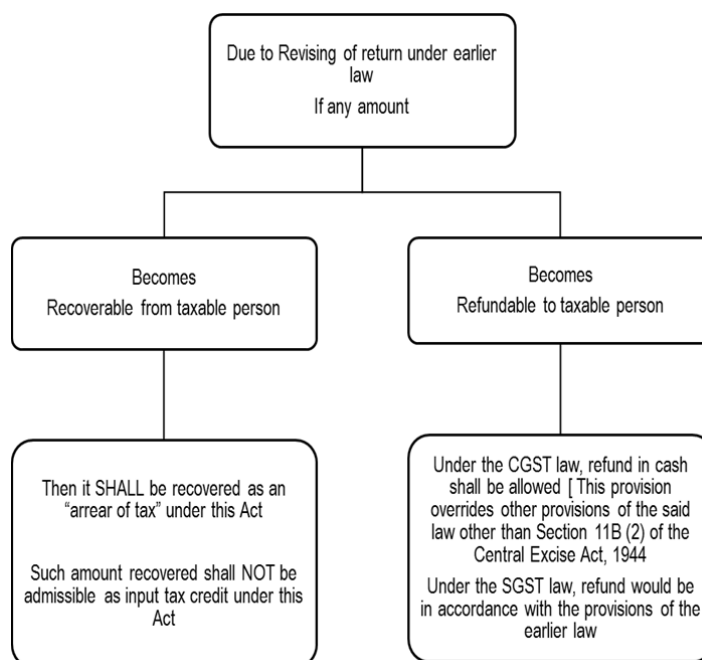
This Section applies where any return is revised under the erstwhile laws by virtue of which any amount becomes payable by or refundable to, the taxable person. This could arise due to any of the following reasons:

- (i) Short payment of output tax liability (payable);
- (ii) Excess payment of output tax liability (refundable);
- (iii) Short claim of CENVAT credit (refundable);
- (iv) Excess claim of CENVAT credit (payable);

The Section specifies that:

- **If any amount is recoverable:** It should be recovered as an arrear of tax under the CGST Act. The amount so recovered would not be allowed as input tax credit.
- **If the amount is allowable as refund:** It would accrue to the claimant as cash refund under the erstwhile law.

Analysis of this transitional provision can be presented in the following flowchart:



Statutory Provisions**142 (10) Treatment of long term contracts**

Save as otherwise provided in this Chapter, the goods or services or both supplied on or after the appointed day in pursuance of a contract entered into prior to the appointed day shall be liable to tax under the provisions of this Act.

142.10.1 Introduction

This transitional provision deals with long term contracts.

142.10.2 Analysis

It provides that in respect of a contract entered into prior to GST regime, the goods or services or both which are supplied on or after the introduction of GST would be liable to tax under the GST Act to the extent the supply takes place after introduction of GST.

Even if the construction contract or works contract is entered into prior to the date of introduction of GST, the contracts would be taxable under the GST Act.

Eg 1: A contract for a painting job was entered on 19th June, 2017. The job is performed from 10th July, 2017 to 30th July, 2017. The said supply will be taxable under GST law.

Statutory Provisions**142(11) Progressive or periodic supply of goods or services**

- (a) *notwithstanding anything contained in section 12, no tax shall be payable on goods under this Act to the extent the tax was leviable on the said goods under the Value Added Tax Act of the State;*
- (b) *notwithstanding anything contained in section 13, no tax shall be payable on services under this Act to the extent the tax was leviable on the said services under Chapter V of the Finance Act, 1994;*
- (c) *where tax was paid on any supply both under the Value Added Tax Act and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed.*

142.11.1 Introduction

This transition provision deals with transactions which have suffered tax (Value Added Tax or Service Tax) because consideration was received under the earlier law, whereas the supply is made after the date of introduction of GST.

142.11.2 Analysis

I. No CGST shall be levied on:

1. **Goods**, to the extent tax was leviable under the Value Added Tax Act of the state; Considering the non-obstante clause, it is provided that even though any of the ingredients of supply prescribed in section 12 occur after the appointed date, if VAT was

lawfully levied (even if not yet paid), VAT alone will be leviable and not GST.

2. Service, to the extent Service Tax was leviable on the said service.

In short, GST shall not be levied on a supply to the extent Value Added Tax or Service Tax, as the case may be, was leviable on the said supply.

Eg: Advance of ₹ 1,00,000/- was received on 10th June, 2017 for service to be rendered in July, 2017. The invoice for the service was raised for ₹ 1,50,000/- on 31st July, 2017. GST shall be levied only on ₹ 50,000/-.

Relying upon the salutary principles contained in section 6 of the General Clauses Act regarding the force and power of 'repeal and saving' clause in any legislation, it would be appropriate to mention the results of application of that law in certain situations:

- (i) Where services have been rendered under the earlier law and invoice has also been issued under the earlier law and tax duly levied on provision of service but the payment of this tax was required on 'receipt basis', service tax will continue to be paid as and when outstanding receivables are realized. Tax once levied cannot be levied again (as GST) merely because the service tax was 'lawfully' not payable until realization.
- (ii) Where services have been reference under the earlier law but invoice for the same has not been issued and is permitted to be issued within 30 days from the date of completion of service, when the invoice is actually issued, service tax alone ought to be applied. This invoice will not be covered by section 140(5) as the invoice has not been issued before the appointed date. Also the service tax charged will not be available to claim as a refund under 142(3) to 142(8). These reasons do not justify levy of GST on the services already provided.
- (iii) Where services (liable to reverse charge or partial reverse charge) have been rendered along with invoice duly issued prior to the appointed date but the tax (on reverse charge basis) has been paid in July 2017, this tax is not available as transition credit to the recipient (making reverse charge payment of tax) as it would not be included as Cenvat credit in the last ST3 (to be filed by 15 Aug 2017) and therefore not be covered within section 140(1). Had the service tax (on reverse charge basis) been paid before the appointed date (by sufficient planning), the same would have been included in the transition credit under section 140(1). Also, refund of such taxes paid are not covered by sections 142(3) to 142(8) although it can be attempted under the earlier law itself.

To address the above issue, the CBEC has issued Circular 207/5/2017- Service Tax dated 28th September, 2017, clarifying that such credit arising as consequence of payment of service tax on reverse charge basis after 30th June, 2017 shall be indicated in Part I of form ST 3 in entries I3.1.2.6, I3.2.2.6 and I3.3.2.6. The circular also provided for revision of form ST 3 already filed by the assessee to include the said entries.

- II. Where tax was paid under both Value Added Tax Act and under Finance Act, 1994, viz., Construction service, works contract or supply of food/beverages, Tax shall be leviable under CGST Act on the supplies effected after the appointed day and the Value Added Tax or Service Tax shall be admitted as credit to the taxable person.

Eg: Contract entered in March, 2017 for ₹ 1,00,00,000/-. Advance received till 30th June, 2017 amounts to ₹ 10,00,000/-. Value Added Tax of ₹ 40,000/- and Service Tax of ₹ 60,000/- have been paid on the said advance. GST shall be levied on ₹ 1,00,00,000/- as per Sec 13 of the CGST Act. The value added tax and service tax paid shall be allowed as credit under the erstwhile law in the manner as may be prescribed.

- III. Supplies liable to both VAT as well as ST are provided for in this clause. For eg. Works contracts, Hoteliers when the time of supply under CGST Act applies. The differential tax under GST and those already paid under erstwhile law will become payable. Credit of tax already paid must not be understood as 'input tax credit' as defined u/s 2(63). This is an apparent conflict but not so u/s 140(5) of the CGST Act which needs to be reconciled. The said credit pertains to the credit under erstwhile laws and the same shall be available as credit under erstwhile laws.

Rule 118 of CGST Rules, 2017 provides for declaration of proportion of supply on which value added tax or service tax has been paid before the appointed day but the supply is made after the appointed day and the input tax credit applicable there on in FORM GST TRAN-1. It is important to note that if taxes already paid have been charged to the customer (who may have even taken credit), this provision would not apply because credit cannot be allowed to the customer as well as to the supplier under this provision.

The absence of non-obstante clause in this provision indicates that taxes paid under the earlier law must be without being leviable under those laws. This is because tax once levied and assessed under the earlier laws must only be paid and cannot be abrogated by the repeal. And most certainly not get levied again under the new law. For this reason, it is opined that, even transactions such as works contract or supply of food, would be saved by clauses (a) and (b) operating jointly if taxes were lawfully levied under the earlier laws. And clause (c) comes into operation only when taxes have been paid in advance of levy actually attracting under the earlier laws.

142.11.3 Related provisions

Section	Description
Section 2(28)	Definition of consideration
Section 12	Time of supply of goods
Section 13	Time of supply of services

Statutory Provisions**142(12) Taxability of supply of goods sent on approval basis.**

Where any goods sent on approval basis, not earlier than six months before the appointed day, are rejected or not approved by the buyer and returned to the seller on or after the appointed day, no tax shall be payable thereon if such goods are returned within six months from the appointed day:

Provided that the said period of six months may, on sufficient cause being shown, be extended by the Commissioner for a further period not exceeding two months:

Provided further that the tax shall be payable by the person returning the goods if such goods are liable to tax under this Act, and are returned after a period specified in this subsection:

Provided also that tax shall be payable by the person who has sent the goods on approval basis if such goods are liable to tax under this Act, and are not returned within a period specified in this sub-section.

142.12.1 Introduction

This transition provision covers the goods sent on approval basis under erstwhile law returned to the supplier within a period of 6 months from the appointed day or extended period and beyond.

142.12.2 Analysis

No CGST shall be payable for goods sent on approval basis, returning to the supplier due to rejection or non-approval by the buyer within a period of 6 months or the extended period of 2 months. However, tax shall be payable by the person returning the goods as well as by the person sending the goods if the goods are returned after the period of six months and such goods are liable to tax under the CGST Law.

142.12.3 Time period:

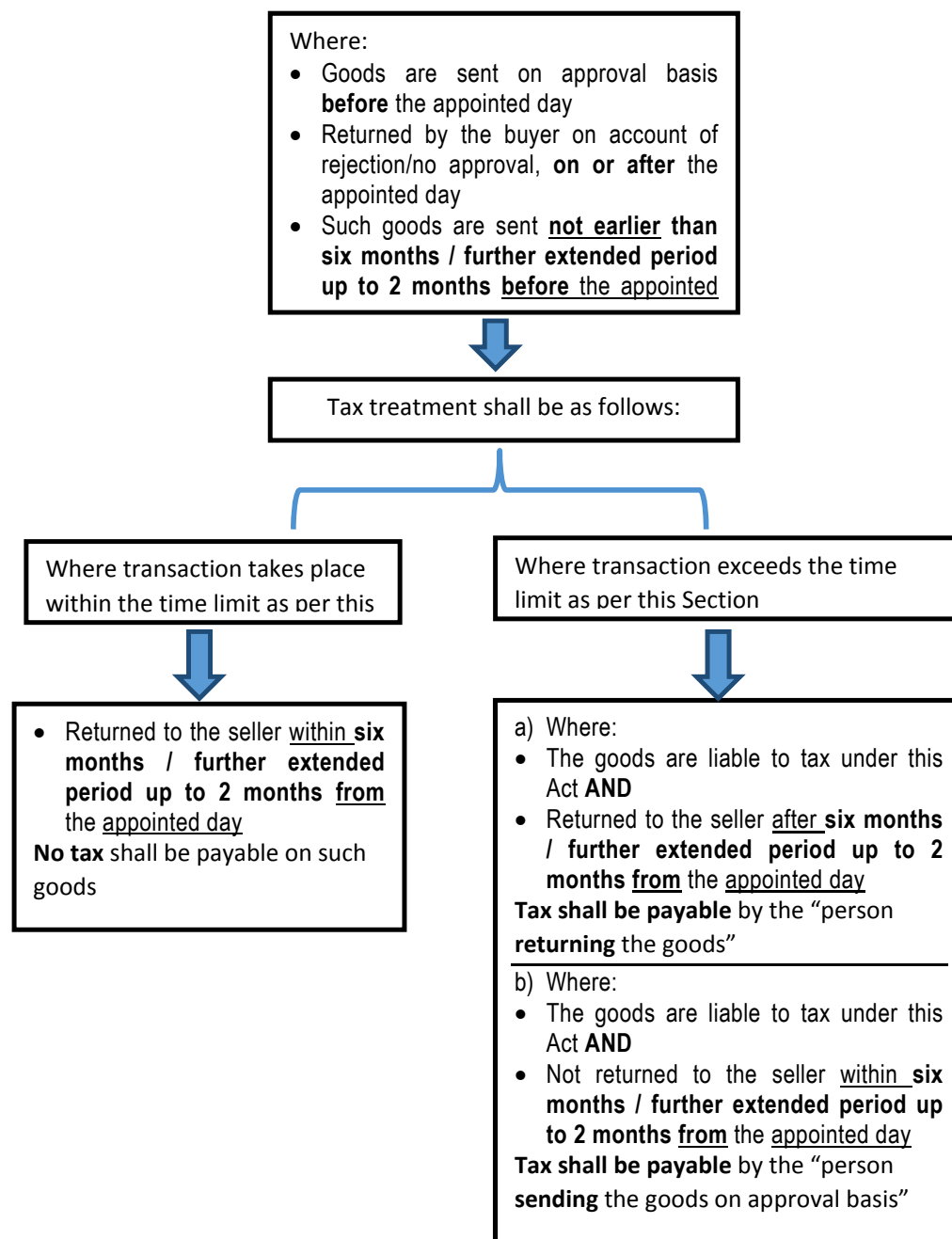
- (a) **Sending of goods:** It should have taken place not earlier than 6 months prior to the appointed day.
- (b) **Return of goods:** It should be within 6 months from the appointed day or as extended by the commissioner by a period not exceeding two months on sufficient causes being shown.

If goods are returned after the said period, CGST shall be paid by the person returning the goods.

If the goods are not returned within the period specified, the person who has sent the goods on approval shall pay GST on the said goods. This shall be available as credit to the purchaser of the goods.

In case of sale of approval prior to appointed date, the details of goods so sent on approval basis are to be declared in FORM GST TRAN -1 to be filed within time limit as prescribed. (Before 27th Dec, 2017, vide order No.9/2017-GST dt. 15/11/2017, by the Commissioner.)

Flowchart analysing the transitional provisions in Section 142(12).



Statutory Provisions**142(13) Supply of goods in respect of which tax is to be deducted at source.**

Where a supplier has made any sale of goods in respect of which tax was required to be deducted at source under the any law of a State or Union Territory relating to Value Added Tax and has also issued an invoice for the same before the appointed day, no deduction of tax at source under section 51 shall be made by the deductor under the said section where payment to the said supplier is made on or after the appointed day.

142.13.1 Introduction

This transition provision is in respect of TDS under Section 51. It is a transitional provision to ensure that there is no double deduction of tax at source due to introduction of GST.

142.13.2 Analysis

This Section would apply in the following circumstances:

- (i) The supplier had sold any goods under the erstwhile law; and
- (ii) TDS applies on such transactions under erstwhile law; and
- (iii) The supplier had issued the invoice before the appointed day;
- (iv) Payment is made to the supplier after the appointed day.

It provides that merely because payment is made to the supplier after the date of introduction of GST, the TDS provisions under Section 51 of the CGST Act will not apply. In other words, no tax shall be deductible under CGST Act at the time of making payment to the supplier.

Related provisions

Statute	Section	Description
CGST	Section 51	Tax deduction at source

Chapter–XXI

Miscellaneous

- 143. Job work procedure
- 144. Presumption as to documents in certain cases
- 145. Admissibility of micro films, facsimile copies of documents and computer printouts as documents and as evidence
- 146. Common Portal
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170. Rounding off of tax, etc.

171. Anti-profiteering measure

172. Removal of difficulties

173. Amendment of Act 32 of 1994

174. Repeal and saving

Statutory Provisions

143. Job Work Procedure

(1) A registered person (hereafter in this section referred to as the “principal”) may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, without payment of tax, to a job worker for job work and from there subsequently send to another job worker and likewise, and shall, —

- (a) bring back inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out, to any of his place of business, without payment of tax;
- (b) supply such inputs, after completion of job work or otherwise, or capital goods, other than moulds and dies, jigs and fixtures, or tools, within one year and three years, respectively, of their being sent out from the place of business of a job worker on payment of tax within India, or with or without payment of tax for export, as the case may be:

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

- (i) where the job worker is registered under section 25; or
- (ii) where the principal is engaged in the supply of such goods as may be notified by the Commissioner.

(2) The responsibility for keeping proper accounts for the inputs or capital goods shall lie with the principal.

(3) Where the inputs sent for job work are not received back by the principal after completion of job work or otherwise in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of one year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out.

(4) *Where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal in accordance with the provisions of clause (a) of sub-section (1) or are not supplied from the place of business of the job worker in accordance with the provisions of clause (b) of sub-section (1) within a period of three years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.*

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

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

143.1. Introduction

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

Meaning of job work and job worker: Section 2(68) of CGST Act, 2017 gives the meaning of the term 'job work'. As per the said provision, it means a person undertaking any treatment or processing of goods belonging to another registered person. Any person who does 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 should be registered.

This definition is much wider than the one given in 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 reflects the change in basic scheme of taxation relating to job-work in the proposed GST regime. 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 CGST Act. In case the treatment or process amounts to manufacture, there will be a new classification for the supply effected by the principal of the processed goods. But as far as the job worker is concerned, the classification will continue to be HSN 9988 and treated as supply of services always;

- goods belonging to another person – this is the requirement that cannot be likely considered, that is, on 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 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 with 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 **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.

The format of the intimation has not been specified in the CGST Act or Rules. Hence a letter along with a copy of the Delivery Challan may suffice.

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

Rule 55 of CGST rules ,2017 provides that transaction of goods for job work can be without 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 GSTR -1

Delivery challan to be treated as invoice if input/ capital goods not returned within 1 or 3 years

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 same shall be declared in FORM [WAYBILL].

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

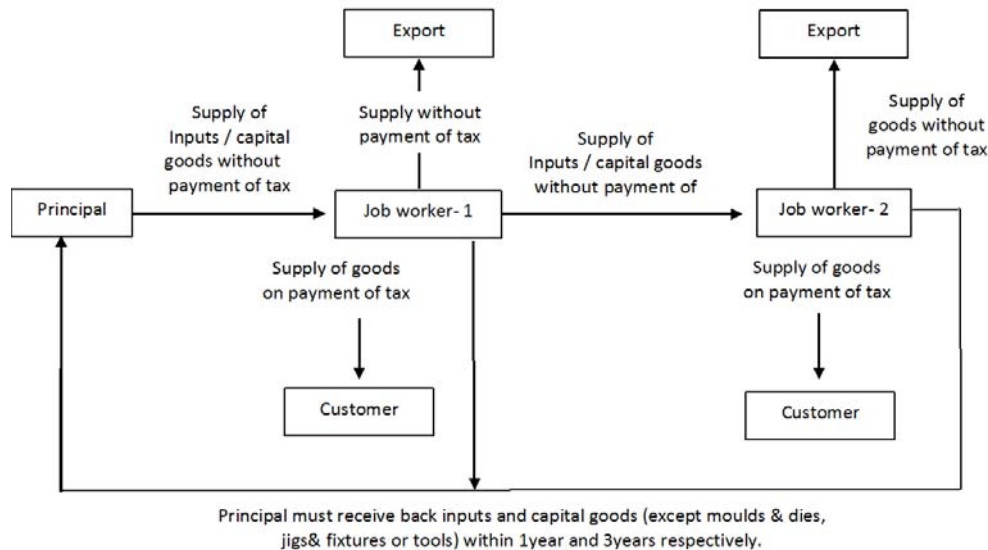
The goods can be supplied directly from the place of business of job worker by the principal only when the principal declares the place of business of the job worker as his additional place of business. However, the exceptions are -

- (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:



Inter-State job-work

Job-work activity can be undertaken in inter-State trade as 'issue' of inputs and capital goods to job worker is not a supply under section 7. 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 principle is registered, the principal will not be permitted to avail this facility allowed by section 143.

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 bodybuilding works on the chassis to make 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 in 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 principle has no option but to bring the bus all the way back and send it again.

In such cases, the entire transaction will have to be thought through a fresh and the principal may need to have a registered premises in Punjab or nearby states. Then undertake a stock

transfer on payment of GST from Tamil Nadu to this new location where registration has been obtained and then carry out I get back and forth movement within a much shorter distance alternatively locate the new registration necessarily in Punjab. And then undertake intrastate job work along with the facility of direct dispatch from the premises of the job worker to the customer in Chandigarh or any other location.

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.

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 worker

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

Section / Rule / Form	Description	Remarks
Sub-section (68) of Section 2	Job work definition	The job work has been defined to mean undertaking any treatment or process 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 turnover of work undertaken for principal

It is important to note here that 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.

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%

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%

143.5. FAQ

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

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

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

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

Q3. Whether any time period has been prescribed within which 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.

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.

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.

143.6 MCQ

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

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

Ans. (c) Registered person

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

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

Ans. (c) Job workers

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

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

Ans. (a) Principal

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

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

Ans. (b) 365 days (One Year)

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

- (a) One Years
- (b) Two Years
- (c) Three years
- (d) None of above

Ans. (d) Three years

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

Statutory provision

144. Presumption as to documents in certain cases

Where any document —

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

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

- (a) *unless the contrary is proved by such person, presume—*
 - (i) *the truth of the contents of such document;*
 - (ii) *that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;*

- (b) admit the document in evidence notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence.

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

- (1) Notwithstanding anything contained in any other law for the time being in force, —
- (a) a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
 - (b) a facsimile copy of a document; or
 - (c) a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or
 - (d) any information stored electronically in any device or media, including any hard copies made of such information,
- shall be deemed to be a document for the purposes of this Act and the rules made thereunder and shall be admissible in any proceedings thereunder, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.
- (2) In any proceedings under this Act or the rules made thereunder, where it is desired to give a statement in evidence by virtue of this section, a certificate, —
- (a) identifying the document containing the statement and describing the manner in which it was produced;
 - (b) giving such particulars of any device involved in the production of that document as may be appropriate for the purpose of showing that the document was produced by a computer,
- shall be evidence of any matter stated in the certificate and for the purposes of this sub section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

145.1 Introduction

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

145.2 Analysis

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

scored 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 proof. 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 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 in GST 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

145.6 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.

145.7 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.

145.8 MCQ

Q1. Document includes:

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

Ans. (d) All of the above

Statutory provision**146. Common Portal**

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

146.1. Introduction

This section deals with notification of common portal for various purposes upon recommendation by the GST Council. The Central government has vide Notification No. 4/2017-Central Tax dated 19-06-2017 notified www.gst.gov.in as the Common Goods and Services tax Electronic portal.

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 decide 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.

146.3. Comparative Review

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

146.6 FAQ

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.

146.7 MCQ

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

- (a) GST Council
- (b) President of India
- (c) Union Finance Minister
- (d) Supreme Court

Ans. (a) GST Council

Statutory provision**147. Deemed Exports**

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

147.1. Introduction

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

147.2. Analysis

The notified goods would be deemed to be exported, 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 missionary 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 FAQ.

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

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

148.1. Introduction

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

148.2. Analysis

The Government can notify such persons upon recommendation of the GST Council. Such notified persons would be required to follow certain special procedures inter-alia relating to registration, returns, tax payment and administration aspects. 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	Seeks to make payment of tax on issuance of invoice by registered persons having aggregate turnover less than Rs 1.5 crores
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

148.4 Analysis of the Notifications

148.4.1 Notification No 40/2017 & 57/2017- Central Tax dated 13th October, 2017 & 15th 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 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 – Notification No 40/2017. The effective date of this provision is 13th October, 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.

Sl 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 th January, 2018
2	October - December, 2017	15 th February, 2018
3	January - March, 2018	30 th April, 2018

148.4.2 Notification No 66/2017- Central Tax dated 15th 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 15th November, 2017.

Therefore, w.e.f 15th November, 2017 no tax needs to be paid on advances received by registered persons against goods supplied. W.e.f. 13th October, 2017 to 15th November, 2017, this benefit was available to suppliers having aggregate turnover less than Rs. 1.5 crores only.

Statutory provision

149. Goods and Services Tax Compliance Rating

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

149.1 Introduction

Compliance rating system is one of the new ways of tax administration. This section states that every 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 compliance rating is a unique form of rating the performance of the registered persons. The parameters which would be considered for performance rating would be prescribed.

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 provision

150. Obligation to furnish information return

- (1) Any person, being—
- (a) a taxable person; or
 - (b) a local authority or other public body or association; or
 - (c) any authority of the State Government responsible for the collection of value added tax or sales tax or State excise duty or an authority of the Central Government responsible for the collection of excise duty or customs duty; or
 - (d) an income tax authority appointed under the provisions of the Income-tax Act, 1961; or
 - (e) a banking company within the meaning of clause (a) of section 45A of the Reserve Bank of India Act, 1934; or
 - (f) a State Electricity Board or an electricity distribution or transmission licensee under the Electricity Act, 2003, or any other entity entrusted with such functions by the Central Government or the State Government; or
 - (g) the Registrar or Sub-Registrar appointed under section 6 of the Registration Act, 1908; or
 - (h) a Registrar within the meaning of the Companies Act, 2013; or
 - (i) the registering authority empowered to register motor vehicles under the Motor Vehicles Act, 1988; or
 - (j) the Collector referred to in clause (c) of section 3 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; or
 - (k) the recognised stock exchange referred to in clause (f) of section 2 of the Securities Contracts (Regulation) Act, 1956; or
 - (l) a depository referred to in clause (e) of sub-section (1) of section 2 of the Depositories Act, 1996; or
 - (m) an officer of the Reserve Bank of India as constituted under section 3 of the Reserve Bank of India Act, 1934; or
 - (n) the Goods and Services Tax Network, a company registered under the Companies Act, 2013; or
 - (o) a person to whom a Unique Identity Number has been granted under sub-section (9) of section 25; or
 - (p) any other person as may be specified, on the recommendations of the Council, by the Government, who is responsible for maintaining record of registration or statement of

accounts or any periodic return or document containing details of payment of tax and other details of transaction of goods or services or both or transactions related to a bank account or consumption of electricity or transaction of purchase, sale or exchange of goods or property or right or interest in a property under any law for the time being in force, shall furnish an information return of the same in respect of such periods, within such time, in such form and manner and to such authority or agency as may be prescribed.

- (2) Where the Commissioner, or an officer authorised by him in this behalf, considers that the information furnished in the information return is defective, he may intimate the defect to the person who has furnished such information return and give him an opportunity of rectifying the defect within a period of thirty days from the date of such intimation or within such further period which, on an application made in this behalf, the said authority may allow and if the defect is not rectified within the said period of thirty days or, the further period so allowed, then, notwithstanding anything contained in any other provisions of this Act, such information return shall be treated as not furnished and the provisions of this Act shall apply.
- (3) Where a person who is required to furnish information, return has not furnished the same within the time specified in sub-section (1) or sub-section (2), the said authority may serve upon him a notice requiring furnishing of such information return within a period not exceeding ninety days from the date of service of the notice and such person shall furnish the information return.

150.1 Introduction

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

150.2 . Analysis

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

Specified persons who would be required to furnish the 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"> • Taxable Person. • Local Authority, Other Public Body or Association. • Authority responsible for collecting VAT, Sales Tax, State Excise Duty, Central Excise Duty or Customs Duty. • Authority appointed under Income Tax. • Banking Company • State Electricity Board 	<ul style="list-style-type: none"> • Records of registration • Statement of accounts • Periodic returns • Details of payment of tax • Any other details of transaction of goods or services • Transaction relating to bank account • Transaction relating to consumption of electricity

<ul style="list-style-type: none"> Registrar or Sub-Registrar of Registration Act, 1908 Registrar of Companies Registering authority of Motor Vehicles Collector Recognised Stock Exchange Depository of Shares Officer of Reserve Bank of India Goods & Service Tax Network Person to whom Unique Identity Number (UIN) is granted Any other specified person on recommendation of the Council 	<ul style="list-style-type: none"> Transaction of purchase Sales Exchange of goods or property Right or interest in a property
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Implications of non-compliance

- 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.

- 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 provision

151. Power to Collect Statistics

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

151.1 Introduction

This section authorises the Commissioner for the purpose of 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 provision

152. Bar on disclosure of information

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

152.1 Introduction

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

152.2 Analysis

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

- Any person who is engaged in connection with collection of statistics under Section 151 or compilation or computerisation 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 provision

153. Taking assistance from an expert

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

153.1 Introduction

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

153.2 Analysis

This section will enable the Officer to take assistance of experts like IT professional, Lawyer, Technocrat, 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 provision

154. Power to take samples

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

154.1 Introduction

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

154.2 Analysis

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

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

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

154.3 FAQs

Q1. For what purposes can samples be taken?

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

Q2. Who can effect samples?

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

Statutory provision**155. Burden of Proof**

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

155.1 Introduction

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

155.2 Analysis

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

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

- Eligibility to claim input tax credit: Where the taxable person claims any input tax credit under 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 MCQ

Q1. Which of the following proposition is correct?

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

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

Statutory provision

156. Persons deemed to be public servants

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

156.1. Introduction

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

156.2. Analysis

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

157. Protection of action taken under this Act

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

157.1 Introduction

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

157.2 Analysis

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

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

157.4 FAQs

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

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

Statutory provision**158. Disclosure of information by a public servant**

- (1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act (other than proceedings before a criminal court), or in any record of any proceedings under this Act shall, save as provided in sub-section (3), not be disclosed.
- (2) Notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as otherwise provided in sub-section (3), require any officer appointed or authorised under this Act to produce before it or to give evidence before it in respect of particulars referred to in sub-section (1).
- (3) Nothing contained in this section shall apply to the disclosure of, —
 - (a) any particulars in respect of any statement, return, accounts, documents, evidence, affidavit or deposition, for the purpose of any prosecution under the Indian Penal Code or the Prevention of Corruption Act, 1988, or any other law for the time being in force; or
 - (b) any particulars to the Central Government or the State Government or to any person acting in the implementation of this Act, for the purposes of carrying out the objects of this Act; or

- (c) *any particulars when such disclosure is occasioned by the lawful exercise under this Act of any process for the service of any notice or recovery of any demand; or*
- (d) *any particulars to a civil court in any suit or proceedings, to which the Government or any authority under this Act is a party, which relates to any matter arising out of any proceedings under this Act or under any other law for the time being in force authorising any such authority to exercise any powers thereunder; or*
- (e) *any particulars to any officer appointed for the purpose of audit of tax receipts or refunds of the tax imposed by this Act; or*
- (f) *any particulars where such particulars are relevant for the purposes of any inquiry into the conduct of any officer appointed or authorised under this Act, to any person or persons appointed as an inquiry officer under any law for the time being in force; or*
- (g) *any such particulars to an officer of the Central Government or of any State Government, as may be necessary for the purpose of enabling that Government to levy or realise any tax or duty; or*
- (h) *any particulars when such disclosure is occasioned by the lawful exercise by a public servant or any other statutory authority, of his or its powers under any law for the time being in force; or*
- (i) *any particulars relevant to any inquiry into a charge of misconduct in connection with any proceedings under this Act against a practising advocate, a tax practitioner, a practising cost accountant, a practising chartered accountant, a practising company secretary to the authority empowered to take disciplinary action against the members practising the profession of a legal practitioner, a cost accountant, a chartered accountant or a company secretary, as the case may be; or*
- (j) *any particulars to any agency appointed for the purposes of data entry on any automated system or for the purpose of operating, upgrading or maintaining any automated system where such agency is contractually bound not to use or disclose such particulars except for the aforesaid purposes; or*
- (k) *any particulars to an officer of the Government as may be necessary for the purposes of any other law for the time being in force; or*
- (l) *any information relating to any class of taxable persons or class of transactions for publication, if, in the opinion of the Commissioner, it is desirable in the public interest, to publish such information.*

158.1 Introduction

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

158.2 . Analysis

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

- All details 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 provision

159. Publication of information in respect of persons in certain cases

- (1) *If the Commissioner, or any other officer authorised by him in this behalf, is of the opinion that it is necessary or expedient in the public interest to publish the name of any person and any other particulars relating to any proceedings or prosecution under this Act in respect of such person, it may cause to be published such name and particulars in such manner as it thinks fit.*
- (2) *No publication under this section shall be made in relation to any penalty imposed under this Act until the time for presenting an appeal to the Appellate Authority under section 107 has expired without an appeal having been presented or the appeal, if presented, has been disposed of.*

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

159.1 Introduction

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

159.2 Analysis**Powers to publish details:**

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

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

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

- (v) **Exception:** However, publication can be made in relation to imposition of penalty, only when the following conditions are satisfied:
 - The time for presenting an appeal to the First Appellate Authority (u/s 107) has expired and the persons involved, did not present any appeal (OR)
 - The appeal is presented and it is disposed of (against such persons).

159.3 Comparative review

Similar Provisions as above find place in extant 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. (For e.g. Sec.79 of the TNVAT Act, 2006)</i></p>

159.4 Related provisions

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

159.5 FAQs

Q1. Should prosecution proceedings alone be published?

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

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

Ans: No. As per the section, the Competent Authority may form his own opinion and may decide to publish the name and other particulars in such manner as 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 provision

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

- (1) *No assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings done, accepted, made, issued, initiated, or purported to have been done, accepted, made, issued, initiated in pursuance of any of the provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein, if such assessment, re-assessment, adjudication, review, revision, appeal, rectification, notice, summons or other proceedings are in substance and effect in conformity with or according to the intents, purposes and requirements of this Act or any 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 provision

161. Rectification of errors apparent on the face of record

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

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

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

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

161.1 . Introduction

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

161.2 Analysis

This section begins with caution in stating that:

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

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

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

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

The error may be-

- (a) factual,
- (b) legal or
- (c) clerical.

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

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

162. Bar on jurisdiction of civil courts

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

162.1 Introduction

With the advent of administrative law whereby the departmental machinery has been created to deal with disputes, civil court jurisdiction is restricted. 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 provision

163. Levy of Fee

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

163.1 Introduction

This provision empowers the Central Government to collect fees for supplying 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 FAQ

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

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

Q2. How much fees is to be paid?

Ans: It shall be prescribed by a separate notification.

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

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

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

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

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

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

163.5 MCQ

Q1. A person need not pay fees for:

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

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 provision

164. Power of Government to make rules

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

164.1 Introduction

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

164.2 Analysis

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

Two important principles are:

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

It is part of the separation of powers that legislative power is exercised by the legislature and executive only administers it. Delegation requires superintendence of the legislature. Although 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	Section 94 Power to make rules. -	(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Chapter. (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 FAQ

Q1. What is the purpose of making rules?

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

164.7 MCQ

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

- (a) Yes
- (b) No
- (c) Yes, subject to the limitation that it cannot be made beyond the date on which the Chapter-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 provision

165. Power to make regulations

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

165.1 Introduction

While topics for rule making are listed under Section 164 leaving the domain to the appropriate Government, topics for making regulation listed under Section 165 are reserved for the Board. These are mutually exclusive domains.

165.2 Analysis

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

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

165.3 Comparative review

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

Section 37 of the Central Excise Act, 1944

Statutory provision**166. Laying of rules, regulations and notifications**

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

166.1 Introduction

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

166.2. Analysis

- (a) The Act permits making of rules by Government, issuance of regulation by Board and issuance of notification by the Government.
- (b) Such rule, regulation and notification, which is a part of delegated legislation is placed before the Parliament.
- (c) It is laid before the Parliament, as soon as may be after it is made or issued, when the Parliament is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.
- (d) Before the expiry of the session or successive sessions both Houses may make suitable modifications and would have effect in such modified form.
- (e) However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

166.3. Comparative Review

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

Statutory provision**167. Delegation of Powers**

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

167.1 Introduction

This 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> <ul style="list-style-type: none"> (a) any power exercisable by the Board under this Act may be exercisable also by a Chief Commissioner of Central Excise or a Commissioner of Central Excise empowered in this behalf by the Central Government; (b) any power exercisable by a Commissioner of Central Excise under this Act may be exercisable also by a Joint Commissioner of Central Excise or an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise empowered in this behalf by the Central Government; (c) any power exercisable by a Joint Commissioner of Central Excise under this Act may be exercisable also by an Assistant Commissioner of Central Excise or Deputy Commissioner of Central Excise empowered in this behalf by the Central Government; and (d) any power exercisable by an Assistant Commissioner of

Statute	Section / Rule / Form	Description
		Central Excise or Deputy Commissioner of Central Excise under this Act may be exercisable also by a gazetted officer of Central Excise empowered in this behalf by the Board.

167.5 FAQs

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

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

167.6 MCQs

Q1. Which of the following statements is correct?

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

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) Competent Authority

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

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

Commissioner or Joint Secretary posted in the Board and such Commissioner or Joint Secretary shall exercise the powers specified in the said sections with the approval of the Board.

168.1 Introduction

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

168.2 Analysis

There are three aspects to the provision, namely:

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

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

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

Sub-section (2) 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

Statute	Section / Rule / Form	Description
Central Excise Act, 1984	Section 37B. Instructions to Central Excise Officers. -	The Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963 (54 of 1963), may, if it considers it necessary or expedient so to do for the purpose of uniformity in the classification of excisable goods or with respect to levy of duties of excise on such goods, issue such orders, instructions and directions to the Central Excise Officers as it may deem fit, and such officers and all other

Statute	Section / Rule / Form	Description
		<p>persons employed in the execution of this Act shall observe and follow such orders, instructions and directions of the said Board:</p> <p><i>Provided that no such orders, instructions or directions shall be issued)</i></p> <p>so as to require any Central Excise Officer to make a particular assessment or to dispose of a particular case in a particular manner; or</p> <p>so as to interfere with the discretion of the Commissioner of Central Excise (Appeals) in the exercise of his appellate functions.</p>

168.5 Relevant orders

Various orders have been brought in by the Board from time to time under this Section vide Order No. 1/2017-GST to Order No. 11/2017-GST. These have been in respect of the extension of time limit for filing of Form GST TRAN-1, Form GST CMP-01, Form GST CMP-03 and Form GST REG-26.

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

<p>(1) <i>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: —</i></p> <p>(a) <i>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</i></p> <p>(b) <i>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</i></p>
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- (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"> — Delivery through a messenger including a courier; — Courier (no specific mention about whether it is approved by CBEC); — Electronic Means (E-mail/common portal); — Publication in Newspaper.
Additional Addressees (if main addressee is 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	<p>The proposed Section covers any communication issued under the law.</p> <p>In the extant Central Excise Law, Section 37C covers <i>decision / order / summons / notice</i>.</p> <p>Any communication might include intimation letters sent under the law, trade letters issued, acknowledgments issued etc.</p>
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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 provision

170. Rounding off of tax, etc.

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

170.1 Introduction

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

170.2 Analysis

- (i) **Amounts covered:** Tax, interest, penalty, fine or any other sum payable, and refund or any other sum due, under the Act.
- (ii) The above amounts shall be rounded off as under:

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

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

170.3 Comparative review

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

170.4 Related provisions

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

170.5 FAQs

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

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

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

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

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

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

170.6 MCQs

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

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

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 provision

171. Anti-profiteering measure

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

171.1 Introduction

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

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 16th 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 15th November, 2017 after the 23rd GST Council Meeting on 6th 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. 4th 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).

Rule 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 erstwhile law, to be nominated by the Council.

Rule 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.

Rule 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 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 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.

Rule 125. Secretary to the Authority

The Additional Director General of Safeguards under the Board shall be the Secretary to the Authority.

Rule 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.

Rule 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 per cent 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 of the close of each quarter

Rule 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.

Rule 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 allowed by the Standing Committee and, upon completion of the investigation, furnish to the Authority, a report of its findings along with the relevant records.

Rule 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.

Rule 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.

Rule 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 proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860).

Rule 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 per cent 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.

Rule 134. Decision to be taken by the majority

If the Members of the Authority differ in opinion on any point, the point shall be decided according to the opinion of the majority.

Rule 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.

Rule 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.

Rule 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;
- (d) "Screening Committee" means the State Level Screening Committee constituted in terms of sub-rule (2) of rule 123 of these rules.

171.3 Comparative Review

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

171.4 FAQs

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

Ans. The Central 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 provision

172. Removal of difficulties

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

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

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

172.1 Introduction

The responsibility to implement the legislatures will 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 13th 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 provision**173. Amendment of Act 32 of 1994**

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

Statutory provision**174. Repeal and Saving**

- (1) *Save as otherwise provided in this Act, on and from the date of commencement of this Act, the Central Excise Act, 1944 (except as respects goods included in entry 84 of the Union List of the Seventh Schedule to the Constitution), the Medicinal and Toilet Preparations (Excise Duties) Act, 1955, the Additional Duties of Excise (Goods of Special Importance) Act, 1957, the Additional Duties of Excise (Textiles and Textile Articles) Act, 1978, and the Central Excise Tariff Act, 1985 (hereafter referred to as the repealed Acts) are hereby repealed.*
- (2) *The repeal of the said Acts and the amendment of the Finance Act, 1994 (hereafter referred to as "such amendment" or "amended Act"), 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 (101st Amendment) Act 2016 would continue to apply to certain goods.
- (f) For the said purpose, the General Sales Tax/VAT / CST laws and Central Excise Act, 1944 and Central Excise Tariff Act, 1985 would continue to apply – 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,1955 Central 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 (101st Amendment) Act, 2016, would continue to apply to certain goods. Consequently, VAT laws would continue to that extent.

Q7. After introduction of GST what is the fate of all departmental appeals filed during the pre-GST regime?

Ans. It would continue and would not abate.

Q8. After introduction of GST whether Department can continue to investigate the offences allegedly committed under the old regime?

Ans. Investigation can continue and SCN can be issued later.

Q9. Can the Supreme Court dismiss all indirect tax appeals pending before it on the ground that GST Act has been introduced?

Ans. The appeals already instituted would be heard by the Supreme Court and would not abate or be dismissed.

174.5 MCQs

Q1. The _____ law which is not repealed after enactment of GST.

- (a) Entry Tax law
- (b) VAT law
- (c) Company law
- (d) Central Excise law.

Ans. (a) 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

SCHEDULE-I

[See Section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Rule 32 of CGST rule, 2017, provides that Central Government can notify the value to be nil in respect of value of taxable services

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

It is being reported that gifts and perquisites supplied by companies to their employees will be taxed in GST. Gifts upto a value of Rs 50,000/- per year by an employer to his employee are outside the ambit of GST. However, gifts of value more than Rs 50,000/- made without consideration are subject to GST, when made in the course or furtherance of business. The question arises as to what constitutes a gift. Gift has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift. Another issue is the taxation of perquisites. It is pertinent to point out here that the services by an employee to the employer in the course of or in relation to his employment is outside the scope of GST (neither supply of goods or supply of services). It follows therefrom that supply by the employer to the employee in terms of contractual agreement entered between the employer and the employee, will not be subjected to GST. Further, the input tax credit (ITC) scheme under GST does not allow ITC of membership of a club, health and fitness centre [section 17 (5) (b) (ii)]. It follows, therefore, that if such services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured by the employer. The same would hold true for free housing to the employees, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the cost-to-company (C2C).

(www.cbec.gov.in)

3. *Supply of goods—*
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.

SCHEDULE-II

[See Section 7]

ACTIVITIES TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

- 1. Transfer**
 - (a) any transfer of the title in goods is a supply of goods;
 - (b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;
 - (c) any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed, is a supply of goods.
- 2. Land and Building**
 - (a) any lease, tenancy, easement, licence to occupy land is a supply of services;
 - (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.
- 3. Treatment or process**

Any treatment or process which is applied to another person's goods is a supply of services.
- 4. Transfer of business assets**
 - (a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person;
 - (b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services;
 - (c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—
 - (i) the business is transferred as a going concern to another person; or
 - (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of services

The following shall be treated as supply of service, namely: —

- (a) renting of immovable property;
- (b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation - For the purposes of this clause—

- (1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: —
 - (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
 - (ii) a chartered engineer registered with the Institution of Engineers (India); or
 - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and
- (f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely: —

- (a) works contract as defined in clause (119) of section 2; and
- (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other

Schedule-II

than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

7. Supply of Goods

The following shall be treated as supply of goods, namely: —

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

SCHEDULE-III

[See Section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
 - (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
 - (b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
 - (c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.
6. Actionable claims, other than lottery, betting and gambling.

Explanation - For the purposes of paragraph 2, the term "**Court**" includes District Court, High Court and Supreme Court.

THE INTEGRATED GOODS AND SERVICE TAX ACT, 2017

Statement of Objects and Reasons:

Earlier, the States effecting inter-State sale of goods were empowered to collect and retain Central Sales Tax (CST) under the Central Sales Tax Act, 1956.

The difficulties faced in the erstwhile Central Sales Tax system are:

- (i) The levy is non-vatable i.e. the credit of CST is not available as a set-off in the hands of the purchaser.
- (ii) CST directly gets added to the cost of the goods resulting in cascading effect of the taxes on the cost of production of products.
- (iii) Creation of tax arbitrage on account of the rate of CST being different from VAT levied on intra-State sale.
- (iv) Several businesses are not in a position to procure goods in the course of inter-State trade or commerce after concessional rate of tax against the declaration forms.

To usher in the GST regime, levy of a single tax called Integrated Goods and Service Tax is considered necessary on the supply of goods or services or both taking place in the course of inter-State trade/ commerce. The rate of tax is proposed to be more or less equal to the sum total of Central Tax (CGST) and State Tax (SGST) or Union Territory Tax (UTGST) though there are some cases where more rationalisation is required in terms of parity of net tax incidence. The new legislation, amongst others, broadly:

- (i) Provides for levy of tax on all inter-State supplies of goods or services or both (except alcoholic liquor for human consumption) at a rate recommended by the GST Council (not exceeding 40%);
- (ii) Provides for levy of tax on goods imported into India;
- (iii) Provides for levy of tax on import of services on a reverse charge basis;
- (iv) Empowers the Central Government to grant exemptions on the recommendation of the GST Council;
- (v) Provides for determination of nature of supply (intra-State or inter-State) and place of supply
- (vi) Provides for payment of tax by a supplier of Online Information and Database Access or Retrieval Services (OIDAR)
- (vii) Enables apportionment of tax and settlement of funds on account of transfer of input tax credit between the Central Government, State Government and Union Territory; `
- (viii) Provides for application of certain provisions of the Central Goods and Service Tax Act, 2017 to the extent relevant for the purposes of this Act;
- (ix) Provides for transitional transactions in relation to import of services.

Chapter I

Preliminary

1. Short title, extent and commencement

2. Definitions

Statutory Provision

1. Short title, extent and commencement

- (1) *This Act may be called the Integrated Goods and Services Tax Act, 2017.*
- (2) *It extends to the whole of India except the State of Jammu & Kashmir.*
- (3) *It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:*

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

1. *The Central Goods and Services Tax Act, 2017 has been implemented in the State of Jammu and Kashmir from 8th July 2017 through Constitution (Application to Jammu and Kashmir) Amendment Order, 2017, the Central Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017 and the Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017.*
2. *Certain provisions came into force on 22.6.17 and remaining provisions on 1.7.17 as notified by the Central Government and hence appointed day for the CGST Act, IGST, UTGST Acts, SGST Acts was 1st July 2017. However, the appointed day for the State of Jammu and Kashmir was 8th July 2017.*

Title

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

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

Extent

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

Part VI of the Constitution of India provides that for every State, there shall be a Legislature, while Part VIII provides that every Union Territory shall be administered by the President through an 'Administrator' appointed by him. However, the Union Territories of Delhi (Article 239 AA) and Pondicherry (Article 239A) have been provided with Legislatures with powers and functions as required for their administration.

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

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

The assembly of J&K had passed the GST bill in the first week of July. Subsequently, the Honourable President of India promulgated two ordinances, namely, the CGST (Extension to Jammu and Kashmir) Ordinance, 2017 and the IGST (Extension to Jammu and Kashmir) Ordinance, 2017 making the CGST/ IGST applicable to the State of Jammu and Kashmir, w.e.f. 8 July 2017. After the promulgation of ordinance, India has adopted GST in its form across the country.

Commencement:

Provisions of the IGST Act related to registration etc. came into operation through Notification No. 1/2017- Integrated Tax dated 19.6.2017. Further, Notification No. 3/2017-Integrated Tax was issued to make other provisions of the IGST Act applicable w.e.f. 1st July. Effectively, all operation provisions of the IGST Act have become applicable from 1st July 2017.

Similar to extending enforcement of IGST Act, Notification No. 4/ 2017–Integrated Tax dated 28th June, 2017 has been issued to make Integrated Goods and Services Tax Rules, 2017 applicable w.e.f. 22nd June 2017. However, IGST Rules, 2017 have been separately notified along with the Central Goods and Services tax Rules, 2017.

Statutory Provision

2. Definitions

In this Act, unless the context otherwise requires-

(1) *“Central Goods and Services Tax Act” means the Central Goods and Services Tax Act, 2017;*

It refers to the Act under which tax is levied on intra-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption).

(2) *“central tax” means the tax levied and collected under the Central Goods and Services Tax Act;*

Tax levied under the CGST Act is referred to as “Central tax” as opposed to “CGST” as used in the model GST laws. It refers to the tax charged under the CGST Act on intra-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 20%. . The rates for goods have been notified vide Notification No. 1/2017- Integrated Tax (Rate) dated 28-06-2017 while Notification No. 8/2017- Integrated Tax (Rate) dated 28-06-2017 covers the rates of services notified.

It is relevant to note that the term ‘central tax’ under the IGST Act is defined to include tax levied and collected under the CGST Act whereas the term ‘central tax’ under the CGST Act is defined to mean the central goods and services levied under section 9 . Therefore, the phrase ‘central tax’ has a wider connotation under the IGST Act as it includes taxes collected in addition to what is levied under CGST Act.

(3) “continuous journey” means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation. —For the purposes of this clause, the term “stopover” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time;

This is relevant to determine the place of supply of passenger transport services.

Continuous journey refers to a journey where:

- (a) A single or more than one ticket or invoice is issued at the same time;
- (b) Service is provided by one service provider or by an agent on behalf of more than one service providers
- (c) Journey does not involve any stopover at any of the legs of the journey for which one or more separate tickets or invoices are issued (“Stopover” means a place where a passenger disembarks from the conveyance).

The following aspects need to be noted:

- All stopovers will not cause a break in the journey. Only those stopovers for which one or more separate tickets are issued will be relevant. A travel involving Bangalore-Dubai-New York-Dubai-Bangalore on a single ticket with a halt at Dubai (onward and return) will be covered by the definition of continuous journey. However, if the passenger disembarks at Dubai or breaks his journey for a certain period in order to resume it at a later point of time, it will not be considered a continuous journey.
- All the above conditions should be cumulatively satisfied to consider the journey as continuous journey.
- A return journey will be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

(4) “customs frontiers of India” means the limits of a customs area as defined in section 2 of the Customs Act, 1962;

The customs frontiers of India include the following:

- (a) Customs Port;
- (b) Customs Airport;
- (c) International Courier Terminal;
- (d) Foreign Post Office;
- (e) Land Customs Station;
- (f) Area in which imported goods or goods meant for export are ordinarily kept before clearance by Customs Authorities

The following aspects need to be noted:

- Bonded Warehouses would now be covered under this definition.
- A person importing goods into the territory of India from an overseas exporter would be liable to pay IGST on such supply of goods.
- Where a transfer of documents of title takes place during import, the question of payment of tax by the importer would not arise since the documents of title would be transferred before the goods cross the customs frontier of India. It has been clarified vide *Circular No. 33 /2017-Cus dated 1-Aug-17*, that IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time.
- Supplies made by an importer after the goods have crossed the customs frontier of India would be liable to CGST, SGST or IGST, depending on the facts of each case.

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

Export of goods will be treated as ‘zero-rated supplies’. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if the supplies were exempt supplies so long as the eligibility of the input taxes is established.

Following aspects need to be noted:

- Unlike export of services which requires fulfilment of certain conditions for a supply to qualify as ‘export of services’ like the nature of currency in which payment is required to be made, location of the exporter etc., export of goods doesn’t require fulfilment of any such conditions.
- The movement of goods is alone relevant and not the location of the exporter/ importer.

- The exporter may utilize such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.
- The exporter will be eligible to claim refund under the following situations:
 - (i) He may export the goods under a Letter of Undertaking, without payment of IGST and claim refund of unutilized input tax credit; or
 - (ii) He may export the goods upon payment of IGST and claim refund of such tax paid.

(6) “export of services” means the supply of any service when, —

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

The concept of export of services is broadly borrowed from the provisions of the erstwhile Service Tax law.

Under the GST regime, export of service will be treated as ‘zero-rated supplies’. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if supplies were exempt supplies as long as the eligibility of the input taxes as input tax credits is established.

The exporter may utilise such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.

The exporter will be eligible to claim refund under the following situations:

- (a) He may export the services under a Letter of Undertaking, without payment of IGST and claim refund of unutilized input tax credit; or
- (b) He may export the services upon payment of IGST and claim refund of such tax paid.

The following aspects need to be noted:

- The requirement under the Service Tax law was that the supplier should be located in the taxable territory i.e. India, excluding Jammu and Kashmir. Under the GST law, the requirement is that the supplier is located in India (which includes Jammu and Kashmir) as GST has been enacted in the State of J&K also.
- Although overseas establishment of a person who is situated in India is treated as a distinct person for purposes of levy of integrated tax, as regards export of services, this

overseas establishment must demonstrate substance in its activities to qualify as recipient of the export of the services from India and establish itself as more than just a mere establishment of the person.

- Establishments will be treated as establishment of distinct persons under the following situations:

Situation	Location of one establishment	Location of the other establishment
I	India	Outside India
II	State or Union Territory	Outside that State or Union Territory
III	State or Union Territory	Business vertical registered in that State or Union Territory

Therefore, where both the establishments are located in a State/ Union Territory under the same GSTIN, the establishments will not be considered as distinct persons.

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

Fixed Establishment refers to a place:

- Having a sufficient degree of permanence
- Having a structure of human and technical resources
- Other than the registered place of business

The following aspects need to be noted:

- Not every temporary or interim location of a project site or transit-warehouse will (*ipso facto*) become a fixed establishment of the taxable person.
- The person should undertake supply of services or should receive and use services for own needs.
- Temporary presence of staff in a place by way of a short visit to a place or so does not make that place a fixed establishment.
- Liaison Offices meant to undertake liaison activities cannot render services that are commercial in nature, in the garb of rendering liaison services. For e.g.: If a liaison office were to render marketing service to its parent entity outside India, for a customer located in India and the said liaison office staff receive a fee/ commission, then the concept of liaison office stands to test. In such a scenario, the reimbursements received by the liaison office could be subject to tax notwithstanding the fact that the entire transaction can be subjected to valuation as a permanent establishment.

(8) *“Goods and Services Tax (Compensation to States) Act” means the Goods and Services Tax (Compensation to States) Act, 2017;*

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

(9) *“Government” means the Central Government;*

(10) *“import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;*

Import of goods into India would be treated as supply of goods in the course of inter-State trade/ commerce and would be liable to integrated tax under this Act.

The following aspects need to be noted:

- The place of supply of goods in case of imports would be the location of the importer. E.g.: If goods are imported at Mumbai port but the importer is at Delhi, the place of supply shall be Delhi;
- The integrated tax would be levied on the value of goods as determined under the Customs law in addition to the custom duties levied on such imports. In other words, levy of Basic Customs Duty (BCD) will continue and the component of Countervailing Duty (CVD) and Special Additional Duty (SAD) will be replaced by Integrated tax;
- The time at which the customs duties are levied on import of goods would also be the time when integrated tax is levied;
- The importer will be liable to pay integrated tax on a reverse charge basis and the same will have to be discharged by cash only and credit cannot be utilized for discharging such a liability;
- Merchant Trading Transactions (MTT) i.e. where the supplier of goods will be resident in one foreign country, the buyer of goods will be resident in another foreign country and the merchant or intermediary will be resident in India, would primarily not come under the ambit of GST since they do not involve entry of goods into India.

(11) *“import of services” means the supply of any service, where—*

- (i) *the supplier of service is located outside India;*
- (ii) *the recipient of service is located in India; and*
- (iii) *the place of supply of service is in India;*

The phrase “import of service” is very broad and covers all such supplies where:

- (a) The supplier is located outside India,

(b) The recipient is located in India

(c) Place of supply is in India.

The following aspects need to be noted:

- Supplies, where the supplier and recipient are mere establishments of a person, would also qualify as “import of service”.
- The importer will be liable to pay integrated tax on a reverse charge basis and the same will have to be discharged by cash only and credit cannot be utilized for discharging such a liability;
- Import of service made for a consideration alone would be taxable, whether or not in the course of business. Therefore, import of service for personal consumption for a consideration would qualify as ‘supply’ and would be liable to integrated tax. However, the recipient will not be required to obtain a registration for that purpose. However, Import of services from related persons or establishments located outside India without consideration also would be liable to integrated tax as per Schedule I of the CGST Act, 2017;
- The threshold limits for registration would not apply and the importer would be required to obtain registration irrespective of his turnover.

(12) “integrated tax” means the integrated goods and services tax levied under this Act;

It refers to the tax charged under this Act on inter-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 40% . The rates for goods have been notified vide Notification No. 1/2017- Integrated Tax (Rate) dated 28-06-2017 while Notification No. 8/2017- Integrated Tax (Rate) dated 28-06-2017 covers the rates of services notified.

(13) “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

The following aspects need to be noted:

- An intermediary arranges or facilitates supply of goods or services or both, or securities between two or more persons. For e.g.: Travel Agent
- Two supplies are generally involved:
 - Supply between the principal and the third party; and
 - Supply of his own service to his principal – generally for a fee or commission;
- An intermediary cannot alter the nature or value of supply, which he facilitates on behalf of his principal;

- The consideration for an intermediary's supply is separately identifiable from the main supply that he is arranging and is in the nature of fee or commission charged by him;
- The test of agency must be satisfied between the principal and the agent i.e. the intermediary;
- The place of supply in relation to intermediary services is the location of the service provider.

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

- where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;*
- where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*
- where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and*
- in absence of such places, the location of the usual place of residence of the recipient;*

The phrase 'location of the recipient of services' is essential to determine the place of supply of service and can be understood in the following 4 sub-clauses:

- Services received at a place of business where registration is obtained – Location of such place of business;
- Services received at a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources) – Location of such fixed establishment;
- Services received at more than one establishment – Location of the establishment most directly concerned with the receipt of the supply;
- Services received at a place other than above – Location of the usual place of residence of the recipient (address where the person is legally registered/ constituted in case of recipients other than individuals).

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

E.g.: Event management services received in the Mangalore unit of M/s. ABC Ltd. M/s. ABC Ltd has its registered office in Mumbai (having a GST registration) and has a branch office in

Bangalore (having a GST registration). Mangalore unit is neither an additional place of business nor a fixed establishment. In such a case, a view may be taken that the location of the recipient of service is the Mumbai office, and not the Bangalore office, although Bangalore and Mangalore are located in the same State.

- (15) *“location of the supplier of services” means, —*
- (a) *where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;*
 - (b) *where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*
 - (c) *where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and*
 - (d) *in absence of such places, the location of the usual place of residence of the supplier;*

The phrase ‘location of the supplier of services’ is essential to determine the place of supply of service and can be understood in the following 4 sub-clauses:

- (a) Services made from a place of business where registration is obtained – Location of such place of business;
- (b) Services made from a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources) – Location of such fixed establishment;
- (c) Services made from more than one establishment – Location of the establishment most directly concerned with the receipt of the supply;
- (d) Other than the above – Location of the usual place of residence of the supplier (address where the person is legally registered/ constituted in case of recipients other than individuals).

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

Where services are provided from more than one establishment i.e. principal place of business and fixed establishment, the location of the establishment with which the service receiver is directly concerned will be considered for the purpose of determining the location of supply.

(16) *“non-taxable online recipient” means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.*

Explanation. —For the purposes of this clause, the expression “governmental authority” means an authority or a board or any other body, —

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

The phrase “non-taxable online recipient” covers the following persons:

- (a) The Central Government
- (b) Local Authority
- (c) Governmental Authority i.e. an authority established with 90% or more participation by the Government and set-up to undertake functions entrusted to a municipality under Article 243W of the Constitution like:
 - Preparation of plans for economic development,
 - Urban planning,
 - Fire Services,
 - Water supply, etc.

(17) *“online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as, —*

(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) online gaming;

The definition has very wide coverage of activities/ services delivered in the digital economy and is drafted in line with the provisions under the Service Tax laws to include services like e-downloads of games, movies etc., web-hosting services, online supply of on-demand disc space, distance teaching, etc.

An indicative list of services that would not be covered under Online Information and Database Access or Retrieval (OIDAR) services are:

- Legal services or Financial services advising clients through e-mail
- Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network (using a remote link)

Following aspects need to be noted:

- Supply of Online Information and Database Access or Retrieval (OIDAR) services by a person located in a non-taxable territory (outside India) to a non-taxable online recipient, would be liable to tax in the hands of the supplier;
- The supplier would be responsible for collection and remittance of integrated tax to the Government of India;
- The supplier can take a single registration under the Simplified Registration Scheme (yet to be notified by the Government);
- Alternatively, a person located in India representing the supplier can obtain registration and pay the tax on behalf of the supplier. If the supplier does not have a representative/ physical presence in India, he can appoint a person who will be liable to pay the integrated tax on such transactions by providing the details of the State of consumption;
- Business-to-Business (B2B) transactions w.r.t. OIDAR will be taxable in the hands of the recipient itself under reverse charge mechanism.

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

The output tax i.e. integrated tax chargeable on inter-State taxable supply of goods or services can be summarised as under:

Type of Supply	Reference
Supplies between 2 States (or UT with Legislature)	Section 7(1) and 7(3) of the IGST Act
Import of goods or services	Section 7(2) and Section 7(4) of the IGST Act
Supplies to/ by a SEZ developer or unit	Section 7 (5) (b) of the IGST Act
Supplies made by a person located in India and where the place of supply is outside India	Section 7 (5) (a) of the IGST Act

Following aspects need to be noted:

- While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the law from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but who have failed to obtain registration.
- The amount covered under this term is the amount of tax that is 'chargeable', and not the amount that is 'charged'. Therefore, in case a person wrongly charges tax, or charges an excess rate of tax, as compared to the applicable tax rate, such excess would not qualify as output tax.
 - The taxes payable by recipient of supply, on account of making inward supplies of such categories of supply as are notified for the purpose of reverse chargeability of tax, or making inward supplies from unregistered persons, would be out of the scope of 'output tax'.
- The implication of the exclusions mentioned above is that the input tax credit cannot be utilised for making payment of any amount that does not qualify as output tax. Discharge of liability in such cases has to be by way of cash payments (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).
- The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the tax paid on such supplies as output tax in the hands of the supplier.

(19) "Special Economic Zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;

It covers two categories of zones as under:

- (a) Zones which are existing as on 10.02.2006 i.e. the date when SEZ Act was made effective.
- (b) Zones which have been notified under section 3(4) and section 4(1) of the SEZ Act, 2005.

Notifications under section 3(4) are issued when the State Government wants to set up a SEZ and the Notifications under section 4(1) are issued when any other person (except State Government) wants to set-up a SEZ. The notifications issued therein specify the SEZ area.

(20) "Special Economic Zone developer" shall have the same meaning as assigned to it in clause (g) of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co-Developer as defined in clause (f) of section 2 of the said Act;

The term "Special Economic Zone developer" covers the following persons:

- (a) Person/ State Government who has been granted a letter of approval by the Central Government

- (b) Special Economic Zone Authority
- (c) Co-developer

Where the State Government/ person wants to set up a SEZ, notifications are required to be issued under section 3(4) and section 4(1) of the SEZ Act, 2005, respectively and after fulfilment of the prescribed conditions and procedures, a letter of approval is granted. Such a person who has been granted a letter of approval is regarded as a developer.

A co-developer is a person who has been granted a letter of approval for providing infrastructure facilities or for carrying out authorized operations in a notified SEZ. The Board of Approval (BOA) may specify the facility required to be developed by such a co-developer and in such a case, the co-developer will enter into an agreement with the developer for the specified purpose.

Supplies made to SEZ developer/ unit would be regarded as zero-rated supplies.

(21) “supply” shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act;

The concept of ‘supply’ has been discussed in detail in the analysis of ‘Supply’.

(22) “taxable territory” means the territory to which the provisions of this Act apply;

It covers the whole of India including the State of Jammu and Kashmir.

(23) “zero-rated supply” shall have the meaning assigned to it in section 16;

The following taxable supplies of goods and/ or services are considered as ‘zero rated supplies’:

- (a) Export of goods or services or both
- (b) Supply of goods or services or both to a SEZ developer or SEZ unit

Input tax credit can be availed for making zero-rated supplies, even though such zero-rated supplies may be an exempt supply.

A taxable person exporting goods or services would be eligible for refund under the following two options:

- Export under bond/ LUT without payment of integrated tax and claim refund of unutilised input tax credit; or
- Export on payment of integrated tax which can be claimed as refund accordingly.

(24) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;

Certain words and expressions like person, supplier, recipient, reverse charge, time of supply, value of supply etc. defined in the CGST/ UTGST/ GST (Compensation to States) laws will have the same meaning for the purpose of IGST law.

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

Chapter II

Administration

3. Appointment of officers
4. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances

Statutory Provision

3. Appointment of officers

The Board may appoint such central tax officers as it thinks fit for exercising the powers under this Act.

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

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

3.1/4.1 Introduction

Although CGST and IGST are both taxes of the Union, it is required that lawful authority be vested in certain persons to discharge duties for purposes of Integrated Tax.

3.2/4.2 Analysis

It is for this reason that the board has been empowered to appoint Central tax officers to discharge duties under the IGST Act. Please note that appointment of officers remains with the government but confirmation of responsibility to act as integrated tax officers is left with the Board.

Suitable enabling provisions have also been made, whereby officers of State / UT Tax can be authorised to discharge functions under the IGST Act. Such a provision is necessary in order to maintain uniformity in administration of notified supplies or notified category of taxable persons which are exclusively left under the CGST Act to be administered by officers of State / UT Tax. It is appreciable that careful consideration has been given to ensure that there is no duplication of administrative power at the same time sufficient flexibility is enabled to ensure smooth and seamless tax compliance experience for trade and industry in GST regime.

Chapter III

Levy and Collection of Tax

5. Levy and Collection

6. Power to grant exemption from tax

Statutory provision

5. Levy and Collection

- (1) *Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both; except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:*

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

- (2) *The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.*
- (3) *The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*
- (4) *The integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*
- (5) *The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:*

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

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

5.1 Introduction

The Constitution mandates that no tax shall be levied or collected by a taxing Statute except by authority of law. While no one can be taxed by implication, a person can be subject to tax in terms of the charging section only.

This is the charging provision of the IGST Act. It provides that all inter-State supplies would be liable to IGST at rate recommended by the Council and notified subject to a ceiling rate of 40%. The provision of this section is comparable to the provision under section 9 of the CGST Act and section 7 of the UTGST Act.

The levy is on all goods or services or both except alcoholic liquor for human consumption. Further, GST may be levied in supply of petroleum crude, high spirit diesels, motor spirit (petrol), natural gas and aviation turbine fuel with effect from the date notified by the Government on the recommendations of GST Council.

The levy of tax on supply of goods and / or services is in three parts - (i) in the hands of the supplier and (ii) in the hands of the recipient of goods / services under reverse charge mechanism and, (iii) in case of specified services, in the hands of electronic commerce operator

5.2 Analysis

In terms of section 2(24) of the Act, any words or expression which are used in this Act, but are not defined should be assigned the meaning as given to such words or expressions in the CGST Act, the UTGST Act, and the GST (Compensation to States) Act.

With specific reference to this section, the following words/ expressions would be relevant-

- Supply
- Inter-State supply
- Goods
- Services
- Taxable person

The meaning to the expression 'inter-State supply' can be understood from section 7 of this Act. However, the meaning of 'supply' and 'taxable person' should be borrowed from the CGST Act. Reference may be made to the CGST Act for an in-depth understanding of such expressions and words.

Levy of tax: Every inter-State supply will be liable to tax, if:

- (i) There is a Supply either of goods or services or both, even when a supply involves goods or services or both the law provides that such supply would be classifiable only as goods or services in terms of Schedule II of the Act.
- (ii) The supply is an inter-State supply – viz. ordinarily, the location of the supplier and the place of supply are in different States. (Refer section 7 of the IGST Act to understand the meaning of inter-State supply);
- (iii) The tax shall be payable by a 'taxable person' as explained in section 2(107) read with section 22 and section 24 of the CGST Act.

Imports: Proviso to section 5(1) makes a very important exception in respect of "goods imported into India". Import of goods is defined in section 2(10) in a manner identical with the definition under Customs Act in section 2(23). The important exception made under the proviso is the carve out from the levy under section 5 supplies involving import of goods and place such transactions under Customs Act and not under IGST Act. In other words, goods imported into India will be liable to IGST but not under IGST Act instead under section 3(7) of Customs Tariff Act. Vide Taxation Laws (Amendment) Act, 2017 sweeping changes have been brought about in Customs in the wake of introduction of GST. Amongst others, one significant change is that, in addition to basic customs duty levied under section 12 of Customs Act-section 3 of Customs Tariff Act - sub-section 7 levies IGST on import of goods. It merits to mention here is that sub-section 9 levies compensation cess wherever applicable when the said goods are imported into India.

Going back to the proviso to sub-section 1, the expression 'the point at which import duties are leviable' is very significant. Examination of the 'point of levy' under Customs Act reveals that goods brought into India are liable to customs duties at the time specified in section 15. Accordingly, no duties are levied until the bill of entry for home consumption is filed. Imported goods are defined in section 2(25) of Customs Act as:

"imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption"

Goods that have been cleared for home consumption will cease to be imported goods. Goods which have entered India but not yet cleared for home consumption will not attract the levy of customs duty until bill of entry for home consumption is filed. Customs Act permits goods that have entered India to be deposited in a bonded warehouse on filing 'into-bond' bill of entry without payment of duty. Hence, goods that have entered India will not attract liability to IGST until they reach the point – location or time – when bill of entry for home consumption is ready to be filed.

Further, goods imported by SEZ also do not attract liability to IGST as the goods are 'not yet' liable to be assessed to customs duty. Section 53 of the SEZ Act states that:

53(1). A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations.

Please note the following aspects:

- Goods deposited in warehouse by filing into-bond bill of entry do not attract liability to any customs duty until the date specified in section 15 is reached;
- Goods received by EOU attracts liability to customs duty as notification 44/ 2016-Cus dated 29 July, 2016 has delicensed warehouse facility of EOUs and clarified vide Circular 35/ 2016 dated 29 July, 2016;
- Notification 15/ 2017-Integrated Tax (Rate) dated 30-Jun-17 issued granting exemption from IGST on import of goods by a SEZ and this exemption was immediately rescinded vide notification 18/2017- Integrated Tax (Rate) dated 5-Jul-17 as granting such an exemption would have been out of harmony with the concept that goods are 'not yet' reached the 'point' when liability to customs duty is attracted;
- Circular 35/ 2017-Cus dated 1 August, 2017 regarding high-sea sales states that IGST is applicable but deferred until bill of entry for home consumption is filed; and
- Circular 46/ 2017-Cus dated 24 November, 2017 regarding in-bond sales makes it explicitly clear that IGST is not applicable until bill of entry for home consumption is filed.

In view of the foregoing, *proviso* to section 5(1) is of paramount importance which attracts the levy of IGST not before the bill of entry for home consumption is due to be filed in accordance with the provisions of Customs Act.

Supply: Refer discussion under section 7 of the CGST Act for a detailed understanding of the expression 'supply'. Additionally, the comments relating to 'composite supply' and 'mixed supply' will equally apply for supplies taxable under IGST Act.

Tax shall be payable by: The tax shall be payable by a 'taxable person' as defined under section 2(107) read with section 22 and section 24 of the CGST Act. Broadly, a taxable person is one who is registered or who is required to be registered under the GST law. Please refer to the discussion under the CGST Act for a thorough understanding of this concept.

Tax payable: Every inter-State supply falling under section 7 of the IGST Act will attract IGST, if it gets covered by section 5. However, all transactions covered within definition of supply in the course of inter-State trade or commerce within the meaning of section 7 does not mean that it is always subject to levy of IGST unless it falls in section 5 i.e. charging section.

Tax on import of goods: This Act provides that IGST shall be levied on import of goods in terms of section 3 of the Customs Tariff Act, 1975. It implies that on such importation of goods, IGST will be payable in addition to the Basic Customs Duty (BCD). The proviso to section 5(1) of the IGST Act also clarifies that the value and point at which IGST would be payable will be determined in accordance with section 12 of the Customs Act, 1962.

Rate and value of tax: The rate of tax notified separately, but shall not exceed 40%, and the value of supplies would be as determined under section 15 of the CGST Act.

Applicability in respect of e-commerce operators: Refer discussion under section 9(5) of the CGST Act for an understanding of the applicability of this provision for e-commerce operators.

Reverse charge mechanism: Normally, the supplier of goods and/ or services will be liable to discharge tax on the supplies effected. However, the Central Government is empowered to specify categories of supplies in respect of which the recipient of goods and/ or services will be liable to discharge the tax. *Notification No. 4/ 2017-Integrated Tax (Rate) dated 28-Jun-17 amended vide Notification No. 37/ 2017-Integrated Tax (Rate) dated 13-Oct-17, 2017, Notification No. 45/ 2017- Integrated Tax (Rate) dated 14-Nov-17 & 10/ 2017-Integrated Tax (Rate), dated 28-Jun-17 amended vide Notification No. 34/ 2017-Integrated Tax (Rate) dated 13-Oct-17* has been issued to notify the goods and services respectively where tax has to be paid by recipient of supply under reverse charge mechanism.

Similarly, registered person shall be liable to discharge the tax in respect of supply of taxable and/ or services by unregistered person. There is no threshold exemption limit in case of inter-State supply. Hence, if the supplier is located in one State and the place of supply is in another State, the unregistered supplier has to compulsorily obtain registration and charge IGST. The provision of section 5(4) would be applicable in case of import of service where supplier is located outside India but the place of supply and location of recipient of service is in India.

Accordingly, all other provisions of this Act and CGST Act, as applicable, will apply to the recipient of such goods and/ or services, as if the recipient is the person liable to pay tax in relation to supply of such goods and/ or services.

E-commerce: Where any supply of services is effected through e-commerce operators, the law provides that, the Central Government may on recommendations of the Council, notify that the e-commerce operator will be liable to discharge the tax on such supplies. *Notification No. 14/ 2017-Integrated Tax (Rate) dated 28-Jun-17 amended vide Notification No. 23/ 2017-Integrated Tax (Rate) dated 22-Aug-17* has been issued to provide that in case of the following categories of services, the tax on inter-State supplies shall be paid by the electronic commerce operator

- (i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motor cycle;
- (ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.
- (iii) services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods and Services Tax

Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

In case where the e-commerce operator:

- (a) Does not have a physical presence then the person who represents the e-commerce operator will be liable to pay tax.
- (b) Does not have a physical presence or a representative, then the e-commerce operator is mandatorily required to appoint a person who will be liable to pay tax.

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

- (a) Market-place – the question of supply by the e-commerce operator does not arise. For this reason, they are liable for TCS under section 52.
- (b) Fulfillment center – here States have been contesting that this model is one involving 'buy-sell' and accordingly liable to GST. The test here is to establish the fact that the supply is by supplier directly to the end customer and not 'through' the e-commerce operator.
- (c) Hybrid (of above 2) – although not widely prevalent, this is a case where both buy-sell as well as market-place models are employed. It is important for such business to clearly demarcate the two lines-of-business or choose to merge into either of the two so that the respective incidence of tax follows.
- (d) Agency – this is employed by few business involving supply of industrial inputs. The *modus operandi* is that the principal logs-in to the portal and routes the supplies to the end customer. The agreements are so framed that the e-commerce operator becomes responsible for the delivery and collection of payment. This renders the e-commerce Operator to constitute an agency involving handling of the inventory themselves. Such arrangements may be reviewed to ensure the inference of agency. And where such transactions *inter se* come within the operation of Entry 3 of Schedule I of the CGST Act states that transactions between Principal and Agent are treated be a supply and liable to tax. This consequence may be borne in mind even by e-commerce businesses.

5.3 Comparative review

Under the erstwhile tax laws, Central Excise is on 'manufacture of goods', VAT/ CST is on 'sale of goods' and Service tax is on 'provision of service'. Unlike different incidences under erstwhile law in a GST regime, 'it is supply which is a taxable event'. Further, free supplies would be liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit; Unlike different incidences, under the GST law, it is 'supply' which would be the taxable event. Under the erstwhile law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT/ CST. However, under the GST law, it would be taxable as a 'supply'.

Under the erstwhile laws, there are multiple transactions which apparently qualify as both 'sale of goods' as well as 'provision of services'. E.g. license of software, providing a right to use a brand name, etc. Unlike this situation, GST clarifies as to whether a transaction would qualify as a 'supply of goods' or as 'supply of services'. A transaction would either qualify as goods or as services, under the GST law. Even in respect of composite contracts, it has been clarified under Schedule II, definitions of composite supply and mixed supply in the CGST law.

The payment of VAT by the purchaser (registered dealer) on purchase of goods from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism, in respect of say, import of services, sponsorship services etc., are comparable to the 'reverse charge mechanism' prescribed herein. However, under GST law, the Central Government can notify class of goods which are a subject matter of reverse charge.

5.4 Related provisions

Statute	Section	Description
IGST	Section 7	Meaning of inter-State supplies
CGST	Section 9	Levy and collection of CGST/ SGST
CGST	Section 7 read with Schedule I, II and III	Definition of 'supply'
CGST	Section 2(107) read with section 22 and section 24	Meaning of 'taxable person'
CGST	Section 2(17)	Definition of 'Business'

5.5 FAQs

Q1. Will sale of business as a whole be liable to tax?

Ans. Clause (d) of section 2(17) of the CGST Act provides that supply or acquisition of goods including capital goods and services in connection with commencement or closure of business is also included in the term "business". Therefore, the goods element in the sale of business, would be regarded as 'supply' and therefore, liable to tax.

One may also refer to Schedule II which specifies listed number of issues when it will not be taxable.

Q2. Is the reverse charge mechanism applicable only to services?

Ans. No, section 5(3) or 5(4) of the IGST Act and section 9(3) or (4) of the CGST Act does not limit reverse charge to services, it applies to goods also. Notification No. 04/ 2017-Central Tax (Rate), dated 28-06-2017 amended vide Notification No. 36/ 2017-Central Tax (Rate) dated 13-10-2017 and Notification No. 43/ 2017-Central Tax (Rate) dated 14-11-2017 has been issued to provide the cases where tax has to be paid by recipient of supply of goods under reverse charge mechanism. This includes the Cashew nuts,

not shelled or peeled, Bidi wrapper leaves (tendu), Tobacco leaves, Silk yarn, Supply of lottery, used vehicles, seized and confiscated goods, old and used goods, waste and scrap, raw cotton when supplied by specified suppliers.

Q3. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. The recipient of supply will be the person liable to pay the tax – i.e., reverse charge mechanism would operate. However, Notification No. 32/ 2017-Integrated Tax (Rate) dated 13-Oct-17 exempts inter-State supply of goods received by registered person from an un-registered dealer from whole of the integrated tax under section 5(4) till 31st March, 2017.

Q4. In respect of exchange, will the transaction be taxable as two different supplies or will it be taxable only in the hands of the main supplier?

Ans. Taxable as two different supplies. Exchange from point of view of each party will need to be examined if it attracts the requirements of levy of tax.

Q5. In respect of exchange or barter, if one supply is intra-State and another is inter-State, how will the taxes be applicable?

Ans. There are two separate supplies and taxes as applicable (as inter-State and/ or intra-State respectively).

Q6. What are examples of 'disposals' as used in supply?

Ans. Sale of old furniture by a garment manufacturer.

Note: Disposal is where the articles are being cleared up and not necessarily as the main object of the business.

Q7. Will recovery towards food and conveyance from employees be liable to tax as supply by the employer to the employee?

Ans. Yes, as the exclusion in Schedule-III is only in respect of services 'by employee' to the employer and not the other way around.

Q8. Will a Bank qualify as a taxable person for sale of hypothecated/ pledged goods (auction)?

Ans. Yes, the nature of business as a bank does not affect tax liability. GST is payable if there is any supply of taxable goods or services even by a bank.

Q9. Will an Insurance company be a taxable person for sale of repossessed goods?

Ans. Yes. Although not the principal source of income, sale of repossessed goods is key aspect of insurance business.

Q10. Will a "not for profit entity" be liable to tax on any sales effected by it – e.g.: sale of assets received as donation?

Ans. Yes. NPEs do not distribute profit to promoters but that does not exclude from doing activities that conform to definition of business.

Statutory provision**6. Power to grant exemption from tax**

- (1) *Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.*
- (2) *Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.*
- (3) *The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an Explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such Explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.*

Explanation.— For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

6.1 Introduction

This provision states that the Central Government may grant exemptions for inter-State supply of certain goods and/ or services. Reference may also be made to section 11 of the CGST Act and section 8 of the UTGST Act for a better understanding.

6.2 Analysis

The Central Government will be empowered to grant exemptions from payment of IGST on inter-State supplies, subject to the following conditions:

- (i) Exemption should be in public interest
- (ii) By way of issue of notification
- (iii) On recommendation from the Council
- (iv) Absolute/ conditional exemption may be for any goods and/ or services
- (v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature

With specific reference to the forth condition indicated above, it is important to note that the exemption would only be in respect of goods and/ or services, and not specifically for classes of persons.

E.g.: An absolute exemption could be granted in respect of supply of fertiliser. A conditional exemption could be supply of fertiliser subject to the condition that no input tax credit has been claimed in respect of inputs and capital goods.

Exemption by way of special order is where the exemption is issued for a specific purpose. E.g. Exemption to imports made for a defence project during the times of emergency.

Mandatory nature of absolute exemptions has been litigated in the past and where tax is paid even though exemption is available, credit becomes admissible. For this reason, absolute exemptions have been made compulsory. As such, credit denial also becomes absolute. No plea of equity or revenue neutrality becomes admissible.

There is generally not much doubt about exemptions – whether absolute or conditional – because the condition associated may be examined at one-time or continuously to be satisfied. Conditional exemptions abate if the associated condition is not complied. Care should be taken not to mistake conditional exemption with absolute exemption having specific applicability.

From the explanation provided after sub-section (2), there is one school of thought wherein it is opined/ understood that in case of conditional exemptions, there is an option available to the taxable person to pay the tax (by which way, there would be no requirement for input tax credit reversals). However, an absolute exemption is required to be followed mandatorily. The other view is that exemptions would never be optional, and would be mandatory automatically when the conditions relating to the exemption are satisfied. This provision does not bring in any clarity on this issue.

In terms of sub-section (2), the Government may issue a special order on a case-to-case basis. The circumstances of exceptional nature would also have to be specified in the special order. While this provision is welcome, industry is apprehensive that this could be used without necessary superintendence.

To provide more clarity to the exemption notification or the special order, it is provided that the Government may issue an “Explanation” at any time within a period of one year from the date of issue of notification or special order. The effect of this “Explanation” would be retrospective, viz., from the effective date of the relevant notification or special order.

The law mandates that when the exemption is absolute (i.e., if whole or part of tax leviable is exempt) the registered person cannot collect taxes in excess of the effective rate.

Exemption under section 11 of the CGST/ SGST Act equally applicable

Any exemption notification or special order issued under section 11 of the CGST Law will apply equally for inter-State supplies, viz., any supply of goods or services or both which are exempt under CGST Law will be exempt even under the IGST Law

Effective date of the notification or special order

The effective date of the notification or the special order would be date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would come into force on the date of its issue by the Central Government for publication in the Official Gazette. It follows that such notification/ order shall be made available on the official website of the department of the Central Government.

Exemption under CGST Act	Deemed to exempt under SGST Act
	Deemed to exempt under UTGST Act
Exemption under IGST Act	No auto-application of exemption

Exemptions issued under IGST Act:

Following exemptions have been issued under IGST Act:

- Notification No. 07/ 2017-Integrated Tax (Rate), dated 28-06-2017: Exemption from IGST supplies by CSD to Unit Run Canteens and supplies by CSD/ Unit Run Canteens to authorised customers under section 6(1).
- Notification No. 9/ 2017-Integrated Tax (Rate) dated 28-Jun-17: Mega exemption list for supply of service amended vide Notification No.21/2017 dated 22- Aug-17, 29/2017 dated 29-Sept-17, 33/2017 dated 13-Oct-17, 42/2017 dated 27-Oct-17. The exemption notification covers entries where services supplied by supplier of service has been exempted from levy of GST.
- Notification No. 18 /2017-Integrated Tax (Rate) dated 5-Jul-17 : IGST exemption to SEZs on import of Services by a unit/ developer in a SEZ.
- Notification No. 31/2017- Integrated Tax (Rate) dated 29-Sept-17: Exempting supply of services associated with transit cargo to Nepal and Bhutan.

6.3 Comparative review

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

6.4 Related provisions

Statute	Section	Description
CGST	Section 11	Exemption from payment of CGST/ SGST
UTGST	Section 8	Power to grant exemption from tax

6.5 FAQs

Q1. Can an exemption be granted for inter-State supplies when such an exemption is not granted for intra-State supplies?

Ans. Yes.

Q2. Can the Central Government issue a special order for exemptions that are only meant for transactions liable to IGST?

Ans. Yes.

Q3. Is the State Government empowered to grant exemption by way of a special order for inter-State supplies?

Ans. No. The State Government is not empowered to grant exemptions on any inter-State supplies.

Chapter IV

Determination of Nature of Supply

- 7. Inter-State supply
- 8. Intra-State supply
- 9. Supplies in territorial waters

Statutory provision

- 7. Inter-State Supply**
- (1) *Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in—*
- (a) *two different States;*
 - (b) *two different Union territories; or*
 - (c) *a State and a Union territory,*
- shall be treated as a supply of goods in the course of inter-State trade or commerce.*
- (2) *Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.*
- (3) *Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in—*
- (a) *two different States;*
 - (b) *two different Union territories; or*
 - (c) *a State and a Union territory,*
- shall be treated as a supply of services in the course of inter-State trade or commerce.*
- (4) *Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.*
- (5) *Supply of goods or services or both, —*
- (a) *when the supplier is located in India and the place of supply is outside India;*
 - (b) *to or by a Special Economic Zone developer or a Special Economic Zone unit; or*
 - (c) *in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.*

7.1 Introduction

Having examined levy and the scope and coverage of supply, the next aspect to determine is the nature of supply so as to identify the right kind of tax applicable in a given case. It is important to note that nature of supply is not a question of fact but the result of application of the law to the fact, which provides us the answer. Concluding the answer about the nature of tax is paramount not only for the selection of the right kind of tax but also to recognise the departure of GST from the well understood principles under the erstwhile law.

Nature of supply does not refer to 'place of supply'. The next Chapter deals with place of supply but before getting to place of supply it is important to understand the nature of supply. There are very specific principles laid down that need to be identified from the facts in each transaction in order to determine the nature of supply that is involved. This section provides as to when the supplies of goods and/or services shall be treated as Supply in the course of inter-State trade/commerce.

Section 7(1) & 7(2) of IGST Act, primarily covers two kinds of supplies – Supply of goods within India and supply of goods imported into India and Section 7(3) & 7(4) of IGST Act, covers two kinds of supplies – supply of services within India and import of services into India. Certain supplies of goods or services are treated as supplies in the course of inter-State trade or commerce as defined in section 7(5) of the Act.



7.2 Analysis

Inter-State supply of goods

At the outset one may need to bear in mind the treatment extended to the subject matter of supply, that is, whether the supply is of goods or services or both or supply involving goods but treated as supply of services in terms of the fiction specified in Schedule II. In respect of goods (treated as goods), if the location of the supplier and the place of supply are in two different States or UT or either, then the supply will be in the course of inter-State trade or commerce.

We need to pause here and examine the two terms that have been used, namely:

- (a) **Location of supplier** – Unlike in the case of services, location of supplier of goods is a term that is not defined in the law. This is not an oversight of the draftsmen but a deliberate intention of the lawmakers to leave it to the facts of each case to determine the 'location of supplier of goods'. For example, if a company incorporated in Delhi were to place purchase order on a manufacturer in Maharashtra to produce certain articles and sell it on ex-works basis with instructions to retain it until further instructions. This would be a case where the manufacturer in Maharashtra would like to charge IGST because the purchase order is from a customer in Delhi. In this supply, the location of supplier is Maharashtra and place of supply is also Maharashtra. Therefore, the manufacturer is required to charge CGST/ SGST because this supply does not involve any movement and due to the instructions (or lapse of time) delivery is complete in Maharashtra itself. Now, if instructions are subsequently issued to dispatch the goods to a warehouse in Madhya Pradesh, the supply by the manufacturer having been completed long before these dispatch instructions are received, there is a new supply emerging from Maharashtra to Madhya Pradesh but the supplier in this instance will be the Company in Delhi and not by the manufacturer-supplier in Maharashtra. One supplier can effect supply only once of the given goods. In this new supply, the location of supplier can either be Delhi – registered place of business – or Maharashtra – the physical point where the goods are situated. The location of the registered place of business (Delhi) cannot guide the decision regarding the nature of supply but will be guided by their location 'under the control' of the supplier (Company in Delhi)). The point where goods are situated better represents the location of supplier. The location of supplier is therefore the physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied. This interpretation augurs well with the concept of casual taxable person. The company in Delhi that collects delivery of the goods in Maharashtra and supplies them from Maharashtra to Madhya Pradesh must be regarded as casual taxable person in Maharashtra liable to pay IGST on this supply.

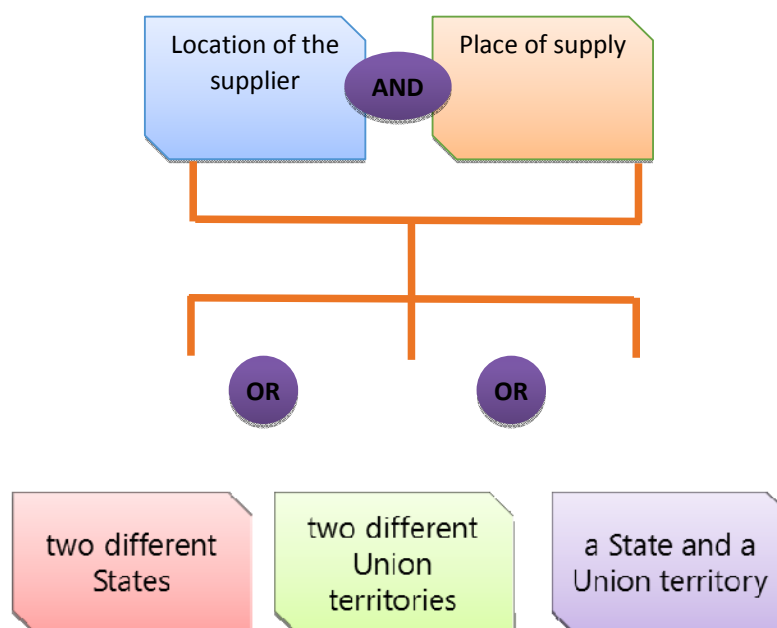
If however, the delivery by the manufacturer is not completed ex-works but retained to be delivered to Madhya Pradesh at the instruction of the customer in Delhi then it would

be a case of supply from Maharashtra to Delhi and from Delhi to Madhya Pradesh. We can identify the examples where the location of supplier of goods is more accurately determined by the physical point where the goods are located under the control of the person wherever incorporated or registered, ready to be supplied instead of relying on a superfluous fact of the registered place of business.

- (b) **Place of supply** – It appears to be a phrase that is easily understandable but due to the presence of Chapter V (i.e. place of supply of goods or services or both) in this Act demands that the common sense understanding be avoided but the meaning ascribed to place of supply from sections 10 to 14 of this Act be applied. Place of supply, therefore, is a phrase of legal significance whose meaning is to be determined by examining the respective sections in Chapter V and brought to bear while determining nature of supply. For example, manufacture in Maharashtra and supply to a company in Delhi on Ex-Works basis, its place of supply has to be the location of completion of delivery. And in respect of the new supply from Maharashtra to Madhya Pradesh, the place of supply is where the movement terminates for delivery – Madhya Pradesh.

It is therefore important to identify the location of supplier of goods and not based on a statutory definition but by inquiring into the facts of a transaction of supply and comparing this with the place of supply appointed by the statute in Chapter V. Now, if these two are situated in different States or UTs or either, then the nature of supply is declared by section 7 to be in the course of inter-State trade or commerce.

two different States



This provision is subject to the provisions of section 10 because any interpretation or application of this section 7 cannot be in derogation of the place of supply dictated by section 10. Section 7 can be correctly interpreted only by identifying the location of supplier of goods based on the physical point where the goods are situated and comparing that with the answer from referring to section 10 regarding place of supply of goods.

With regard to supply of goods that are imported into the territory of India, by legislative override it is declared that if the goods crossed the customs frontiers of India, the supply will always be in the course of inter-State trade or commerce. Reference may be made to the definition of import of goods [section 2(10)] which adverts to the physical movement of goods into India from a place outside India by the active efforts on the part of any person (who may be situated in India or outside India).

The use of the word 'bringing' in section 2(10) excludes naturally and involuntarily occurring phenomena causing the relocation of goods into India from a place outside India. There may be any number of supplies taking place between persons who are incorporated outside India and persons who are incorporated and even registered in India – they will all be transactions of supply in the course of inter-State trade or commerce – till such time the goods cross the customs frontiers of India.

Import of goods

We need to pause here again and examine two kinds of transactions – those that commence outside the territory of India and are concluded also outside territory of India and those that commence outside but conclude by entering the territory of India. For example, company in Germany supplies goods from Germany to another company in Sri Lanka – this is not a supply in the course of inter-State trade or commerce because it commences and concludes outside the territory of India. It would be so, even if the goods were supplied by the company in Germany from Germany to a customer incorporated in India if the goods are not 'brought' into India but sold in high seas to yet another company in Singapore. In order for every supply to come within the operation of sub-section 2 to section 7 it requires that the resultant effect of the supply must cause the goods to enter the territory of India. This Act does not enjoy extra-territorial jurisdiction and is limited to imposing tax if the goods are imported into the territory of India.

Further, if goods have been brought into India but have not left the customs frontiers of India, that is, the limits of a customs area, any supplies that are taking place after being brought into India until they cross the customs frontiers of India even though the place of entry into India and the place that comprises the customs frontier may be in the same State will continue to be supply is in the course of inter-State trade or commerce.

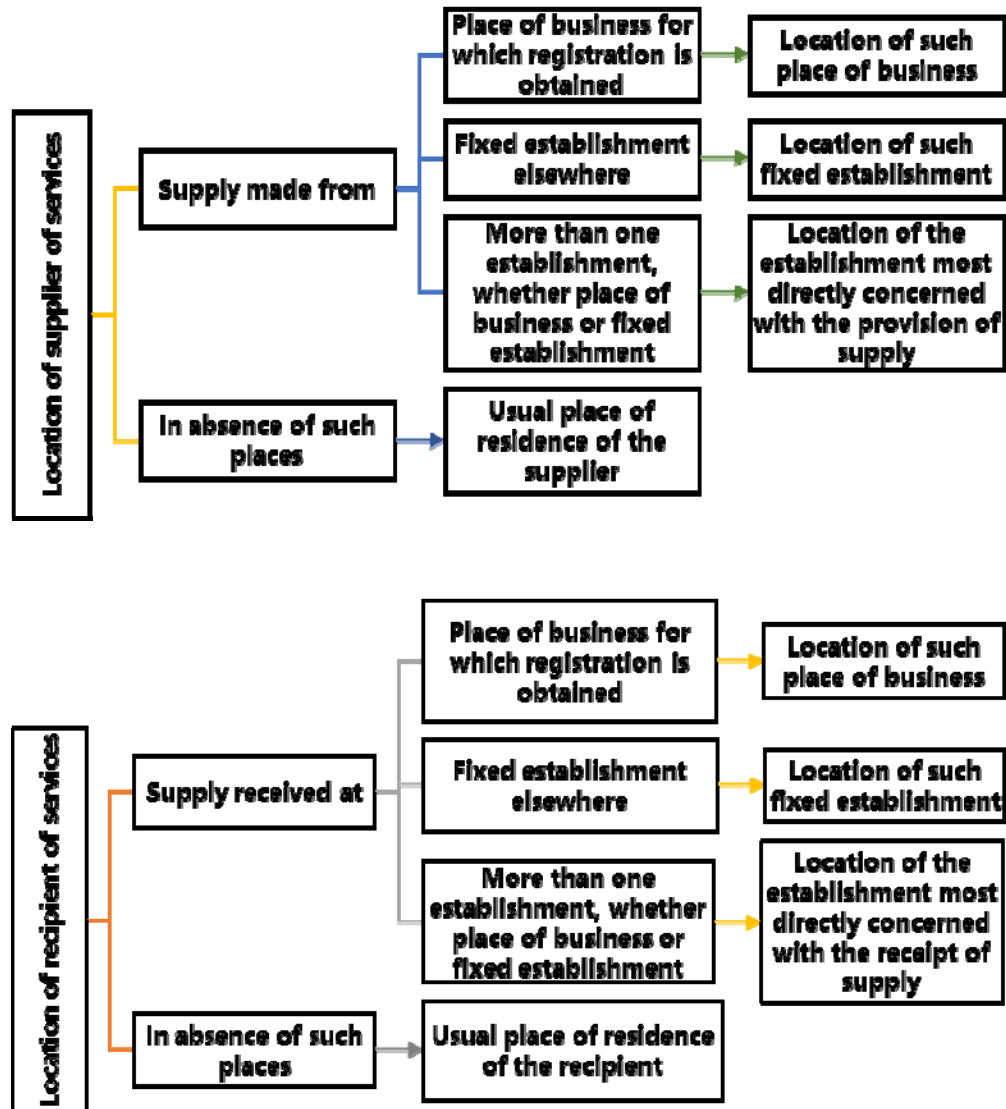
For example, goods have been imported from France by a company incorporated and registered in Nasik which have landed at Mumbai port but during their clearance are supplied by the Nasik company to a company in Pune, this supply continues to be in the course of inter-State trade or commerce. Even though the supplier is in Nasik and the recipient is in Pune, since the goods have not yet crossed the customs frontiers of India at the time of

supply. This supply comes within the operation of sub-section 2 of section 7. A test that can be applied to determine whether the supply has been concluded before the goods crossed the customs frontiers of India or not crossed the customs frontiers of India is – who has filed a bill of entry in respect of the goods imported as required under the Customs Act. Transactions taking place before filing of bill of entry are termed as “high sea sale” transactions under common trade practice where the original importer sells the goods to a third person before the goods are entered for customs clearance. This supply is covered within definition of inter-State supply. Provisions of sub-section (12) of section 3 of Customs Tariff Act, 1975 in as much as in respect of imported goods provides that all duties, taxes, cess’ etc. shall be collected at the time of importation i.e. when the import declarations are filed before the customs authorities for the customs clearance purposes. High sea sale transactions, though regarded as supply in the course of inter-State trade or commerce, are not subject to levy of IGST as the supply takes place before filing of Bill of entry and IGST in case of importation of goods can be levied at the time of filing of Bill of Entry. Hence, IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance. The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas-sales-contract, details of service charges/ commission paid etc, to establish a link between the first contracted price of the goods and the last transaction. In the above example, supply by Nasik company to recipient of Pune is high sea sale transaction and is not subject to levy of IGST. When Pune recipient files bill of entry, IGST has to be paid on the assessable value which shall include the margin charged by Nasik supplier also.

Inter-State supply of services

Continuing with inter-State supply, but in respect of services, it is firstly important to recollect that this provision will apply not only in respect of supply of services but also in respect of transactions involving goods which are treated as supply of services by the fiction in Schedule II. The discussion regarding location of supplier of goods and place of supply of goods will be applicable in the context of services but only to a limited extent for the reason that location of supplier of services has been defined in this Act.

The location of supplier of services and the place of supply of services are in two different States or UTs or either, such as supply of services shall be in the course of inter-State trade or commerce. It is interesting to note that inter-State trade is not simply called ‘intra-State trade’ but is prefixed with ‘in the course of’. This prefix is not without reason, because such prefix is missing in relation to intra-State supply. The significance of ‘in the course of’ is well explained in the decision of State of Bihar Vs Telco Ltd. 27 STC 127 at pg. 148 where the Hon’ble Supreme Court has held that it signifies a series of activities that are all inter-related in an unbroken chain of events so intimately linked to each other that all of them are bound together ‘in the course of’ such an inter-State trade transaction.



Location of supplier of services is defined to mean 'place of business from where supply is made and duly registered for the purpose'. It also includes other places 'from where' supplies are made being a fixed establishment – a place with sufficient degree of permanence and suitable structure to supply services. And lastly, the usual place of residence of the service provider. It is interesting to note that the location of supplier of services has nothing to do with the business premises 'wherefrom' supply is made.

For example, a company incorporated in Chennai engaged in the business of investment in immovable property and letting them out on rent may have such investments in Chennai and in Hyderabad. By the definition of location of supplier of services being the 'place of business', the company has its place of business where its 'seat of management' is located – Chennai. Accordingly, the location of service provider in relation to the transaction involving renting of immovable property is not where the property let out is situated but the registered office of the company where the management has its seat for decision making. Therefore, in relation to property in Chennai that is let out, it is an intra-State supply because location of supplier of services and place of supply both in Chennai. In respect of its property located in Hyderabad, it is an inter-State supply because the location of supplier of service is in Chennai but the place of supply is Hyderabad. Surely, there is no argument to support the view that in every place where property is located the decision to let out such property is taken in each such location. On the contrary, all decisions are taken where the seat of management is located and therefore, the location of supplier of service remains Chennai wherever the let-out properties may be situated. This view may not be acceptable to all but merits attention.

Special category of inter-State supplies

Fiction in law is no stranger to taxation and GST law indulges in use of fiction without any hesitation. The following categories of supplies of goods or services or both, are treated as being in the course of inter-State trade or commerce:

(a) *when the supplier is located in India and the place of supply is outside India*

Here it is extremely important to note that usage of the 'supplier is located' is not to be equated with 'location of supplier'. From the previous discussion, it is learnt that location of supplier of goods is – physical point where the goods are situated under the

2(105) supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

control of the person wherever incorporated or registered, ready to be supplied. But, the deliberate departure in usage of the same set of words is almost misleading. Supplier is located in India does not refer to location of supplier. Instead, it is a simple question of fact as to where the supplier is located. Please note, that the 'supplier' is none other than the **'one who supplies'** and not his agent or representative or any other person. The question that arises is – what is the GST impact in case the supplier is located outside India and the place of supply is outside India? The Act applies to supplies within the taxable territory and when both – supplier as well as place of supply – being located outside India, the Act does not enjoy any jurisdiction to impose tax even if the recipient is located in India. The destination of consumption being decided by the place of supply provisions and not location of the recipient

(b) *where the supply is 'to' or 'by' an SEZ developer or unit*

Here, it is important to note that supply to SEZ (developer or unit) is treated as inter-State supply. Supply 'by' SEZ (developer or unit) will also be treated as inter-State supply. Further, the implication of this provision is also that supply by SEZ's *inter se* – one SEZ unit (or

developer) to another SEZ unit (or developer) – will also be treated as a supply in the course of inter-State trade or commerce.

Let us take a few examples to illustrate the implications from this provision:

- Taxable person (non-SEZ) located in Jaipur supplying goods to a SEZ unit located in Jodhpur is a supply in the course of inter-State trade or commerce.
- SEZ unit in Kolkata supplying services to another SEZ unit in Kolkata is a supply in the course of inter-State trade or commerce.
- Lease of premises by SEZ developer in Chennai to SEZ unit in that same zone in Chennai will be a supply in the course of inter-State trade or commerce.
- non-SEZ Sales by SEZ unit in Kochi to a non-SEZ in Kochi will be a supply in the course of inter-State trade or commerce.
- Disposal of scrap by a SEZ developer in Mumbai to a scrap dealer in Mumbai (outside the zone) is a supply in the course of inter-State trade or commerce.
- Export of goods by a SEZ unit to a customer in Italy is a supply in the course of inter-State trade or commerce.

(c) *Any supply not being an intra-State supply*

Here it is to be considered that any supply that falls outside the scope of intra-State supply will not escape GST but would be an inter-State supply due to this residual provision in the Act.

7.3 Comparative Review

There is no such proposition in the erstwhile laws as the concept of supply is unique to our tax system and considered as a 'taxable event' for the first time in indirect tax regime. As mentioned earlier, section 7 must be read alongside sections 10, 11, 12 & 13 and whenever a conflict arises between the said provisions, section 7 should make way for the provisions of such Sections, which is signified by usage of the words "subject to the provisions of section 10/ 12".

However, broadly this can be compared with the provisions of CST Act, 1956 which provides for determining when a sale will be an inter-State sale or when a sale is outside the State.

7.4 Related Provisions

Statute	Section / Rule / Form	Description
IGST	Section 8	Meaning of intra-State supply
IGST	Section 10	Place of supply of goods other than supply of goods imported into, or exported from India

IGST	Section 12	Place of supply of services where location of supplier and recipient is in India
IGST	Section 5	Levy and collection of Tax
CGST	Section 9	Levy and collection

Statutory provision**8. Intra-State Supply**

- (1) Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the following supply of goods shall not be treated as intra-State supply, namely: –

- (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
- (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
- (iii) supplies made to a tourist referred to in section 15.

- (2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation 1 —For the purposes of this Act, where a person has, —

- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or
- (iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory,

then such establishments shall be treated as establishments of distinct persons.

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

8.1 Introduction

With the background discussion on inter-State supplies, it would be appropriate to contrast this understanding with a discussion on intra-State supplies.

Analysis

Intra-State supply of goods

In relation to goods, section 8 provides that where the location of the supplier and the place of supply are in the same State or UT, such a supply will be treated as an intra-State supply. Reference may be had with respect to the discussion on location of supplier of goods in the context of section 7 which may be relied upon for the purpose of this discussion. This provision too, is made subject to the provisions of section 10, that is, reference must be had to section 10 regarding the place of supply and the conclusion reached by applying section 10 is required to be read into this section for the purpose of determination of the intra-State nature of the supply. The two factors – location of supplier and place of supply – must at the conclusion of a supply be in the same State or UT. And when it is so, the supply would be an intra-State supply of goods.

For example, a company having its regular registration in Uttar Pradesh has taken a casual registration in Odisha. It has purchased certain goods in Odisha and supplying the same to the customer also in Odisha under two separate transactions of supply, both of them will be intra-State supplies.

Therefore, it is important to bear in mind that the place of incorporation of the supplier in any transaction is not relevant as the location of the supplier which has been explained earlier as – physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied.

Three exceptions have been carved out in this provision, namely:

- supply 'to' or 'by' a SEZ developer or unit
- supply involving goods imported into India but not beyond the customs frontiers
- supply to outbound tourist as per section 15

These three exceptions make it abundantly clear that they have been treated to be an inter-State supply,

2(15) location of supplier of services means –

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (d) in the absence of such places, the location of the usual place of residence of the supplier;

expressly stated under section 7. This proviso excludes any opportunity to question the probable intra-State nature of the said supply. As discussed in the various examples where even though the movement may be within the same State but due to the fiction in section 7 – these supplies being treated as in the course of intra-State trade or commerce – cannot be disturbed by section 8. The express exclusion is evidence of a suspect inclusion – with this proviso, there is no question of the intra-State nature of the supplies listed.

Please note that the supplies are not three specific supplies but three classes of supplies. Examples of supply to or by a SEZ developer or unit has already been discussed in detail earlier the same may be referred. Supply involving goods imported into India also been discussed and the same may be referred. For examples, regarding supplied to tourist, kindly refer discussion under section 15.

Intra-State supply of services

With regard to supply of service, if the twin factors – location of supplier of services and place of supply of services – are in the same State or UT, then such supply will be treated as intra-State supply. Location of supplier of services has been defined in the Act to mean ‘place of business from where supply is made and duly registered for the purpose’. It also includes other places and reference may be had to the discussion in respect of inter-State supply of services for the implications of this definition. To provide some additional illustration, please consider audit services being provided by a Chartered Accountant located in Delhi to a company in Delhi. For the purpose of the audit, the Chartered Accountant visits the company’s factory located in Noida. Here, although the Chartered Accountant is physically moving to Noida, but he is not supplying any services from such a location. Here, the transaction will be an intra-State supply from Delhi to Delhi. Please refer to more detailed discussion under section 12.

Further, here too we find caution exercised in expressly excluding supply of services ‘to’ or ‘by’ SEZ developer or unit from the scope of intra-State supply of services. The two explanations provided are significant as the concept of distinct persons in section 25(4) of CGST Act is further clarified in stating that the following will also be distinct persons, namely:

2(7) fixed establishment means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs:

- establishment in India and an establishment outside India
- establishment in a State or UT and an establishment outside that State or UT
- establishment in a State or UT and a business vertical (registered separately) in the same State or UT

Please note that the term ‘establishment’ may be interpreted as being similar to ‘fixed establishment’ which is defined in this Act in identical manner with the definition in section

2(50) of CGST Act. It refers to it being 'a place with sufficient degree of permanence and suitable structure to supply services or to receive and use the services'.

8.2 Comparative Review

There is no such proposition in the erstwhile laws as the concept of supply is unique to our tax system and considered as a 'taxable event' for the first time in indirect tax regime. section 8 has to be read alongside sections 10 and 12 and whenever a conflict arises between the said provisions, section 8 has to make way for section 10/ 12, which is signified by usage of the words "subject to the provisions of sections 10/ 12".

However, broadly this can be compared with the provisions of CST Act, 1956 which provides for determining when a sale will be an inter-State sale or when a sale in outside the State.

8.3 Related Provisions

Statute	Section/ Rule/ Form	Description
IGST	Section 7	Meaning of inter-State supplies
IGST	Section 5	Levy and collection of IGST
IGST	Section 10	Place of supply of goods
IGST	Section 12	Place of supply of services
CGST	Section 9	Levy and collection of CGST/ SGST

Statutory provision

9. Supplies in Territorial Waters

Notwithstanding anything contained in this Act, —

- (a) *where the location of the supplier is in the territorial waters, the location of such supplier; or*
- (b) *where the place of supply is in the territorial waters, the place of supply,*
shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

9.1 Introduction

GST being a destination based consumption tax (discussed in greater detail in section 10), the actual place of supply may sometimes be in the territorial waters of India. And it could also be where the supplier is required to travel into the territorial waters to supply goods or services. While the nature of supply in these cases may be inter-State supplies, it will be decided by section 7 but the ambiguity about the exact location – either of the supplier or of the place of supply – requires to be addressed by statute. For this reason, clear provisions are laid down as to where on the land mass of India, will the actual location be linked to. Please note the statute uses the expression 'deemed to be' which would supply an artificial meaning. Also, this provision does not seek to violate exclusive jurisdiction of the Union on matters of territorial

waters but merely establishes a link to the land mass of India to overcome judicial intervention or assumptions by industry.

9.2 Analysis

The provision identifies two facts that have been discussed at length in the context of section 7 and 8, namely:

- Location of supplier of goods or services or both
- Place of supply of goods or services or both

By applying the provisions of section 10 and 12, if it is established that the 'place of supply' is in the territorial waters and not on the land mass, there can be ambiguity as to the applicability of the provisions of section 7 and 8 in these cases. Similarly, if the location of the supplier is found to be in the territorial waters and not on the land mass, there can be a doubt, if not about the applicability of section 7 and 8, at least about the manner of their applicability. To address these situations, the statute lays down, by a deeming fiction, that such locations – supplier or place of supply – will be the most proximate State or UT. For example, if repair services are provided by a company in Delhi on a ship moored off the coast of Kochi for a shipping company from United Kingdom, the place of supply being the location of the ship will create doubt about the applicability of GST. Now, by the provisions in section 9, it is clear that the place of supply of the repair services will not be the waters but Kochi. With this doubt having been resolved, it would be an inter-State supply *albeit* to the UK company.

The non-obstante clause at the beginning of this section is important to overcome any alternative interpretations that may be attempted by reading other provisions of the Act.

9.3 Comparative Review

Under the erstwhile tax laws, Central Excise is on 'manufacture of goods', VAT/ CST is on 'sale of goods' and Service tax is on 'provision of service'. Unlike different incidences, under the GST law, it is 'supply' which would be the taxable event. Under the erstwhile law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT/ CST. However, under the GST law, it would be taxable as a 'supply. Further, free supplies would be liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit; under the GST law, the treatment would be similar to the erstwhile VAT laws, where the supplies are made without any consideration (monetary/ otherwise).

Under the erstwhile laws, there are multiple transactions which apparently qualify as both 'sale of goods' as well as 'provision of services'. E.g.: license of software, providing a right to use a brand name, etc. Unlike this situation, GST clarifies as to whether a transaction would qualify as a 'supply of goods' or as 'supply of services'. A transaction would either qualify as goods or as services, under the GST law. Even in respect of composite contracts, it has been clarified under the GST law (Schedule II of the Act, concept of composite supply and mixed supply).

The payment of VAT in the hands of the purchaser (registered dealer) on purchase of goods

from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism in respect of say, import of services, sponsorship services etc. are comparable to the 'reverse charge mechanism' prescribed herein. However, the concept of partial reverse charge/ joint charge is not expected to continue in the GST regime, viz., every supply will be liable to forward charge/ reverse charge, wholly. Further, the concept of reverse charge only exists in relation to services. The GST law, however, permits the supply of goods also to be subjected to reverse charge.

9.4 Related Provisions

Statute	Section/ Rule/ Form	Description	Remarks
IGST	Section 7	Meaning of inter-State supplies	Defines inter-State supplies of goods and / or services for the purposes of levy of tax under the IGST Act
CGST	Section 7 of CGST Act read with Schedule I, II and III	Definition of 'supply'	Every supply of goods or services would be liable to tax. Thus, it becomes essential to understand the meaning of 'supply'.
CGST	Section 9	Levy and collection of GST	Charging section under CGST Act
CGST	Section 22	Persons liable for registration	Liability to tax is on every taxable person. Thus, it becomes essential to understand the meaning of 'taxable person'.
CGST	Section 49	Payment of tax	Provides for method and timelines for remittance of tax by the registrant.

Chapter V

Place of Supply of Goods or Services or Both

10. Place of supply of goods other than supply of goods imported into, or exported from India
11. Place of supply of goods imported into, or exported from India
12. Place of supply of services where location of supplier and recipient is in India
13. Place of supply of services where location of supplier or location of recipient is outside India
14. Special provision for payment of tax by a supplier of online information and database access or retrieval services

Statutory provision

- 10. Place of supply of goods, other than supply of goods imported into, or exported from India**
- (1) *The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under, —*
- (a) *where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;*
 - (b) *where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;*
 - (c) *where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;*
 - (d) *where the goods are assembled, or installed at site, the place of supply shall be the place of such installation or assembly;*
 - (e) *where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.*

(2) *Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.*

10.1 Introduction

Place of supply is important to determine the kind of tax that is to be applied. When the location of supplier and the place of supply are in two different States, then it will be an inter-State supply and IGST applies. And when they are in the same State, then it will be an intra-State supply and CGST/ SGST applies. 'Place of supply' is not a phrase of common understanding, it is a legal term and as in the cases of all legal terms, their common understanding must not be applied but the meaning assigned to them in the law must be followed. Place of supply, similar to time of supply, is that which the legislature has appointed.

GST is understood as a 'destination based consumption tax' but there is no provision that declares this fact. This missing declaration is more than adequately supplied by the principle being embodied in the provisions of 'place of supply'. It is here that we find that the destination principle of GST is fully captured. The law maker has declared, in each case of supply, its destination of supply.

10.2 Analysis

(a) Place of Supply – Supplies within India

Place of supply of goods, where the supplier and the recipient are both located within India, will be determined in accordance with section 10 of the IGST Act. The phrase 'location of supplier of goods' has not been defined in the IGST Act and this is deliberate. Two very important phrases are relevant, namely:

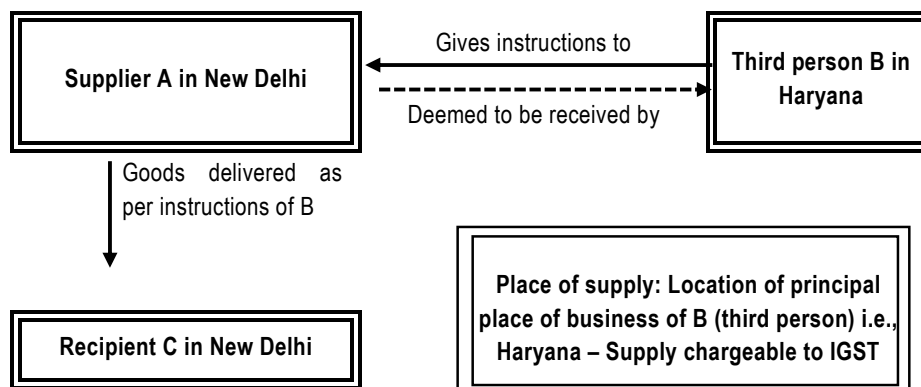
- Location of supplier – the word 'location' in this phrase refers to the site or premises (geographical point) where the supplier is situated with the goods in his control ready to be supplied or in other words it is the physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied;
- Place of supply of goods – this is a legal phrase which the section decides to be the site or premises (geographical point) as its 'place of supply'.

2(93) "recipient" of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered, and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

Place of supply in each case is discussed below:

- (a) Where 'supply involves movement', the place of supply will be the place where the goods are located at the time at which the movement terminates for delivery to the recipient. The location of the goods is a question of fact to be ascertained by observing the journey that the goods supplied make from their origin from supplier and terminating with recipient. This movement, however, can be by the supplier or by the recipient after having disclosed the destination of their movement or journey. Movement 'terminates for delivery' requires a brief understanding about the manner of concluding delivery. Delivery – the mode and the time – is the unilateral choice of the recipient and the supplier has no authority to decide 'how' and 'when' he will deliver the goods to the recipient. It is easy to determine in a contract for supply where it records this 'choice' of the recipient regarding the mode and time of delivery. The supplier is always duty-bound to deliver in exactly the same way – manner and timing – which the recipient dictates. In fact the supplier continues to be obligated until delivery is completed in the way it is stated by the recipient. In other words, delivery is not complete if there is any deviation in either the manner or the timing as compared to that dictated by the recipient. When the delivery is to the satisfaction of the recipient, then the supplier is released from his obligation. Therefore, the additional question of fact to be determined is the mode and time of delivery dictated by the recipient and whether the same has been complied with to the satisfaction of the recipient.
- (b) Where goods are delivered by the supplier to the recipient but at the instruction of a third party, then the place of supply will be determined to be the place of supply which will be the principal place of business of such third party and not of the actual recipient. It is important to identify the two supplies involved – by supplier to third party and by third party to recipient. This provision deals only with the first limb of supply, that is, supply by supplier to third party. The question that arises is – the *locus* or authority of the third party to issue instructions to the supplier regarding its delivery. Even though the definition in section 2(93) refers to recipient as the 'payer of the consideration', in this provision, recipient is the one who actually collects the goods. And the third party is the one who enjoys privity with the supplier to be able to direct him to deliver the goods. Now, the place of supply will not be dependent on whether the movement of goods is from one State to another (if the supplier and recipient are in two different States) but as declared by the section to be dependent on the principal place of business of such third party.



- (c) Where the supply does not involve movement of goods, the place of supply will be the location of the goods at the time of its delivery to the recipient. It is not a case where there is difficulty in movement of the goods, but a case where the supply contemplates that the goods ought not to move and when their delivery to the recipient will stand complete. For example, a generator that is bolted to the concrete floor in the basement of a building purchased by the tenant and being left behind at the time of rejecting the tenancy, the supply of the generator by the tenant to the landlord for an agreed price is a case of 'supply that does not involve movement of the goods'. In such cases, the place of supply will be where the generator stands bolted to the concrete floor and without requiring any movement. The landlord (recipient) confirms satisfactory completion of delivery. This provision comes into operation only when its applicability is established based on the facts involved in the supply, that is, they do not involve movement. Reverting to the previous sub-section where the second limb of supply – by the third party to the recipient, where the goods having already reached their destination under the first supply are supplied – is a supply that does not involve movement of goods. And the place of supply would be where the equipment is located (with the recipient) at the time of confirmation of satisfactory completion of delivery.
- (d) Where the goods are assembled or installed at site, the place of supply will be the location of such installation or assembly. It is important to note that due to the introduction of 'composite supply' and the fact that this assembly or installation is not a 'works contract', this provision refers to only one supply. In other words, supply from the place of their origin to the site 'for' assembly or installation is subsumed within this provision and merged with the supply to the recipient by virtue of such assembly or installation. This provision appoints the place of supply based on the final act of assembly or installation. There is no requirement to vivisection the entire composite supply of goods (not being works contracts) that is a supply-cum-installation into a supply-plus-installation. If such vivisection were to be done, then in every instance of supply-cum-installation, the supplier will become a 'casual taxable person' in the State where the

assembly or installation is required. Further, it is important to note that in the case of assembly or installation, it is a supply that is not 'works contract'. This is because works contracts, in GST, are treated as supply of service and that too only if the resultant is an immovable property and the provisions of this section do not apply to works contracts.

- (e) Where goods are supplied on-board a conveyance, the place of supply will be the location at which the goods are taken on-board. Here too, are two supplies – supply of the goods 'to' the operator of the conveyance and supply 'by' the operator to the passenger during the journey 'in' the conveyance. The place of supply appointed under this sub-section is in respect of the second limb which is the supply by the operator of the conveyance during its journey to the passenger. Conveyance includes vessel, aircraft, train or motor vehicle. The place of supply in respect of first limb of supply will continue to be determined by other provisions of this section and only the second limb of supply 'on-board the conveyance' will be determined by this sub-section.

Residuary provision-Where none of the above provisions are applicable to determine the place of supply of goods, the Central Government will prescribe rules (based on recommendations of the Council) regarding the manner of its determination. Please ensure that before taking recourse to this residual provision, it must be demonstrated that the supply is one which is not already covered by any of the earlier sub-sections.

Place of supply concept – goods or services

Supplier	Place of Supply	Whether inter-State/ intra-State
Kerala	Bihar	Inter-State (IGST)
Puducherry	Puducherry	Intra-State (CGST + Pud GST)
Chandigarh	Chandigarh	Intra-State (CGST + UTGST)
Chandigarh	Punjab	Inter-State (IGST)
Chandigarh	Daman & Diu	Inter-State (IGST)
Goa	Goa	Intra-State (CGST + Goa GST)
Karnataka (SEZ)	Karnataka (non-SEZ)	Inter-State (IGST)

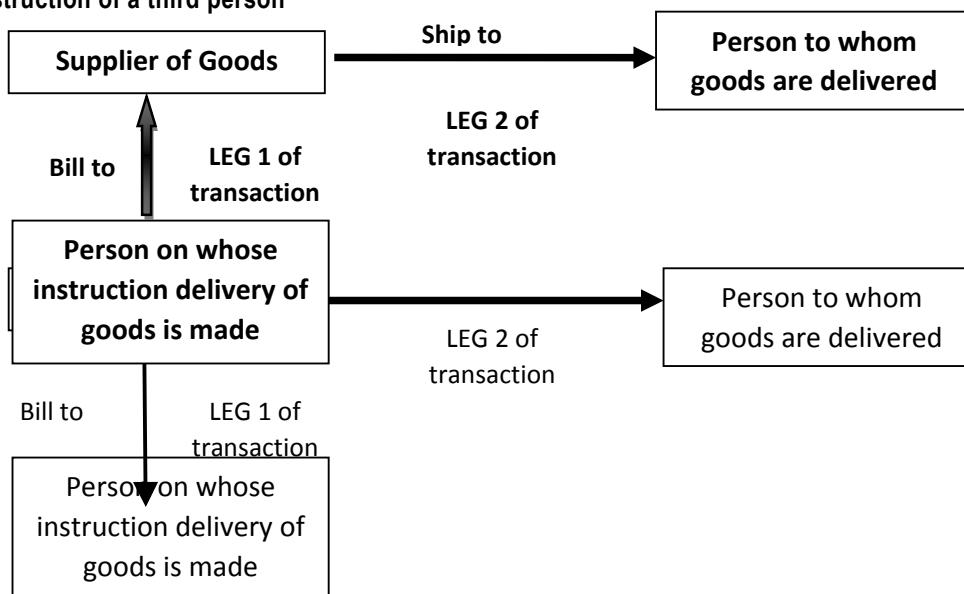
Place of supply of goods, other than supply of goods imported into, or exported from India

Section 10(1)(a): Supply involves movement of goods

Particulars	Supplier's factory from where goods are removed	Termination of movement for delivery	Place of supply	Tax Payable
Movement of goods by the supplier (goods dispatched by	Orissa	Assam	Assam	IGST payable at Orissa

supplier)				
[Section 10(1)(a) read with section 2(96)(a) of CGST Act]	Orissa	Orissa	Orissa	CGST / SGST payable at Orissa
Movement of goods by the recipient (goods collected by recipient)	Kerala	Goa	Goa	IGST payable at Kerala
[Section 10(1)(a) read with section 2(96)(b) of CGST Act]	Kerala	Kerala	Kerala	CGST / SGST payable at Kerala

Section 10(1)(b): Supply involves movement of goods, and delivered to a person on the instruction of a third person



Leg 1: Supply from the supplier of goods (Seeta) to the person to whom the goods are delivered (Ram) on the instruction of a third person (Lakshman) – *Place of supply shall be the principal place of business of the person on whose instruction goods are delivered to the receiver of goods:*

Case	Location of Supplier - Seeta	Place of delivery of goods - Office of Ram	Principal place of Lakshman who instructed delivery to Ram	Place of supply for Seeta	Type of tax payable by Seeta
1	Ahmedabad	Ahmedabad	Amritsar	Amritsar	IGST at Ahmedabad
2	Ahmedabad	Amritsar	Amritsar	Amritsar	IGST at Ahmedabad
3	Ahmedabad	Bangalore	Bangalore	Bangalore	IGST at Ahmedabad
4	Ahmedabad	Chandigarh	Udaipur	Udaipur	IGST at Ahmedabad

Leg 2: Deemed supply of goods by the person on whose instruction (Lakshman) the goods were delivered by the original supplier (Seeta) to the receiver of goods (Ram) – *Place of supply shall be the location of the goods at the time of delivery to the recipient:*

Case	Location of Supplier - Seeta	Place of delivery of goods - Office of Ram	Principal place of Lakshman who instructed delivery to Ram	Place of supply for Lakshman	Type of tax payable by Lakshman
1	Ahmedabad	Ahmedabad	Amritsar	Ahmedabad	IGST at Punjab
2	Ahmedabad	Amritsar	Amritsar	Amritsar	CGST + Punjab GST at Punjab
3	Ahmedabad	Bangalore	Bangalore	Bangalore	CGST + Kar GST at Karnataka
4	Ahmedabad	Chandigarh	Udaipur	Chandigarh	IGST at Rajasthan

Section 10(1)(c): Supply does not involve movement of goods

Particulars	Location of supplier	Location of recipient	Location of goods	Place of supply	Tax Payable
Sale of pre-installed DG Set	Delhi	Bhopal	Bhopal	Bhopal	IGST payable at Delhi
Manufacture of moulds by job-worker (supplier), sold	Tamil Nadu	Kerala	Tamil Nadu	Tamil Nadu	CGST + TN GST

to the Principal, but retained in job worker's premises					payable at Tamil Nadu
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Section 10(1)(d): Supply of goods assembled/ installed at site

Particulars	Location of supplier	Registered office of recipient	Installation/ Assembly Site	Place of supply	Tax Payable
Installation of weigh bridge	Delhi	Bhopal	Bhopal	Bhopal	IGST payable at Delhi
Servers supplied and installed at the office of a marketing firm	Karnataka	Goa	Karnataka	Karnataka	CGST + Kar GST payable at Karnataka
Supply of work-stations	Gujarat	Gujarat	Kerala	Kerala	IGST payable at Gujarat

Section 10(1)(e): Supply of goods supplied on board a conveyance

Particulars	Location of supplier	Loading of goods	Passenger boards at	Place of supply	Tax Payable
Supply of canned aerated drinks on a flight	Punjab	Punjab	Delhi	Punjab	CGST + Pun GST payable at Punjab
Sale of Haldirams mixtures during the journey	Pune	Goa	Hyderabad	Goa	IGST payable at Pune
Sale of sun-glasses on a ship	Bangalore	Chennai	Cochin	Chennai	IGST payable at Bangalore

Statutory provision**11. Place of Supply of Goods Imported into, or Exported from India**

The place of supply of goods, —

- (a) *imported into India shall be the location of the importer;*
 (b) *exported from India shall be the location outside India.*

11.1 Analysis

Place of Supply – Supplies outside India

Place of supply of goods where the goods are imported into or exported from India will be determined in accordance with section 8 of the IGST Act. Import of goods is defined in section 2(5) of the IGST Act and export of goods is defined in section 2(10) of the IGST Act. With these definitions, which are with reference to the movement of goods and not the location of the supplier or recipient. In this case, the place of supply will be:

(a) In the case of import of goods, the location of the importer and

(b) In the case of export of goods, the location outside India where the goods are exported.

2(5) “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

2(10) “import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

It is important to recognize that payment in convertible foreign exchange is not at all a criterion for determining whether it is export or import in respect of goods. Whereas payment in foreign exchange is relevant for services including transactions involving goods treated as services. Transactions of merchanting trade – where the goods are procured from one country and are directly dispatched without entering India will not be a supply in the ‘taxable territory’. Financial effect of such transactions alone will be reflected in the books of accounts without incidence of GST. Another form of international supply – high sea sales – is also a transaction that transpires outside the taxable territory and does not attract incidence of GST. Re-import of export goods will also be liable to GST in the same manner.

Imports will be liable to IGST in addition to basic customs duty and exports will be zero-rated with benefit of refund of input tax credit or rebate of tax paid. Please refer to The Taxation Amendment Act, 2017 for the necessary amendments made to Customs Tariff Act, 1975 and Central Excise Act, 1944 to enable imposition of BCD+IGST on import of goods liable to GST.

Taxation of High Sea Sales: As clarified vide Circular No. 33 /2017-Customs dated 01-08-2017

High Sea Sales of imported goods is a term used to denote a transaction whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. Since all transactions entered within the territory of India for sale and purchase of goods is taxable under GST, there were doubts on the levy of GST on High Sea Sales. More so, when such ‘High Sea Sales were categorised as Inter-State Supplies. Accordingly, Government has clarified the position of levy of GST on High Sea Sales vide *Circular No. 33/ 2017-Cus dated August 1st, 2017*. It has been clarified that IGST on High Sea Sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. In other words, the buyer of High Sea Sales shall be

disposing IGST on such imports and as part of Customs. Further, value addition accruing in each such High Sea Sale shall form part of the value on which IGST is collected at the time of clearance i.e. Buyer shall pay IGST on the final purchase value as per last High Sea Transaction envisaging all margins earned by all persons who made High Sea Sales of such Goods.

Place of supply of goods imported into, or exported from India

Section 11(a): Import of goods

Case	Location of supplier	Location of goods before supply	Goods supplied to	Location of recipient	Place of supply
1	Thailand	Thailand	Assam	Assam	Assam
2	China	China	Kashmir	Haryana	Kashmir
3	Sri Lanka	Sri Lanka	Kerala	Kerala	Kerala
4	Karnataka	Iran	Dubai	Karnataka	Not an import

Section 11(b): Export of goods

Case	Location of supplier	Location of goods	Goods supplied to	Location of recipient	Place of supply
1	Assam	Assam	Thailand	Assam	Thailand
2	Tamil Nadu	Kashmir	China	Texas	China
3	Sri Lanka	Kerala	Sri Lanka	Sri Lanka	Sri Lanka
4	Maharashtra	Dubai	Iran	Iran	Not an export

Another aspect to be carefully considered here is 'bill to-ship to' arrangements involving cross-border trade. It is not important for the supply is 'billed to' a person outside India but the supply is the 'shipped to' a person outside India. In fact, it is not at all relevant where the billing is done 'to' for the transaction to come within the operation of section 11. As mentioned earlier, payment of foreign exchange is not a criterion that determines whether the supply is an export or not. Reference may be had to discussion under section 16 regarding 'supply by way of export' which qualifies for zero-rated benefit. It is sufficient to mention here that in the export – goods shipped to a place outside India – would qualify as an export eligible for zero rated benefit. Exports, therefore, are always determined based on their 'ship to' location being a place outside India whether or not the additionally qualify for the zero rated benefit under section 16. Similarly, import of goods also are determined based on the 'ship to' location being the place within India with a journey or originating outside India. However, with the *proviso* to section 5(1) imposing GST not under the IGST Act but under the Customs Tariff Act, as soon as the goods supplied to qualify as import of goods under section 11, they are attracted the

incidence of additional customs duty equivalent to IGST. It is important to note that the similarity in the definition of import of goods and export of goods and the dissimilarity in the treatment of GST in these cases.

Statutory provision

12. Place of Supply of Services where Location of Supplier and Recipient is in India
<p>(1) <i>The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.</i></p> <p>(2) <i>The place of supply of services, except the services specified in sub-sections (3) to (14)</i></p> <p style="padding-left: 20px;">(a) <i>made to a registered person shall be the location of such person;</i></p> <p style="padding-left: 20px;">(b) <i>made to any person other than a registered person shall be, —</i></p> <p style="padding-left: 40px;">(i) <i>the location of the recipient where the address on record exists; and</i></p> <p style="padding-left: 40px;">(ii) <i>the location of the supplier of services in other cases.</i></p> <p>(3) <i>The place of supply of services, —</i></p> <p style="padding-left: 20px;">(a) <i>directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or</i></p> <p style="padding-left: 20px;">(b) <i>by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or</i></p> <p style="padding-left: 20px;">(c) <i>by way of accommodation in any immovable property for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or</i></p> <p style="padding-left: 20px;">(d) <i>any services ancillary to the services referred to in clauses (a), (b) and (c),</i></p> <p style="padding-left: 20px;"><i>shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:</i></p> <p style="padding-left: 20px;"><i>Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.</i></p> <p><i>Explanation. —Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.</i></p>

- (4) *The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.*
- (5) *The place of supply of services in relation to training and performance appraisal to, —*
 (a) *a registered person, shall be the location of such person;*
 (b) *a person other than a registered person, shall be the location where the services are actually performed.*
- (6) *The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.*
- (7) *The place of supply of services provided by way of, —*
 (a) *organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or*
 (b) *services ancillary to organization of any of the events or services referred to in clause (a), or assigning of sponsorship to such events, —*
 (i) *to a registered person, shall be the location of such person;*
 (ii) *to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.*
- Explanation.—Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.*
- (8) *The place of supply of services by way of transportation of goods, including by mail or courier to, —*
 (a) *a registered person, shall be the location of such person;*
 (b) *a person other than a registered person, shall be the location at which such goods are handed over for their transportation.*
- (9) *The place of supply of passenger transportation service to, —*
 (a) *a registered person, shall be the location of such person;*
 (b) *a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:*

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).

Explanation. —For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.

- (10) *The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.*
- (11) *The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall, —*
- (a) *in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;*
 - (b) *in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;*
 - (c) *in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means, —*
 - (i) *through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or*
 - (ii) *by any person to the final subscriber, be the location where such pre-payment is received or such vouchers are sold;*
 - (d) *in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:*

Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:

Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.

Explanation.—Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such

circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

- (12) *The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:*

Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

- (13) *The place of supply of insurance services shall, —*

- (a) *to a registered person, be the location of such person;*
- (b) *to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.*

- (14) *The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.*

12.1 Important Definitions

(a) Location of Recipient of Services:

Section 2(14) of the IGST Act, 2017 defines “location of the recipient of services” as:

- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the recipient.

(b) Location of the Supplier of Services:

Section 2(15) of the IGST Act, 2017 defines “location of the supplier of services” as:

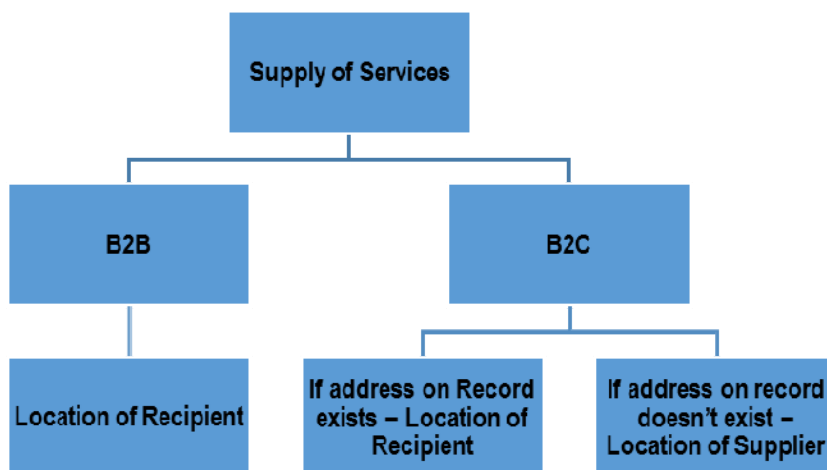
- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the supplier;

12.2 Analysis

(a) Place of Supply – Supplies within India

Place of supply of services where both the supplier and recipient are located within India will be determined in accordance with section 12 of the IGST Act.

- (i) General provision regarding place of supply will be as follows:
 - Services supplied to a recipient who is registered, POS will be the location of such person
 - Services supplied to a recipient who is not registered, POS will be the address-on-record of such person and where such address is not available, it will be the location of supplier

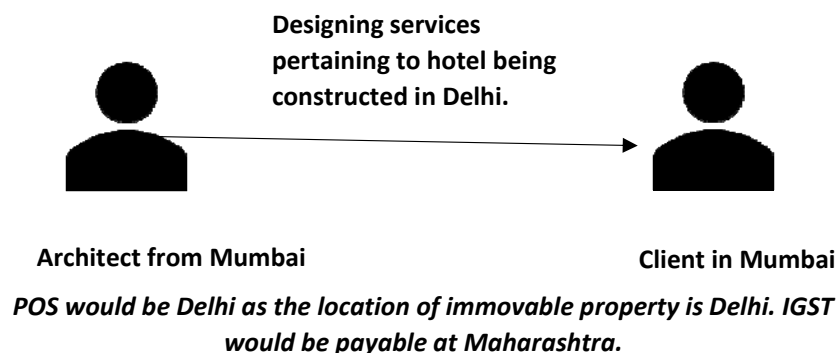


There could be a scenario where multiple POS in the same invoice to a particular customer because of supply of distinct goods and goods; services and services or goods and services may get covered. In such a case, the supplier has to issue a separate invoice where each invoice has only one POS. Eg: servicing of a motor vehicle wherein there is independent

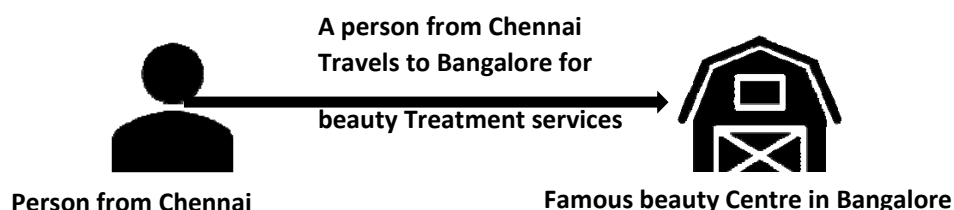
service element and also spare parts getting replaced. Services are charged at 18% tax and spare parts majorly are taxed at 28%. Considering this case to be a B2C, for invoicing of services we have to go by address on record which could be other state hence POS is that other state. However, in case of goods since there is no evidence on record to the supplier that the goods which are replaced would be leaving the state of origin and would travel to the other state, the service provider would treat POS as his own state. This method is also supported by the fact that GSTR-1 (Outward supply) returns does not allow to key in 2 different POS for the same invoice.

(ii) Specific provisions regarding place of supply that will apply in priority over the general provisions will be as follows:

- Services directly in relation to immovable property will be the location of such property. The expression 'in relation to' encompasses a wide range of services that have a proximate nexus with the immovable property. The provision lists these services – architects, interior decorators, surveyors, engineers and other related experts or estate agents, grant of rights to use immovable property or carrying out/ coordination of construction work. As can be seen, this list is not exhaustive and therefore – 'in relation to' – test will continue to be applicable to identify the services that will have the location of the property as its place of supply. Also, the location of the supplier or recipient is irrelevant in such cases. Further, there are other services that have proximity to immovable property that are 'by way of' accommodation. Such services too have, as their place of supply, the location of such property. Such property may be a hotel, inn, guest house, homestay, club or campsite including houseboat. The use of such property may be accommodation or for organizing a function such as marriage. The end-use will not alter the applicability of this provision but the proximity of the property vis-à-vis the services. Services that are ancillary to such services would also be covered by this provision. Further, goods required in construction activity received as stock before being assigned to any particular site will not be determined by this provision but the general provision. For example, steel purchased in bulk and sent to a central warehouse being deployed to any specific site.



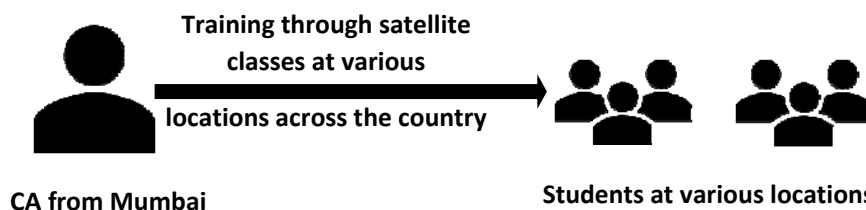
- Services of restaurant and catering, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery will be the location where these services are actually performed. The services listed in this provision do not carry a common thread so as to allow expanding this list. At the same time, each of these services themselves are a broad description of various specific services that may be performed under that umbrella. Services, must be examined very carefully to fall with the scope of this provision. It is important to understand POS will not help you to determine in which state you have to take registration, it only determines which is the state where supply is consumed in to determine the nature of tax. For understanding registration requirement one has to determine the same basis of Chapter VI of CGST Act within the scope of this provision.



POS would be Bangalore as that is the place where service is performed.

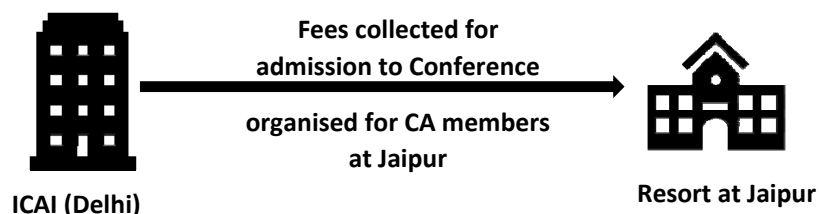
CGST + Karnataka GST would be payable at Bangalore.

- Services of training and performance appraisal supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location where services are actually performed. Recipient here being the 'person liable to pay the consideration' is not to be misconstrued to be the 'trainee' or 'person appraised'. Eg: a corporate training organized by a training institute in Mumbai for a registered corporate client in Bangalore. The amount of consideration is paid by the corporate through the individual participants. Here the liability to pay the consideration is on the corporate entity in Bangalore and not on individual participants. Hence, POS has to be determined on the basis of location of the recipient being corporate entity and not based on the place where the services are actually performed.



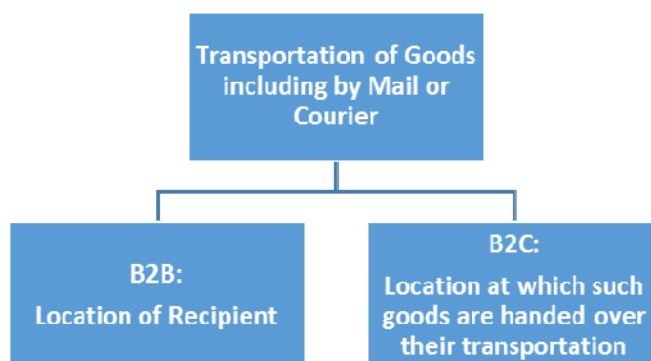
POS would be Mumbai as that is the place where service is performed. CGST + Maharashtra GST would be payable at Mumbai.

- Services of admission to a venue will be the location of the venue. The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment or an amusement park including ancillary services. Services referred to here are only 'admission' and not for organizing the event at the venue.

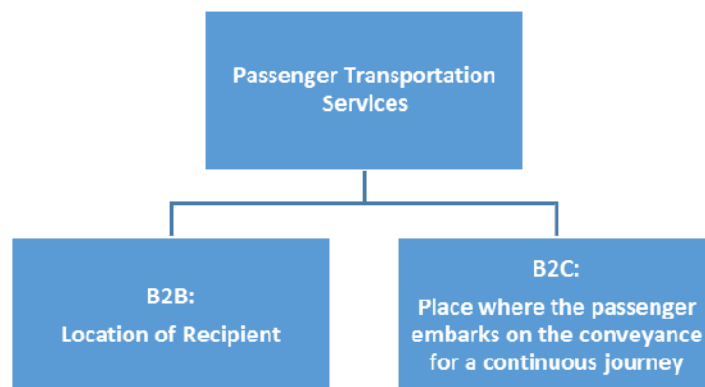


POS would be Jaipur as that is the place where event is actually held. IGST would be payable at Delhi.

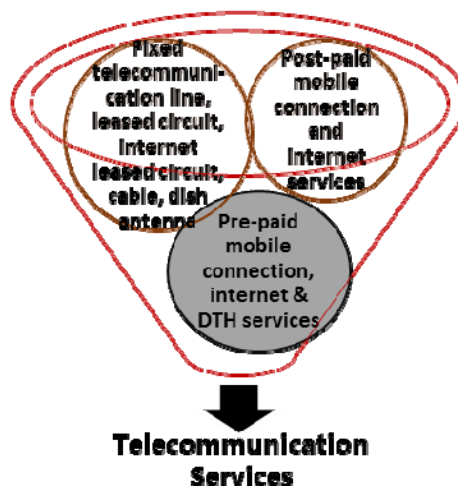
- Services of organizing an event including ancillary services supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location of the venue itself. The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment. Services referred to here are 'by way of' organizing the event at the venue. Where the event is organized in a ground or field being an immovable property, the service of securing the location has, as its place of supply, determined by a foregoing provision but the rest of the services of organizing the event alone will fall in this provision. If you look at this provision along with the previous for admission to an event, in case of B2B transaction admission to an event would have POS as the location of the event whereas services of organizing the event is based on the location of the registered recipient.
- Services of transportation of goods supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the location where goods are handed over for such transportation. Transportation of goods may be by any mode including mail or courier.



- Services of transportation of passenger will be the location of the recipient when supplied to a registered person. When the recipient is not registered, the place of supply will be the location of embarkation. Return journey is regarded as separate bookings and where the point of embarkation is unknown then the place of supply will be based on the general provisions prescribed.



- Services supplied on-board a conveyance, will be the first scheduled point of departure. Irrespective of whether the supplies are B2B or B2C the POS is determined based on the first scheduled point of departure. The registered recipient receiving any services on board through its employees/directors would lose the ITC on the said transaction in case if the location of the registered recipient and the first schedule point of departure are in two different states.
- Telecommunication services are provided in various forms and the place of supply will depend on the mode of providing the services. Where the services involve an in situ device installed to enable the service, the place of supply will be the location where such device is installed. This device may be a dish antenna, telephone line, etc. Where the services involve portable device, the place of supply will be the billing address if the same is on post-paid basis. Where it is on pre-paid basis, the place of supply will be the location of any intermediary who facilitates the supply or location where payment is received. Where none of the situations provide an appropriate location, then the place of supply will be the address-on-record of the recipient. If address is not available, then the location of supplier will be the place of supply.



- Banking and financial services including stock broking services will be the location of the address-on-record of the recipient. And if address is not available, then the location of supplier will be the place of supply. The services referred in this provision are not services 'by' a banking or financial institution but services 'of' banking and financial services. As such, the service is to be examined and not the service provider. Classification of services to identify the applicability of this provision is an important exercise that is to be undertaken.
 - Insurance services supplied to a registered person will be the location of the recipient. When the recipient is not registered, the place of supply will be the address-on-record of the recipient.
 - Advertisement services involving 'dissemination' of the material supplied to the Government or a statutory body will be the location of such dissemination. Where it is identifiable to a specific State, then that would be the place of supply and where it is disseminated over number of States, then a rule of proportion or any other reasonable basis is to be applied.
- (iii) Considering that place of supply has been so specifically covered in the various provisions discussed, it is to be borne and recollected that identifying the place of supply is for purposes of determining whether it is an inter-State supply or an intra-State supply. After must resistance to let go of the experience from erstwhile tax laws, it would dawn upon each of us to eschew seeking registration in every State where their services constitute a place of supply, but rather rely upon this section to open the doors to choose to effect inter-State supplies from one (or few) State only instead of multi-State registration that may be necessitated under erstwhile tax laws. Another important aspect especially when a recipient is a registered person which comes out on analysis of Section 12 is that where ever the POS is based on location of the recipient the ITC is

intact and wherever the POS is not based on location of the recipient but based on some other criterion as discussed above, then there is high probability of losing out on ITC in the hands of a registered person. Eg: immovable property related services, admission to an event, services on board an aircraft etc.

Statutory provision

13. Place of Supply of Services where Location of Supplier or Location of Recipient is outside India

- (1) *The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.*
- (2) *The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:*
Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.
- (3) *The place of supply of the following services shall be the location where the services are actually performed, namely: —*
 - (a) *services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:*
Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:
Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, then that which is required for such repairs;
 - (b) *services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.*
- (4) *The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.*
- (5) *The place of supply of services supplied by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational or entertainment event, or a*

celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organization, shall be the place where the event is actually held.

- (6) Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.
- (7) Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.
- (8) The place of supply of the following services shall be the location of the supplier of services, namely: —
 - (a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
 - (b) intermediary services;
 - (c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.

Explanation. —For the purposes of this sub-section, the expression, —

- (a) “account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;
- (b) “banking company” shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);
- (c) “financial institution” shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);
- (d) “non-banking financial company” means, —
 - (i) a financial institution which is a company;
 - (ii) a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or
 - (iii) such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.
- (9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.

- (10) *The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.*
- (11) *The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.*
- (12) *The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.*
- Explanation. —For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely: —*
- (a) *the location of address presented by the recipient of services through internet is in the taxable territory;*
 - (b) *the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;*
 - (c) *the billing address of the recipient of services is in the taxable territory;*
 - (d) *the internet protocol address of the device used by the recipient of services is in the taxable territory;*
 - (e) *the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;*
 - (f) *the country code of the subscriber identity module card used by the recipient of services is of taxable territory;*
 - (g) *the location of the fixed land line through which the service is received by the recipient is in the taxable territory.*
- (13) *In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.*

13.1 Analysis

Place of supply of services where either the supplier or recipient are located outside India will be determined in accordance with section 13 of the IGST Act. In other words, this provision applies for the determination of export of services as well as for import of services.

International supplies involving services are not verifiable similar to goods. GST, in certain cases, treats supplies involving goods as 'supply of services'. In such cases too, this provision will apply for determination of their export and import. Given the definition of export of services and import of services and on comparing them to goods, it will be evident that there is really

no comparison. Matters such as location of supplier, location of recipient, currency of compensation, etc., assume importance in relation to services including goods that are treated as supply of services. In this background, we may analyze place of supply of services where either one – supplier or recipient – is located outside India.

Then the place of supply determined by application of this provision may be carried into the definition to determine whether the international supply meets the requirements to be regarded as 'export of services' or 'import of services'. This may be somewhat unnatural but that is the correct approach because location of recipient outside India and payment in foreign currency are tests that the GST law does not appreciate. In this time and age of forex surplus, when two enterprises which are both located within India transacting in foreign currency is not impermissible.

Place of supply of international supplies is as follows:

- (i) General provision regarding place of supply will be the location of the recipient of the services. But, it will be the location of the supplier of services if the location of the recipient is not known without employing any extraordinary means. Recipient is defined as 'person liable to pay consideration' in section 2(93) of the CGST Act
- (ii) Specific provisions regarding place of supply that will apply in priority over the general provision will be as follows:
 - Services that are 'in respect of' goods made available 'by' recipient 'to' supplier or persons representing supplier for performance of those services will be the location where the services are actually performed. It is worthwhile to note here that the goods must be made available only by the recipient and **not his representative** but whereas person to whom it is made available could be supplier or his representative. It is also noteworthy that the services to which this provision is to apply are not expressly listed here and left to an application of – made available for performance – test to determine its applicability. Services that are supplied by remotely accessing the goods, the place of supply will be the location of the goods, without prejudice to goods that are imported for 'repair and return'. In cases where services are supplied at multiple locations, including a

2(6) "export of services" means the supply of any service when

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (v) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8;

2(11) "import of service" means the supply of any service, where

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India;

location in the taxable territory, PoS is location in the taxable territory. Further, rule of proportion is to be applied in case the services are carried out in different States.

- Services 'directly in relation to' immovable property will be the location of such property. The expression 'in relation to' encompasses a wide range of services that have a proximate nexus with the immovable property. Such property may be a hotel, inn, guest house, homestay, club or campsite including houseboat. The end-use will not alter the applicability of this provision but the proximity of the property vis-à-vis the services. Services that are ancillary to such services would also be covered by this provision. This provision is identical to Section 12 (3) discussed in earlier. In cases where services are supplied at multiple locations, including a location in the taxable territory, PoS is location in the taxable territory. The rule of proportion is to be applied in case the services are carried out in different States. Services required in construction activity which are received before being assigned to any particular site will not be determined by this provision but the general provision. For example, lease of construction equipment sent to a central warehouse before being deployed to any specific site.
- Services of admission to a venue will be the location of the venue. The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment or an amusement park including ancillary services. Services referred to here are admission or organizing the event at the venue. In cases where services are supplied at multiple locations, including a location in the taxable territory, PoS is location in the taxable territory. Further, rule of proportion is to be applied in case the services are carried out in different States.
- Services in the following three cases deviates from the 'destination' principle and appoints the place of supply to be the location of the supplier:
 - Services of a banking company or a financial institution or NBFC – reference to services 'of' indicate that this specific provision will encompass all activities by such a service provider performed in their capacity as such.
 - Intermediary services – defined in section 2(13) provide for a broad set of activities. It is important to examine whether the role of an intermediary is limited in any manner to marketing (proliferation of information to potential customers), pre-sale (submitting quotations) and post-sale (assisting in delivery, installation and after-sales support).
 - Hiring of transport for a period upto one month – all services attendant to securing such limited duration. This excludes aircraft and vessel other than yacht.
- Services of transportation of goods will be the destination of the goods. Transportation of goods may be by any mode but not mail or courier.

- Services of transportation of passenger will be the location where the passenger embarks for the journey.
 - Services supplied on-board a conveyance, will be the first scheduled point of departure. Services are to be supplied during the journey and substantially consumed on-board. Any deviation from this condition will result in it getting classified under the general rule.
 - Services of online information and database access or retrieval will be location of recipient. Please refer to detailed discussion under section 14 on OIDAR. Further, such recipient will be considered as situated in a taxable territory if any two of the following conditions are fulfilled:
 - Address of recipient in taxable territory
 - Card of recipient that is used to pay for the services is issued in taxable territory
 - Billing address is in taxable territory
 - Internet protocol address in taxable territory
 - Bank of recipient in taxable territory
 - Country code of SIM card is of taxable territory
 - Fixed line used by recipient is in taxable territory
- (iii) Where there is any occasion for double taxation or non-taxation, the Central Government is empowered to notify the place of supply with respect to service of any specific description, wherein the place of supply will be the place of effective use and enjoyment of a service.

Statutory provision

14. Special Provision for Payment of Tax by a Supplier of Online Information and Database Access and Retrieval (OIDAR) Services

- (1) *On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:*

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—

- (a) *the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;*
- (b) *the intermediary involved in the supply does not authorize the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;*
- (c) *the intermediary involved in the supply does not authorize delivery; and*
- (d) *the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.*
- (2) *The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:*
- Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:*
- Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.*

14.1 Introduction

This is a new transaction that is brought within the tax net only from 1 Dec 2016 under Service Tax. The experience of less than 6 months has been more than encouraging in the amount of tax that has been collected. OIDAR is in a class of its own as regards taxable person and place of supply. Everything discussed until now must be given a go-bye and OIDAR understood clearly.

14.2 Analysis

Online Information and database access or retrieval (OIDAR) is defined in a specific manner and may be simplified as follows:

2-step definition	Services (and not goods) supplied
	Delivered over continuous internet connectivity
2-step clarification	Involves minimal human intervention
	Impossible to ensure in absence of information technology

Six illustrations in the definition and some explanation about inclusions and exclusions:

Illustration	Includes	Excludes
Online advertising E.g. Google	<ul style="list-style-type: none"> Banner ads, pop-up ads, sponsored ads, etc. 	<ul style="list-style-type: none"> Preparation of content for online display like production, distribution and services of intermediaries Advertisement in newspaper, on posters and on television
Cloud services E.g. Amazon Web services	<ul style="list-style-type: none"> Webhosting Data warehousing 	<ul style="list-style-type: none"> Software license issued by delivery of key number to remotely download via FTP
e-books, movies, music, software and other intangibles E.g. Gaana.com & Netflix	<ul style="list-style-type: none"> Access to content permitted only 'online' even if stored in cache on user-end device but not allowing (official) permanent download 	<ul style="list-style-type: none"> Downloadable e-books, movies, music, etc. which are available for offline viewing without any mandatory e-check of the user credentials Content provided through dedicated user-end device for use of content Supply of physical books, newsletter, newspaper or journals Booking services or tickets to entertainment events, hotel accommodation or car hire Educational or professional courses, where the content is delivered by a teacher over the internet or electronic network
Online data or information E.g. LinkedIn, Taxindiaonline.com	<ul style="list-style-type: none"> Paid websites that provide information Free sites with valuable information – if not treated as 'supply', ITC will not be available but if treated as 'supply, output tax will apply on like-kind-and-quality or cost-plus basis 	<ul style="list-style-type: none"> Net banking where banking information is accessed online but merely incidental to offline banking transactions Electronic commerce Non-commerce and information portals C2C portals

Online supply of digital content E.g. Setmax online, YouTube	TV programs and movies supplied over the internet like monitored by issuing user login / password	<ul style="list-style-type: none"> • Auditors report sent to client via email. It is merely a form in which the offline services are communicated. Services of auditor is not the email of report issued but the opinion expressed about the financial position of the auditee • Online order processing in respect of offline supply of goods • Services of lawyers and financial consultants who advise clients through email
Data storage E.g. Amazon	<ul style="list-style-type: none"> • Webservers – shared or dedicated, with/ without support, etc. 	<ul style="list-style-type: none"> • Lease of server with redundancy
Online gaming E.g. Zapak.com	<ul style="list-style-type: none"> • Live-gaming • Collaborative gaming 	<ul style="list-style-type: none"> • Computer/ mobile games to be used after downloading to user-end device

Like every transaction done over the internet is not e-commerce, everything delivered online is not OIDAR. The acid-test is to see- 'always on'-status of internet connectivity for the continuous supply of the underlying service. Mere use of internet for delivery of services that can otherwise be provided offline through some media like CD, pen-drive, etc. all though less-securely will not be OIDAR. The use of file-transfer-protocol (FTP) for delivery of software or music or games is only to ensure integrity in the delivery of these high-volume files and the use of internet for FTP does not become OIDAR.

To summarise, the following table depicts the ingredients prescribed in this section:

Supplier	Supplier of Services in non-taxable territory		
Recipient	B2C (non-taxable online recipient – NTOR)	Intermediary@ (deemed to be recipient re-supplying to NTOR)	B2B# (all others)
Tax Payer	Overseas supplier	Recipient	Recipient
Tax Payment	Forward Charge (through representative)	Forward Charge	Reverse Charge

@ issues invoice, authorizes charge for services, responsible to collect payment, authorizes delivery and controls terms and conditions of supply. Else, not an intermediary liable to pay

B2B may be registered taxable person for any output supply

14.3 Comparative Review

In Service Tax, erstwhile law similar provision was added with effect from 1st December 2016.

14.4 Related Provisions

1. For the purposes of the definition of 'non-taxable online recipient, "governmental authority" means an authority or a board or any other body:
 - (i) set up by an Act of Parliament or a State legislature; or
 - (ii) established by Government,
 with 90% or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;
2. **Section 13(12)-IGST Act:** The place of supply of the "online information and database access or retrieval services" shall be location of recipient of service.
3. Reverse charge payment under inter-State supplies

IGST is levied on all interstate purchases. However, in case any supplier makes any inter-State supply, he is required to obtain registration irrespective of his turnover. However, when a person who makes purchases from an unregistered supplier even in case of inter-State supplies has been fastened with the responsibility to pay tax as recipient on such transactions vide section 5(4) of IGST Act (exempted upto March 31, 2018 through a notification). Accordingly, wherever the supplier who was to levy IGST but is unregistered, the responsibility to pay such IGST shall lie on the recipient of supplies. Further, the place of supply under this case is immaterial as IGST can be paid by the registered person for any State under his registration. However, it is also important to note that while the tax is to be discharged by the recipient, the basic levy of tax shall be determined from the perspective of the supplier and whether the transaction shall be inter-State or intra-State shall be determined by the location of supplier and not recipient. Thus, any supply received from the supplier of Maharashtra by recipient of Delhi shall be inter-State supply even when he is required to pay tax under reverse charge. In case the place of supply is supplier's location and recipient is not registered in such state, then recipient is not liable to pay tax in such State as the transaction is an intra-State supply and recipient is not a registered person for the purpose of such intra-State supplies. Eg: immovable property related services.

Chapter VI

Refund of Integrated Tax to International Tourist

15. Refund of integrated tax paid on supply of goods to tourist leaving India

Statutory provision

15. Refund of integrated tax paid on supply of goods to tourist leaving India

The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

Explanation.—For the purposes of this section, the term “tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

15.1 Introduction

Outbound passengers leaving India accompanied by GST-paid goods received during their stay in India would result in India exporting its taxes and this is sought to be overcome.

15.2 Analysis

All outbound passengers carrying goods on which IGST has been paid are entitled to claim refund at the port-of-exit. It is likely that the verification will be simple and refund will be online. It is interesting to note that only ‘integrated tax’ is eligible for this refund.

Also, as per proviso to section 8(1), all supplies to such an outbound tourist will always be treated as inter-State supply. The challenge to supplies-to-tourist’s is to identify an outbound tourist and charge IGST instead of CGST/SGST of the State where the goods are delivered. Please note that person seeking such refund must be a ‘tourist’ – who has entered India for genuine non-immigrant purposes. ‘Purpose’ of visit to India is key factor to be examined. Nationality, residency for tax purposes, etc. are irrelevant considerations. The provision of this section has not been made applicable as of now. Detailed inclusions and exclusions can be expected in due course but few illustrations may be considered.

“tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant

Tourist will exclude:

- Persons resident in India (not limited to Indian passport holders) who are exiting India for any purpose whether for short duration or long duration or uncertain duration.

- Deputation of Indian resident to overseas diplomatic postings.
- Children born in India to foreign nationals during their stay in India.

Tourist will include the following:

- Crew of an international conveyance entering and exiting India within short duration even though not for purposes of tourism in India
- Foreign diplomatic visitors on official duty in India
- Foreign sports persons visiting India for participating in tournaments or training purposes
- Foreign journalist and camera crew visiting India in connection with their profession
- Foreign artists, musicians and actors visiting India to perform in shows or content production

Note: - Provisions of this section are yet to be notified by the Government

Chapter VII

Zero Rated Supply

Statutory provision

16. Zero rated Supply

- (1) *“Zero rated supply” means any of the following supplies of goods or services or both, namely: —*
 - (a) *export of goods or services or both; or*
 - (b) *supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.*
- (2) *Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.*
- (3) *A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely: —*
 - (a) *he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or*
 - (b) *he may supply goods or services or both, subject to such conditions, safeguards and procedures as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.*

16.1 Introduction

Exports have been the area of focus in all policy initiatives of the Government for more than 30 years. Now with the Make in India initiative, exports continue to enjoy this special treatment because exports should not be burdened with domestic taxes. On the other hand, GST demands that the input-output chain not be broken and exemptions have a tendency to break this chain. Zero-rated supply is the method by which the Government has approached to address all these important considerations.

16.2 Analysis

Zero-rated supply does not mean that the goods and services have a tariff rate of ‘0%’ but the recipient to whom the supply is made is entitled to pay ‘0%’ GST to the supplier. In other words, as it has been well discussed in section 17(2) of the CGST Act that input tax credit will

not be available in respect of supplies that have a '0%' rate of tax. However, this disqualification does not apply to zero-rated supplies covered by this section. It is interesting to note that section 7(5) (and even proviso to section 8(1)) declares that supplies 'to' or 'by' SEZ developer or unit will be treated as an inter-State supply. So, when two SEZ units or one SEZ developer and another SEZ unit supply goods or services to each other (among themselves within the zone) and the zone being located within the same State or UT, such supplies will always be inter-State supplies. But, it is important to note that this – being treated as inter-State supplies always – by itself does not mean that non-SEZ sales by SEZ unit will be liable to IGST in all cases. Please refer to the table below of supplies involving suppliers in the zone that is covered by the provisions of section 7(5) and proviso to section 8(1):

Supply 'by'	Supply 'to'
SEZ unit	Outside India
SEZ unit	Another SEZ unit
SEZ developer	SEZ unit
Non-SEZ unit	SEZ unit
SEZ unit	Non-SEZ unit
Non-SEZ unit	SEZ developer
SEZ developer	Non-SEZ unit

Note: Physical location within the political boundaries of a State are irrelevant

The intention of government not to burden the export with tax could be achieved either by allowing not to charge tax on the exports of goods/services and claim the refund of input tax credits of taxes paid on inward supplies or by allowing the refund of tax charged on the exports made. Both these alternatives have been enabled in this section. Zero-rated supplies may be undertaken in either of the following ways:

Taxable person to avail input tax credit used in making outward supply of goods or service or both and make zero-rated supply-	
<ul style="list-style-type: none"> Without any payment of IGST on such outward supply by executing LUT (Letter of Undertaking) or bond (dispensed off vide notification 37/2017-Central tax) 	<ul style="list-style-type: none"> Make payment of IGST on the outward supply by debiting 'electronic credit ledger' but without collecting this tax from the recipient
<ul style="list-style-type: none"> Claim refund of input tax credit used in the outward supply 	<ul style="list-style-type: none"> After completing the outward supply, claim refund of the IGST so debited (unjust enrichment having been duly satisfied)
Subject to fulfilment of all associated conditions and safeguards that may be prescribed in either case	

Physical exports are well understood due to the vast experience from Customs Act. Physical exports, as discussed under section 11, are not determined or defined by realization of foreign

exchange (unlike export of services). SEZ is defined in section 2(20) to have the meaning from 2(g) of SEZ Act, 2005. Supply of goods by SEZ to non-SEZ area is governed by Customs Act in terms of Rule 47 in Chapter V of SEZ Rules, 2006. Accordingly, although the supply is 'treated as inter-State supply of goods' in terms of section 7(5), no tax is to be charged by the SEZ supplier but instead, the non-SEZ recipient is to pay IGST at the time of assessment of the bill of entry filed for such goods in terms of Customs Tariff Act, 1975 duly amended by the Taxation Laws Amendment Act, 2017 wherein section 3 of the Customs Tariff Act, 1975 has been substantially altered to enable imposition of additional customs duties only on goods not subsumed into GST and for the imposition of IGST on goods subsumed into GST by sub-section 7, 8 and 9. However, with respect to supply of services by SEZ to non-SEZ area, though not prohibited, is not expressly dealt with by this Chapter V of SEZ Rules as to the taxes/ duties applicable. Hence, when services are supplied from SEZ to non-SEZ area, the following implications arise:

- It may be an import of services by the non-SEZ recipient in terms of section 7(1)(b) liable for payment of IGST on reverse charge basis by the recipient. Support for this view may be found in the SEZ Act which states in section 53 that 'zone shall be deemed to be a territory outside the customs boundaries of India'. And as such, the zone could be a location 'outside India' and this supply could be said to be definition in section 2(11) of 'import of services'.
- At the same time, the definition of India as per section 2(56) of CGST Act means territory of India as referred to in Article 1 of the Constitution. SEZ units are also covered within above definition of India. As the CGST and IGST Act extend to whole of India, it could be said to be applicable to SEZ unit also and thereby making SEZ unit as falling within definition of taxable territory. If this view is taken, it may very simply be an inter-State supply of services liable to payment of IGST on forward charge basis by the SEZ unit because there is no reference in IGST to borrow the operation of section 53 from SEZ Act. Reverse charge Notification No. 10/2017- Integrated Tax (Rate) dated 28-Jun-17 covers any services supplied by any person who is located in a non-taxable territory to any person located in the taxable territory under reverse charge mechanism. SEZ unit may be said to be falling within definition of taxable territory and liable to tax under forward charge.

The latter interpretation appears to be more reasonable construction to follow. Accordingly, certain examples have been discussed below:

These provisions of zero-rated supplies are introduced in the statute on the basis of the prevalent Central Excise and Service Tax laws. It is widely believed that introduction of this provision will alleviate the difficulty of a supplier who exempts goods or services or both in terms of export competitiveness. This provision also specifically expresses that taxes are not exported. Care must be exercised that while paying taxes, such taxes are not collected from the recipient of goods or services or both. This would result in unjust enrichment.

The following illustrations may be considered:

Table A – Physical Exports

Zero-rated supply (Physical exports)	Option A (without payment of IGST)	Option B (with payment of IGST)
ABC from Chennai supplies goods required by PQR in Delhi to effect exports to Germany	<ul style="list-style-type: none"> • ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to issue invoice for €15 • PQR to ensure no IGST is charged in the Euro invoice • PQR to bring proof-of-export and satisfy all other conditions prescribed • PQR to claim refund of input tax credit of Rs.100/- being maximum amount related to the outward export supply • Such refund to be claimed by filing Form GST RFD-01 	<ul style="list-style-type: none"> • ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to issue, invoice for €15 • IGST to be charged on tax invoice issued in INR meant only for the purpose of GST. • PQR to debit electronic credit ledger with IGST applicable of Rs.180/- on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods) • PQR to bring proof-of-export and satisfy all other conditions prescribed • Refund of Rs. 180/- to be allowed on automatic processing of shipping bill by Customs once GSTR-3 and EGM is filed (Rule 96 of the CGST Rules to be followed)
XYZ from Delhi supplies services required by PQR in Delhi to effect export of services to USA	<ul style="list-style-type: none"> • XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax credit • PQR to issue invoice for \$20 • PQR to ensure no IGST is charged in the USD invoice • PQR to bring proof-of- 	<ul style="list-style-type: none"> • XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax credit • PQR to issue invoice for \$20 • IGST to be charged on tax invoice issued in INR meant only for the purpose of GST. PQR to debit electronic credit ledger with IGST applicable of Rs. 300/- on the export

	<p>export and satisfy all other conditions prescribed including realisation of consideration in foreign currency</p> <ul style="list-style-type: none"> • PQR to claim refund of input tax credit of Rs.250 being maximum amount related to the outward export supply by filing refund claim in Form GST RFD-01 	<ul style="list-style-type: none"> • PQR to bring proof-of-export and satisfy all other conditions prescribed • PQR to claim refund of IGST paid in respect of export (though actual relatable credit is much higher at Rs.250/-)
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Table B – Supply 'to' SEZ

Zero-rated supply (supply 'to' SEZ)	Option A (without payment of IGST)	Option B (with payment of IGST)
ABC from Hyderabad supplies goods required by PQR in Kolkata for onward supply to XYZ in Kolkata-SEZ (for use in authorized operations)	<ul style="list-style-type: none"> • ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to supply goods to XYZ (SEZ) for Rs.1,500/- • PQR to ensure no IGST is charged in invoice to XYZ • PQR to obtain proof-of-admittance from SEZ officer and satisfy all other conditions prescribed • PQR to claim refund of input tax credit of Rs.100 being maximum amount related to the supply to XYZ (SEZ) 	<ul style="list-style-type: none"> • ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to issue invoice to XYZ (SEZ) for Rs.1,500/- • PQR to debit electronic credit ledger with IGST applicable of Rs.270/- (say, 18%) on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods) • PQR to obtain proof-of-admittance from SEZ officer and satisfy all other conditions prescribed • PQR to claim refund of Rs.270 debited in electronic credit ledger in respect of supply to XYZ (SEZ) • SEZ unit not to avail the credit of IGST paid by PQR

		[Rule 89 (2)] of CGST Rules
XYZ from Surat supplies goods required by PQR in Rajkot for onward supply of services to MNO in Ahmedabad-SEZ (for use in authorized operations)	<ul style="list-style-type: none"> • XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax credit • PQR to supply services to MNO (SEZ) for Rs.2,000/- • PQR to ensure no IGST (even though within same State, it is inter-State supply) is charged in invoice to MNO • PQR to obtain proof-of-receipt-of-service (as specified by SEZ officer) and satisfy all other conditions (proviso to Rule 89 of Refund Rules) • PQR to claim refund of input tax credit of Rs.250/- being maximum amount related to the supply to MNO (SEZ) 	<ul style="list-style-type: none"> • XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax credit • PQR to issue invoice to MNO (SEZ) for Rs.2,000/- • PQR to debit electronic credit ledger with IGST applicable of Rs.240/- (say, 12%) on the export • PQR to obtain proof-of-receipt-of-service (as specified by SEZ officer) and satisfy all other conditions (proviso to Rule 89 of CGST Rules) • PQR to claim refund of Rs.240/- debited in electronic credit ledger in respect of supply to MNO (SEZ)

Table C – Supply ‘by’ SEZ

Zero-rated supply	Option A	Option B
Supply between two SEZ units:	(without payment of IGST)	(with payment of IGST)
ABC-SEZ in Indore supplies goods manufactured in the zone to PQR-SEZ in Mumbai (for use in authorized operations) Supply by ABC-SEZ to PQR-SEZ is inter-State supply (whether in same State/ UT or in different	<ul style="list-style-type: none"> • Goods or services received by ABC-SEZ from various suppliers will be as stated in Table B (above) • ABC-SEZ to issue invoice to PQR-SEZ without any IGST • No input tax credit that needs to be availed by 	<ul style="list-style-type: none"> • Goods or services received by ABC-SEZ from various suppliers will be as stated in Table B (above) • ABC-SEZ to issue invoice to PQR-SEZ. IGST to be charged but not collected from PQR-SEZ. • ABC-SEZ to debit

States/ UTs)	<p>PQR-SEZ</p> <ul style="list-style-type: none"> • ABC-SEZ to obtain proof-of-admittance from SEZ officer with assistance of PQR-SEZ and satisfy all other conditions prescribed • There is no refund to be claimed either by ABC-SEZ or PQR-SEZ as no IGST has been paid in this chain 	<p>electronic credit ledger with IGST applicable of Rs.240/-.</p> <ul style="list-style-type: none"> • ABC-SEZ to obtain proof-of-admittance from SEZ officer with assistance of PQR-SEZ and satisfy all other conditions prescribed • ABC-SEZ to claim refund claim of Rs. 240/- and debit it in electronic credit ledger in respect of supply to PQR (SEZ)
<p>XYZ-SEZ developer in Noida provides lease of premises to MNO-SEZ for its authorized operations</p> <p>Note: This applies to all supplies by developer to unit – premises lease, premises maintenance and other value added services</p>	<ul style="list-style-type: none"> • Goods or services received by XYZ-SEZ from various suppliers will be as stated in Table B (above) • XYZ-SEZ to issue invoice to MNO-SEZ without any IGST • No input tax credit that needs to be availed by MNO-SEZ • XYZ-SEZ to obtain proof-of-receipt of service from SEZ officer with assistance of MNO-SEZ and satisfy all other conditions prescribed • There is no refund to be claimed either by XYZ-SEZ or MNO-SEZ as no IGST has been paid in this chain 	<ul style="list-style-type: none"> • Goods or services received by XYZ-SEZ from various suppliers will be as stated in Table B (above) • XYZ-SEZ to issue invoice to MNO-SEZ. IGST to be charged but not collected from MNO-SEZ. • XYZ-SEZ to debit electronic credit ledger with IGST applicable of Rs.400/-. • XYZ-SEZ to obtain proof-of-receipt of service from SEZ officer with assistance of MNO-SEZ and satisfy all other conditions prescribed • ABC-SEZ to claim refund claim of Rs.400/- and debit it in electronic credit ledger in respect of supply to PQR (SEZ)
Supply by SEZ into non-SEZ:		

<p>ABC-SEZ in Gurugram supplies goods to PQR (non-SEZ unit) in Delhi (with necessary non-SEZ supply permission obtained by ABC from SEZ officer)</p> <p>Note: All supplies 'by' SEZ is treated as inter-State supply</p>	<ul style="list-style-type: none"> • ABC-SEZ to supply goods to PQR • No IGST to be charged by ABC-SEZ to PQR • PQR to file bill of entry for import of goods from SEZ to non-SEZ • Bill of entry filed by PQR will be assessed for BCD + IGST on reverse charge basis • PQR can then claim input tax credit of IGST paid on reverse charge basis • PQR to utilize IGST credit 	<ul style="list-style-type: none"> • Nothing to discuss in this option
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All refunds are subject to the 'due process' prescribed in section 54 of CGST Act read with Chapter X of CGST Rules including verification of unjust enrichment. Care must be taken not to include the refundable amount in the price charged to overseas customer. This may be checked by looking into:

- If the refundable amount is expensed directly or carried forward as a current asset
- If overseas customer is given credit in any subsequent invoice to the extent of refund
- If the reversal of refundable amount from the credit ledger is charged to P&L or not

Also, all invoices to have a declaration as to –

- Export of goods or services on payment of IGST;
- Export of goods or services without payment of IGST;
- Supplies to a SEZ developer or unit on payment of IGST; or
- Supplies to a SEZ developer or unit without payment of IGST.

Further, all supplies to SEZ developer or unit being zero-rated does not mean that the entire company can enjoy this form of *ab initio* exemption. For example, Company incorporated in Delhi may have established a SEZ unit in Jaipur. All goods and services supplied to SEZ in Jaipur will enjoy the *ab initio* exemption but the goods and services supplied to Delhi will be liable to tax. Now, if the incorporated address of the Company were also in Jaipur and inside the zone, the Company must be cautious to differentiate the supplies that are not related to the authorized operations in the zone but related to the other affairs of the Company and instruct the suppliers to charge applicable GST on such non-SEZ supplies. It is for this reason that proviso to Rule 8(1) of the CGST Rules provides for SEZ unit to secure separate

registration as a distinct business vertical, apart from the rest of the Company. Complete use of this zero-rated exemption will invite recovery action against the SEZ developer or unit. The supplier who supplied as a zero-rated supply is not responsible for this misuse because the SEZ developer or unit would have issued the GSTIN of the zone. Further, in case GST is paid on the non-zone operations of the Company and these costs are included in the export billing, there may be some aspects to be taken care of in case post-export refund of this GST paid is sought to be claimed. Please note that all supplies to SEZ developer or unit alone is treated as an inter-State supply but the supply to the Company relating to non-SEZ activities will continue to be inter-State or intra-State supply as the case may be. With all information, available online through GSTN, misuse is not difficult to identify. Care must be taken to diligently use the provisions of zero-rated supply.

With regard to 'bill to-ship to' transactions, it is important to mention that though the supply may be 'billed to' person located outside India (for exports) or inside zone (for SEZ supplies), where the supplies are 'shipped to' must be clearly identified in order to qualify for the benefit under this section. It is not that 'exports' are zero rated but 'supply by way of export' are zero rated. There is a lot of difference between these two expressions. With the difference between these two expressions having been discussed in the context of sections 11, it is sufficient to mention here that 'supply by way of export' is a subset of 'exports'. And in order to claim benefit of zero rating under this section, it is important to examine an 'export' to meet the requirements of 'supply by way of export'. In other words, both the 'bill to' and 'ship to' locations must be to the destination – outside India (for exports) or inside zone (for SEZ supplies) – in order to qualify for zero rating benefit. This principle applies equally to supply of goods as well as supply of services whether import or export. (I do not believe this is true in case of SEZ. SEZ is considered to be a place in the taxable territory so Section 10(1)(b) equally applies in case of supplies to SEZ. Need your concurrence to change this part)

Even if the goods or service which are either exported or supplied to SEZ unit developer are exempted goods or services, input tax credit is still available for making such zero rated supplies. The requirement to reverse ITC in relation to exempted supplies is not warranted if it is zero rated.

16.3 Procedure for zero-rated supply of goods or services:

16.3.1. Export of goods or services without payment of Integrated Tax

Exporter of goods is eligible to export goods or services without payment of IGST by complying with following procedure

(Note: Same procedures have to be followed by SEZ in respect to export of goods without payment of tax.)

A. Furnishing of Letter of undertaking:

- i. Notification 37/2017 dated 4.10.2017 of Central Tax provides for the conditions and safeguards for export of goods or services without payment of IGST which supersedes notification 16/2017 dated 4.7.2017 of Central tax
- ii. Conditions and safeguards for issuing letter of undertaking: all registered persons who intend to supply goods or services for export without payment of integrated tax shall be eligible to furnish a Letter of Undertaking in place of a bond except those who have been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees;
- iii. the Letter of Undertaking shall be furnished on the letter head of the registered person, in duplicate, for a financial year in the annexure to FORM GST RFD – 11 referred to in sub-rule (1) of rule 96A of the Central Goods and Services Tax Rules, 2017
- iv. Letter of undertaking would be executed by the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor v. Circular 4/2017 of Central Tax provides that LUT would be valid for 12 months.
- vi. Existing LUT would be valid till 31-07-2017. Further, exporters would be required to furnish LUT in revised format till 31-07-2017.
- vii. where the registered person fails to pay the tax due along with interest, as specified under sub-rule (1) of rule 96A of Central Goods and Services Tax Rules, 2017, within the period mentioned in clause (a) or clause (b) of the said sub-rule, the facility of export without payment of integrated tax will be deemed to have been withdrawn and if the amount mentioned in the said sub-rule is paid, the facility of export without payment of integrated tax shall be restored.

C. Furnishing of RFD-11

- i. Rule 96A of CGST Rules provides that any registered person availing option to export goods or services without payment of IGST has to furnish letter of undertaking prior to commencement of export in Form RFD-11. Format of RFD-11 is provided in CGST Rules 2017.
- ii. Circular 26/2017 of customs dated 01-07-2017 provides that procedure prescribed under Rule 96A needs to followed for export of goods or services w.e.f. 01-07-2017.
- iii. Circular 2/2/2017 of Central Tax provides that RFD-11 can be filed in hard copy with Jurisdictional Commissioner/ Assistant Commissioner till the time filing of RFD -11 is supported by online portal.
- iv. Condition to comply:

- a. In case of goods: good to be exported within 3 months from date of issue of invoice
- b. In case of services: Payment to be received in convertible foreign exchange within 1 year from date of invoice
- v. Bond or LUT has to be furnished along Form GST RFD-11 binding himself that tax along with interest @18% would be liable to paid by him;
 - a. In case of goods: within 15 days after completion of 3 months on failure to export such goods.
 - b. In case of services: within 15 days of completion of 1 year if such payment is not received in accordance with point (iv).

D. Tax Invoice:

- i. Exporters would be required to raise tax invoice with prescribed particulars mentioning "Supply meant for export under bond or Letter of Undertaking without payment of integrated tax".
- ii. No tax needs to be charged on the invoice in this case.
- iii. Tax invoice may be in addition to other export documents provided to customer.

E. Sealing(in case of goods):

New scheme shall be effective w.e.f. 1.9.2017. Till then, erstwhile practice of sealing the container under bottle scheme under central excise supervision or otherwise would continue.

F. Shipping Bill (in case of goods):

- i. Shipping Bill format has been revised by customs to capture GST related details.
- ii. Shipping bill to be prepared in Form SB-I.
- iii. In case of export of duty free goods shipping bills has to be prepared in Form SB-II.
- iv. Shipping bill needs to be issued in 4 copies (Original, Drawback purpose, Department purpose and export promotion)

G. Refunds

Refund of taxes in respect of accumulated input tax credit has to be claimed by following procedure prescribed by section 54 of CGST Act read with Chapter X of CGST Rules, 2017.

- Time limit: 2 years from the relevant date
- Method of filing: Form GST RFD-01 in online portal of GST in format provided in CGST Rules 2017
- Provisional refund: 90% of refund claim to be sanctioned within 7 days subject to certain conditions Balance 10% within 60 days on verification of documents by proper officer.

- Details of Bank Realization Certificate (BRC) or Foreign Inward Remittance Certificate (FIRC) needs to be provided along with details of export invoice while filing Form GST RFD-01

16.3.2. Export of goods or services with payment of Integrated Tax

The procedures to be followed under this option is as follows:

(Note: Same procedures have to be followed by SEZ in respect to export of goods with payment of tax.)

A. Commercial Invoice: Exporter can issue 2 sets of invoices to have a smooth flow of transactions with his foreign customers.

- i. Commercial invoice can be issued (along with tax invoice) without showing tax amount.
- ii. Points to keep in mind while following practice of issuing commercial invoice along with tax invoice:
 - Total value of both the invoices should be equal.
 - Every commercial invoice should have a corresponding tax invoice.

B. Tax Invoice:

- i. Exporters would be required to raise tax invoice with prescribed particulars mentioning "Supply meant for export on payment of integrated tax".
- ii. Applicable IGST needs to be charged on the invoice in this case.
- iii. Tax invoice would be in addition to other export documents provided to customer.

C. Sealing/ Shipping Bill: same as referred above in 16.3.1.

D. Refunds:

- a. In case of goods: Rule 96 of CGST Rules provides for the mechanism for refund of tax in case of export of goods with payment of tax.
- i. Shipping bill filed with custom would be considered as application for refund of integrated tax paid on export of goods.
- ii. Refund application shall be valid only when:
 - (a) Filing of export manifest/export report by person in charge of the conveyance carrying the export goods.
 - (b) Furnishing of valid return in Form GSTR-3 or Form GSTR-3B, whichever is applicable, by the applicant.
- iii. GST and custom portal would be inter-linked in which custom portal would electronically confirm to GST portal about movement of goods outside India.
- iv. Upon the receipt of the information regarding the furnishing of a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be from the common portal, the system designated by the Customs shall process the claim for refund and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be

electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.

- v. Withheld of refund: Refund can be withheld upon receipt of request from Jurisdictional Commissioner or where customs provisions are violated.
- vi. The exporter would not be eligible for refund in case of notified goods where refund of integrated tax is provided to Government of Bhutan.
- b. In case of services: Refund of taxes in respect of tax paid has to be claimed by following procedure prescribed by section 54 of CGST Act read with Chapter X of CGST Rules.
 - Time limit: 2 years from the relevant date
 - Method of filing: Form GST RFD-01 on online portal of GST in format provided in CGST Rules 2017
 - Provisional refund: 90% of refund claim to be sanctioned within 7 days subject to certain conditions. Balance 10% within 60 days on verification of documents by proper officer.
 - Details of Bank Realization Certificate (BRC) or Foreign Inward Remittance Certificate (FIRC) needs to be provided along with details of export invoice while filing Form GST RFD-01.

16.4 Procedure for supplies to SEZ unit/ SEZ developer :

Same procedure as referred above in 16.3 can be followed in following cases:

- (a) Supply to SEZ without payment of integrated tax
- (b) Supply to SEZ with payment of integrated tax.

(Note: Same will be followed in cases the above supplies are made by an SEZ unit or SEZ developer)

16.5 Comparative Review

The concept of zero-rated supplies is there in the VAT laws with credit benefit and refund. As far as Central Excise law is concerned there is a rebate mechanism in place. That apart the accumulated unutilised credit is available as refund to the exporters of services/ goods under rule 5 of the Cenvat Credit Rules, 2004.

16.56 Related Provisions

Statute	Section / Sub-Section	Description	Remark
CGST	17(2)	Apportionment of credit and blocked credits	Restrictions on credit attributable to exempt supplies.
IGST	2(23)	Zero-rated supply	Adopts the provisions of section 16 of IGST Act

Chapter VIII

Apportionment of Tax and Settlement of Funds

- 17. Apportionment of tax and settlement of funds
- 18. Transfer of input tax credit
- 19. Tax wrongfully collected and paid to Central Government or State Government

Statutory provision

- 17 Apportionment of tax and settlement of funds**
- (1) *Out of the integrated tax paid to the Central Government, —*
- (a) *in respect of inter-State supply of goods or services or both to an unregistered person or to a registered person paying tax under section 10 of the Central Goods and Services Tax Act;*
 - (b) *in respect of inter-State supply of goods or services or both where the registered person is not eligible for input tax credit;*
 - (c) *in respect of inter-State supply of goods or services or both made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;*
 - (d) *in respect of import of goods or services or both by an unregistered person or by a registered person paying tax under section 10 of the Central Goods and Services Tax Act;*
 - (e) *in respect of import of goods or services or both where the registered person is not eligible for input tax credit;*
 - (f) *in respect of import of goods or services or both made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received,*
- the amount of tax calculated at the rate equivalent to the central tax on similar intra-State supply shall be apportioned to the Central Government.*
- (2) *The balance amount of integrated tax remaining in the integrated tax account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (1) shall be apportioned to the, —*

- (a) State where such supply takes place; and
- (b) Central Government where such supply takes place in a Union territory:
- Provided that where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to, —*
- (a) each of the States; and
- (b) Central Government in relation to Union territories,
- in proportion to the total supplies made by such taxable person to each of such States or Union territories, as the case may be, in a financial year:*
- Provided further that where the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as State tax or, as the case may be, Union territory tax, by the respective State or, as the case may be, by the Central Government during the immediately preceding financial year.*
- (3) The provisions of sub-sections (1) and (2) relating to apportionment of integrated tax shall, *mutatis mutandis*, apply to the apportionment of interest, penalty and compounding amount realized in connection with the tax so apportioned.
- (4) Where an amount has been apportioned to the Central Government or a State Government under sub-section (1) or sub-section (2) or sub-section (3), the amount collected as integrated tax shall stand reduced by an amount equal to the amount so apportioned and the Central Government shall transfer to the central tax account or Union territory tax account, an amount equal to the respective amounts apportioned to the Central Government and shall transfer to the State tax account of the respective States an amount equal to the amount apportioned to that State, in such manner and within such time as may be prescribed.
- (5) Any integrated tax apportioned to a State or, as the case may be, to the Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State, or Central Government on account of such Union territory, in such manner and within such time as may be prescribed.

17.1 Introduction

GST is a destination based consumption tax – this principle is evident in the place of supply provisions. Therefore, GST is to be paid to the State where the destination or consumption takes place. And registration of each tax payer in every destination-State is impossible to comply or administer. It is for this reason that IGST is applicable on supplies whose destination is outside the home-State. Therefore, IGST is not actually a tax but an equitable tax revenue transfer mechanism from the State of origin of supply to the State of its destination where revenue rightly belongs. With IGST having been collected as if it were a tax, it now needs to be transferred to the destination-State. This is provided by section 17 and discussed below.

17.2 Analysis

Inter-State Supply (to)	IGST Paid (on)	Quantum of IGST	Transfer (to)
Unregistered recipient	IGST paid on inter-State supplies IGST paid on import of goods or services	Equivalent Central tax applicable on said supplies in intra-State supply	Union
Composition taxable person			
Registered taxable person not eligible to input tax credit		Balance amount of IGST	State, its respective share of inward supplies@
Registered taxable person eligible to input tax credit but does not avail it within period specified			Union, share of inward supplies to UTs@

@ If this amount cannot be reliably allocated, then rule-of-proportion – total supplies of that State/UT compared to total inter-State supplies during the financial year.

Please note the following further aspects:

- Above formula applies to interest, penalty and compounding amount collected in respect of inter-State supplies
- Any apportioned IGST is found to be refundable, then the same will be recouped from the subsequent transfers
- Time and manner of transfer to States/UTs will be prescribed

Statutory provision

18. Transfer of input tax credit
(1) On utilization of credit of integrated tax availed under this Act for payment of, —
(a) central tax in accordance with the provisions of sub-section (5) of section 49 of the Central Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the central tax account in such manner and within such time as may be prescribed;
(b) Union territory tax in accordance with the provisions of section 9 of the Union Territory Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the

integrated tax account to the Union territory tax account in such manner and within such time as may be prescribed;

- (c) *State tax in accordance with the provisions of the respective State Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and shall be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the appropriate State Government in such manner and within such time as may be prescribed.*

Explanation —For the purposes of this Chapter, “appropriate State” in relation to a taxable person, means the State or Union territory where he is registered or is liable to be registered under the provisions of the Central Goods and Services Tax Act.

18.2 Introduction

After apportionment of IGST paid, it leaves credit of IGST availed to be accounted for on its utilization. This section addresses the apportionment on utilization of IGST credit.

18.3 Analysis

IGST	Appropriation	Allocation (to)
Credit of IGST paid availed	Utilized to pay CGST	Union – Central tax account
	Utilized to pay SGST	State – State tax account@
	Utilized to pay UTGST	Union – UT tax account@

@ of respective State or UT

Statutory provision

19. Tax wrongfully collected and paid to Central Government or State Government

- (1) *A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.*
- (2) *A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.*

19.1 Introduction

Payment of tax based on erroneous determination of ‘nature of supply’ is not permitted to be adjusted because of the above appropriation of payments. Remedy lies in refund.

19.2 Analysis

Taxable person who has paid tax in error is entitled to refund by first restoring the discharge of the correct tax due so that the incorrect tax paid reflects on the Common Portal as 'paid in excess' and:

- IGST paid in error will be refunded subject to conditions prescribed
- IGST payable due to payment of CGST/SGST/UTGST is exempted from payment of interest on IGST due

Provisions of section 54 of CGST Act have not been extended to this refund although the conditions to be prescribed would not be too far from the requirements in section 54.

Chapter IX

Miscellaneous

- 20. Application of provisions of Central Goods and Services Tax Act
- 21. Import of services made on or after the appointed day
- 22. Power to make rules
- 23. Power to make regulations
- 24. Laying of rules, regulations and notifications
- 25. Removal of difficulties

Statutory provision

20. Application of provisions of Central Goods and Services Tax Act

Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

(i) scope of supply; (ii) composite supply and mixed supply; (iii) time and value of supply; (iv) input tax credit; (v) registration; (vi) tax invoice, credit and debit notes; (vii) accounts and records; (viii) returns, other than late fee; (ix) payment of tax; (x) tax deduction at source; (xi) collection of tax at source; (xii) assessment; (xiii) refunds; (xiv) audit; (xv) inspection, search, seizure and arrest; (xvi) demands and recovery; (xvii) liability to pay in certain cases; (xviii) advance ruling; (xix) appeals and revision; (xx) presumption as to documents; (xxi) offences and penalties; (xxii) job work; (xxiii) electronic commerce; (xxiv) transitional provisions; and (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier:

Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than

this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

20.1. Introduction

Certain provisions of CGST Act in relation to levy of tax would be applicable to IGST Act also.

20.2. Analysis

The following provisions of CGST Act shall apply to IGST Act:

- scope of supply;
- composite supply and mixed supply;
- time and value of supply;
- input tax credit;
- registration;
- tax invoice, credit and debit notes;
- accounts and records;
- returns, other than late fee;
- payment of tax;
- tax deduction at source;
- collection of tax at source;
- assessment;
- refunds;
- audit;
- inspection, search, seizure and arrest;
- demands and recovery;
- liability to pay in certain cases;
- advance ruling;
- appeals and revision;
- presumption as to documents;
- offences and penalties;

- job work;
- electronic commerce;
- transitional provisions; and
- miscellaneous provisions including the provisions relating to the imposition of interest and penalty.

The following exceptions are provided:

- (a) In case of TDS (tax deducted at source) the deductor shall deduct tax at the rate of two per cent from the payment made or credited to the supplier.
- (b) In case of TCS (tax collected at source), the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies.
- (c) The value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.
- (d) In cases where the penalty is leviable under the CGST Act and the SGST Act or the UTGST Act, the penalty leviable under this Act shall be the sum total of the said penalties.

20.3. Comparative Review

Under IGST Act	Corresponding Section under erstwhile Central Sales Tax Act, 1956	Comparison
Section 20 providing CGST Act provisions which would be applicable to IGST Act.	Section 9(2) of CST Act which provides that all provisions of General tax law of each State shall apply in respect of CST to dealers registered in that state, except those provided in CST Act and Rules. These include procedural aspects such as returns, assessment, offences, etc.	Section 9(2) of CST Act does not include aspects such as registration, valuation, credit, etc. which are included in Section 20 of IGST

20.4 FAQs

Q1. What are the provisions under CGST which would be applicable to IGST also?

Ans: The provisions relating to scope of supply, composite supply and mixed supply, time and value of supply, input tax credit, registration, tax invoice, credit and debit notes, accounts and records, returns, other than late fee, payment of tax, tax deduction at source, collection of tax at source, assessment, refunds, audit, inspection, search, seizure and arrest, demands and recovery, liability to pay in certain cases, advance ruling, appeals and revision, presumption as to documents, offences and penalties, job work, electronic commerce, transitional provisions and miscellaneous provisions

including the provisions relating to the imposition of interest and penalty, shall apply, in relation to the levy of tax under this Act as they apply in relation to levy of tax under the CGST Act, 2017.

Q2. What is the percentage of tax to be deducted or collected in case of tax deducted at source and tax collected at source?

Ans: The percentage of tax to be deducted by the deductor from the payment made or credit to the supplier is 2% in case of tax deduction at source.

In case of tax collection at source the operator should collect 2% tax on the value of net supplies.

Statutory provision

21. Import of services made on or after the appointed day

Import of services made on or after the appointed day shall be liable to tax under the provisions of this Act regardless of whether the transactions for such import of services had been initiated before the appointed day:

Provided that if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under this Act:

Provided further that if the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under this Act.

Explanation.—For the purposes of this section, a transaction shall be deemed to have been initiated before the appointed day if either the invoice relating to such supply or payment, either in full or in part, has been received or made before the appointed day.

21.1. Introduction

This provision deals with taxability of import of services made after the appointed day.

21.2. Analysis

- (a) It provides that import of services made on or after the appointed day shall be liable to tax under the provisions of IGST Act even if the transactions for such import of services had been initiated before the appointed day.
- (b) However if the tax on such import of services had been paid in full under the pre-GST regime, no tax shall be payable on such import under the IGST Act.
- (c) That apart if the tax on such import of services had been paid in part under the erstwhile law, the balance amount of tax shall be payable on such import under this Act.
- (d) As per the explanation appended to the section a transaction shall be deemed to have been initiated before the appointed day if either the invoice or payment, either in full or in part, has been received or made before the appointed day.

21.3. FAQ

Q1. Whether import of services made after appointed day is liable to tax under this Act?

Ans. Yes. Any import of services made after appointed day is liable to tax under this Act. However, the taxability is subject to the provisos in section 21 of IGST Act.

Q2. What would be the status of import of services, where the tax on the said transaction is paid in full under earlier laws?

Ans. Not liable to tax under this Act. As per the first proviso of section 21 of IGST Act, where the tax on import of services is paid in full under earlier laws, no tax under this Act would be made applicable though such import takes place after the appointed day.

Q3. What would be the status of import where the tax on the said transaction is paid in part under earlier laws?

Ans. As per the second proviso to section 21 of IGST Act, where the tax is paid in part for import of services under the earlier laws, only the balance amount of tax would be payable under this Act.

Q4. When would be the transaction be deemed to have been initiated before the appointed day?

Ans. Under any of the following circumstances it would be deemed that the transaction is initiated before the appointed day-

(i) Where invoice relating to such supply; or

(ii) Payment, either in full or in part;

has been received or made before the appointed day.

21.4 MCQ

Q1. Where the tax is fully paid under earlier laws, amount of tax payable for import of services made after appointed day is?

(a) No tax payable under this Act

(b) Tax as per this Act, to be paid again

Ans: (a) No tax payable under this Act

Q2. Where the tax is paid in part under earlier laws, amount of tax payable for import of services made after appointed day is?

(a) No tax payable under this Act

(b) Balance amount of tax payable on such import of services

Ans: (b) Balance amount of tax payable on such import of services

Statutory provision**22. Power to make rules**

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

22.1. Introduction

- (i) It provides power to the Central Government to make Rules for the purposes of IGST Act upon recommendations by the GST Council.

22.2 Analysis

- (i) Power to make rules by the Central Government is discussed hereunder:
 - The Central Government may make rules for carrying out the purposes of this Act, by notification on the recommendations of the Council.
 - The Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
 - The power to make rules shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the appointed day.
 - Any rules made may provide for penalty upto Rs.10,000 for contravention thereof.
 - “Council” would mean the Goods and Services Tax Council established under Article 279A of the Constitution.

22.3 Comparative review

Under IGST Act	Corresponding Section under erstwhile Central Sales Tax Act, 1956
Section 22 of IGST Act which deals with powers of Central Government to make rules	Section 13 authorizes Central Government to make rules. However, specific scenarios for making rules have been specified like manner of application for registration, form of declaration or certificate.

22.4 FAQs

Q1. Who is given the power to make rules under IGST Act?

Ans: The Central Government may, by notification, make rules for carrying out the purposes of this Act on the recommendation of the Council.

22.5 MCQs

Q1. Under section 22, the Central Government has power to make rules on recommendation of whom of the following?

- (a) Ministry of Finance
- (b) GST Council
- (c) CBEC
- (d) None of the above

Ans: (b) GST Council

Statutory provision**23. Power to make regulations**

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

23.1. Introduction

This provision refers to the Board's power to make regulations.

23.2. Analysis

To carry out the provisions of the IGST Act, the Board is empowered to make regulations, which would be notified. Such regulations should not be inconsistent with the provisions of the IGST Act and the Rules made thereunder.

Statutory provision**24. Laying of rules, regulations and notifications**

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

24.1. Introduction

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

24.2 Analysis

- (a) The Act permits making of rules by Government, issuance of regulation by Board and issuance of notification by the Government.
- (b) Such rule, regulation and notification, which is a part of delegated legislation is placed before the Parliament.
- (c) It is laid before the Parliament, as soon as may be after it is made or issued, when the Parliament is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions
- (d) Before the expiry of the session or successive sessions both Houses may make suitable modifications and would have effect in such modified form.
- (e) However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

24.3. Comparative Review

Similar provisions were there in the erstwhile tax laws as well.

Statutory provision**25 Removal of Difficulties**

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

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

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

25.1. Introduction

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

25.2. Analysis

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

25.3. Comparative review

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

25.4. Related provisions

This is an independent section and would be applicable for implementation of the GST law.

25.5. FAQs

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

Ans: Yes, all powers regarding implementation of any provision of the GST law is covered.

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

Ans: No, the Government has power only to decide on the practical implementation of law. But it cannot amend the Legislation through this section.

Q3. What is the maximum time limit for exercising the powers under Section 25?

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

Q4. Whether the reasons be mentioned in the order?

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

25.6. MCQs

Q1. Whether prior approval of the Parliament is necessary?

- (a) Yes
- (b) No

Ans: (b) No

Q2. What is the maximum period for exercising this power?

- (a) 4 years
- (b) 3 years
- (c) 2 years
- (d) 1 year

Ans: (b) 3 years

THE UNION TERRITORY GOODS AND SERVICE TAX ACT, 2017

Statement of Objects and Reasons

The Union Territories (for brevity, "UT") were earlier empowered to levy Sales Tax / VAT on the sale of goods, whereas the Central Government was empowered to levy excise duty and service tax on manufacture of goods and supply of services. This has led to a multiplicity of indirect taxes being levied by various authorities.

The difficulties faced in the erstwhile indirect tax system were:

- (i) Rising hidden costs in trade and industry due to multiplicity of taxes at the Central and Union Territory levels
- (ii) Lack of uniformity of tax rates and tax structure, compliance procedures across Union Territories
- (iii) Cascading of taxes
- (iv) Non-availability of cross-utilization of credits i.e., utilization of excise duty and service tax credits against taxes levied by Union Territories and vice-versa.
- (v) Credit of taxes levied by one Union Territory or State cannot be set off against taxes levied by other Union Territories or States.

Under the GST regime, Union Territory tax along with related GST legislations replaced the erstwhile taxes while empowering the Central Government to levy Union Territory tax on the supply of goods or services or both taking place within a Union Territory not having a Legislature. The GST legislation:

- (i) Provides for levy of tax on all intra-State supplies of goods or services or both, except alcoholic liquor for human consumption, at the rates recommended by the GST Council;
- (ii) Empowers the Central Government to grant exemptions on the recommendation of the GST Council;
- (iii) Enables apportionment of tax and settlement of funds on account of transfer of input tax credit between the Central Government, State Governments and Union Territories;
- (iv) Empowers recovery of tax, interest or penalty payable by a person and remaining unpaid;
- (v) Empowers establishing of an Authority for Advance Ruling to enable the taxpayers to seek binding clarity on taxation matters;
- (vi) Provides for an elaborate transitional provision for smooth transition of taxpayers to GST regime; and
- (vii) Allows application of certain provisions of the CGST Act, 2017 to the extent relevant for the purposes of this Act;

Chapter I

Preliminary

1. Short title, extent and commencement
2. Definitions

Statutory provision

1. Short title, extent and commencement

- (1) *This Act may be called the Union Territory Goods and Service Tax Act, 2017.*
- (2) *It extends to the Union territories of Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Chandigarh and other territory.*
- (3) *It shall come into force on such date as the Central may, by notification in the Official Gazette, appoint:*

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Title:

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

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

Extent:

Part I of the Constitution of India states: "India, that is Bharat, shall be a Union of States". It provides that territory of India shall comprise the States and the Union Territories specified in the First Schedule of the Constitution of India. The First Schedule provides for twenty-nine (29) States and seven (2+5=7) Union Territories.

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

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

'State' under the GST law is defined to include a Union Territory with Legislature. Delhi and Puducherry, though are Union Territories, have a Legislature of their own. Accordingly, for GST the Union Territories of Delhi and Puducherry will be regarded as a State and will be governed by the respective SGST laws passed by them, instead of the UTGST law which is passed by the Central Government.

Commencement:

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

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

Statutory provision

2. Definitions

In this Act, unless the context otherwise requires—

(1) *"appointed day" means the date on which the provisions of this Act shall come into force.*

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

(2) *"Commissioner" means the Commissioner of Union territory tax appointed under section 3;*

Every Union Territory is administered by the President through an Administrator appointed by him. The Administrator, in turn, is empowered to appoint Commissioners and other officers for carrying out the purposes of the Act who will be deemed to be 'Proper Officers' for administering the Act.

The officers appointed under the erstwhile central and UT laws will continue to function as officers under the UTGST Act as well.

(3) *"designated authority" means such authority as may be notified by the Commissioner;*

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

(4) *"exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be exempt from tax under section 8, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;*

The meaning of exempt supply is similar to the meaning assigned to it under the CGST law with the exception that supplies that are **partly exempted** from tax under this Act will also be considered as 'exempt supply'. On the contrary, partially exempted supplies under the CGST law would not be considered as 'exempt supplies' under the CGST law. The word "wholly" found in section 2(47) of the CGST law which is missing from section 2(4) under the UTGST law in the definition of exempt supply.

Exempt supplies comprise the following 3 types of supplies:

- (a) supplies taxable at a 'NIL' rate of tax;
- (b) supplies that are wholly or partially exempted from UTGST or IGST, by way of a notification; and
- (c) supplies that are not taxable under the Act (petrol, high speed diesel, alcoholic liquor for human consumption etc.)

The following aspects need to be noted:

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

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

This covers all the erstwhile Central and State laws (along with the relevant notifications, orders, and regulations), relating to levy of tax on goods or services like Service Tax law, Central Excise law, State VAT laws, etc. Therefore, laws that do not levy tax or duty on goods or services, such as The Indian Stamp Act, 1899, would not be covered here.

(6) "Government" means the Administrator or any authority or officer authorized to act as Administrator by the Central Government;

Every UT is administered by the President through an 'Administrator' appointed by him. Even a Governor of a State can be appointed as the Administrator of an adjoining UT. Such an Administrator will be regarded as 'Government' for the purposes of the UTGST law.

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

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

Type of Supply	Output tax	Reference
Supplies within a UT without Legislature	UTGST + CGST (intra-State supply)	Section 8(1) and 8(2) of the IGST Act
Supplies between two UT without Legislature	IGST (inter-State supply)	Section 7(1) and 7(3) of the IGST Act
Supplies between a UT without Legislature and a State (including UT with Legislature)	IGST (inter-State supply)	Section 7(1) and 7(3) of the IGST Act

The following aspects need to be noted:

- (a) While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the law from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but who have failed to obtain registration.
- (b) The amount covered under this term is the tax 'chargeable' under law, and not what is 'charged'. Therefore, in case a person wrongly charges an amount as tax, or charges an excess rate of tax as compared to the applicable tax rate, such excess would not qualify as output tax.
- (c) Some experts are of the view that taxes payable on reverse charge basis would also be out of the scope of 'output tax'. Since credit of input tax can only be used to pay output tax, the above will have to be discharged by way of cash only (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).
- (d) The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the UT tax payable on such supplies as output tax in the hands of the supplier.

(8) "Union territory" means the territory of, —

- (i) the Andaman and Nicobar Islands;
- (ii) Lakshadweep;
- (iii) Dadra and Nagar Haveli;
- (iv) Daman and Diu;
- (v) Chandigarh; or
- (vi) other territory.

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

Analysis

'State' under the GST law is defined under the CGST Act to include a Union Territory with Legislature. Delhi and Puducherry, being UTs with Legislature, will be regarded as 'States' for GST, and will be governed by their respective SGST laws, instead of the UTGST law.

By definition, the expression 'other territory' is inclusive of all territories that do not form part of any State (including the UTs of Delhi and Puducherry), and excludes the five UTs without Legislature listed under clauses (i) to (v) of the definition.

All territories that fall into the ambit of 'other territory' would also form part of the meaning of the term 'Union territory'. The purpose of this inclusion is to ensure that any Indian territory that remains unclaimed by all the States and Union Territories can be brought into the scope of GST. Although there is no specific indication that the extent of the term should be limited to the territory of India, locations outside India cannot be said to fall into the scope of 'other territory' defined above, as it would defeat the purpose of law.

(9) *"Union territory tax" means the tax levied under this Act;*

It refers to the tax charged under this Act on intra-State supply of goods or services or both, in addition to the tax levied under the CGST law. The rate of UT tax is capped at 20%, and will be notified by the Central Government based on the recommendation of the GST Council.

(10) *words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Integrated Goods and Services Tax Act, the State Goods and Services Tax Act, and the Goods and Services Tax (Compensation to States) Act, shall have the same meaning as assigned to them in those Acts.*

Certain words and expressions like person, supplier, recipient, intra-state supply, reverse charge, cess, place of supply etc. defined in the CGST/ SGST/ IGST laws will have the same meaning for UTGST law.

Chapter II

Administration

3. **Officers under this Act**
4. **Authorisation of officers**
5. **Powers of officers**
6. **Authorisation of officers of Central Tax as proper officer in certain circumstances**

Statutory provision

3. Officers under this Act

The Administrator may, by notification, appoint Commissioners and such other class of officers as may be required for carrying out the purposes of this Act and such officers shall be deemed to be proper officers for such purposes as may be specified therein:

Provided that the officers appointed under the existing law shall be deemed to be the officers appointed under the provisions of this Act.

4. Authorisation of officers

The Administrator may, by order, authorise any officer to appoint officers of Union territory tax below the rank of Assistant Commissioner of Union territory tax for the administration of this Act.

5. Powers of officers

- (1) *Subject to such conditions and limitations as the Commissioner may impose, an officer of the Union territory tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.*
- (2) *An officer of a Union territory tax may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of a Union territory tax who is subordinate to him.*
- (3) *The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer subordinate to him.*
- (4) *Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of Union territory tax.*

6. Authorisation of officers of Central Tax as proper officer in certain circumstances

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

- (2) *Subject to the conditions specified in the notification issued under sub-section (1), —*
- (a) *where any proper officer issues an order under this Act, he shall also issue an order under the Central Goods and Services Tax Act, as authorised by the said Act under intimation to the jurisdictional officer of central tax;*
 - (b) *where a proper officer under the Central Goods and Services Tax Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the proper officer under this Act on the same subject matter.*
- (3) *Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under this Act, shall not lie before an officer appointed under the Central Goods and Services Tax Act.*

Introduction

Union Territory without a legislature enjoys laws passed by Parliament. The UTGST Act is one where the law is by the Parliament but its administration is left with the Administrator of the Union Territory.

Analysis

Without being bound by the rigours and specificity of executive officers under the CGST act, the UTGST Act empowers the Administrator to issue a notification appointing one or more Commissioners and such other class of officers as required.

The Administrator is also empowered to appoint officers lower in rank than the Assistant Commissioner as required. Commissioners appointed by the Administrator are empowered to impose conditions and limitations necessary in the discharge of functions by the officers of UT Tax. A superior officer is permitted to discharge the functions and exercise the authority conferred on a subordinate officer. Interestingly, we do not find such flexibility in CGST Act and IGST Act. Not only does this Act prescribe the Assuming of power by a superior officer but also permits delegation of vested powers to be exercised by any other officer of UT Tax. Appellate authorities under this act are denied the flexibility of such appropriation or delegation of power vested in them.

Continuing with efficiency in tax administration, without causing any prejudice to the UT Tax Act, officers under the CGST Act are authorised to be officers under this Act. This is permitted only upon the recommendation of the Council and subject to any conditions that may be imposed by the Administrator.

Where officers under this Act initiate any proceedings, said officers shall proceed to pass orders not only in respect of UT Tax but also in respect of Central Tax. Where such conjoined proceedings are underway, the said officers are expected to intimate officers of Central Tax. Similarly, where proceedings initiated by officers in respect of Central tax, the underlying transaction or the taxable base being the same, such officers under the CGST Act, are required to pass orders addressing demands in respect of UT Tax arising from the common underlying transactions. Whichever officer initiates any proceedings will determine the law and forum for exercising lawful jurisdiction in respect of rectification, appeal and revision.

Chapter-III

Levy and Collection of Tax

- 7. Levy and Collection
- 8. Power to grant exemption from tax

Statutory provision

7. Levy and collection

- (1) *Subject to the provisions of sub-section (2), there shall be levied a tax called the Union territory tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding twenty per cent., as may be notified by the Central Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*
- (2) *The Union territory tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Central Government on the recommendations of the Council.*
- (3) *The Central Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*
- (4) *The Union territory tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*
- (5) *The Central Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services.*

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

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

7.1. Introduction

- (i) The Constitution mandates that no tax shall be levied or collected by a taxing Statute except by authority of law. While no can be taxed by implication, a person can be subject to tax in terms of the charging section only
- (ii) Section 7 is the charging provision of the UTGST Act. It provides that all intra-State supplies would be liable to UTGST subject to a ceiling rate of 20%. The levy is on all goods or services or both except on the supply of alcoholic liquor for human consumption. Besides, GST may be levied on the supply of petroleum crude, high speed diesel, motor spirit (petrol), natural gas and aviation turbine fuel with effect from such date as may be notified by the Government after recommendation of the Council. It also provides for the value on which tax shall be paid, the maximum rate of tax applicable on such supplies, the manner of collection of tax by the Government and the person who will be liable to pay such tax. The provision of this section is comparable to the provisions of section 9 of the CGST Act.
- (iii) Under the UTGST law, the levy of tax is as follows:
 - (a) In the hands of the supplier - on the supply of goods and / or services (referred to as tax under forward charge mechanism);
 - (b) In the hands of the recipient – on receipt of goods and / or services (referred to as tax under reverse charge mechanism)
 - (c) In the hands of electronic commerce operator-on services supplied by the suppliers through such electronic commerce operator

In the normal course, the tax would be payable by the supplier of goods and/or services. However, in specific cases (as may be notified), the onus of payment of tax is shifted to the recipient of goods and/or services.

Normally, the supplier of goods or services or both will be liable to discharge tax on the supplies effected. However, the Central Government is empowered to specify categories of supplies in respect of which the recipient of goods or services or both will be liable to discharge the tax.

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

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

- (v) Additionally, where any supply of services is effected through e-commerce operators, the law provides that the Central Government may on recommendation of the Council notify that the e-commerce operator will be liable to discharge the tax on such supplies where the e-commerce operator:
 - (a) Does not have a physical presence then the person who represents the e-commerce operator will be liable to pay tax.
 - (b) Does not have a physical presence or a representative, then the e-commerce operator is mandatorily required to appoint a person who will be liable to pay tax.
- (vi) In so far as e-commerce operators are concerned, care must be exercised to determine the nature of business of such operators. Essentially, there are four models of e-commerce business:
 - (a) Market-place – the question of supply by the e-commerce operator does not arise. For this reason, they are liable for TCS under section 52.
 - (b) Fulfilment centre – here States have been contesting that this model is one involving 'buy-sell' and accordingly liable to VAT. The test here is to establish the fact that the supply is by supplier directly to the end customer and not 'through' the e-commerce operator.
 - (c) Hybrid (of above 2) – all though not widely prevalent, this is a case where both buy-sell as well as market-place models are employed. It is important for such business to clearly establish which side of the fence they are would prefer to fall on so that the respective incidence of tax follows.
 - (d) Agency – this is employed by few business involving supply of industrial inputs. The *modus operandi* is that the principal logs in to the portal and routes the supplies to the end customer. The agreements are so framed that the e-commerce operator becomes responsible for the delivery and collection of payment. This renders the e-commerce Operator to constitute an agency. Such arrangements need to be vetted to ensure the inference of agency that emerges if it is not so desired, then the same may be redrafted suitably. Schedule I of the CGST Act states that transactions between principal and agent are deemed to be a supply and liable to tax. This consequence may be borne in mind even by e-commerce businesses.

7.2 Analysis

The discussion of Levy under Section 9 of the CGST Act made in this book may be referred for detailed analysis

Levy of tax: Every intra-State supply will be liable to tax, if:

- (a) Supply should involve goods or services or both viz., wholly goods or wholly services or both or both viz.,

Even where a supply involves both, goods and services, the law provides that such

supplies would be classifiable either as, wholly goods or wholly services. The reference to be made to Schedule II of the CGST Act which provides for this classification.

- (b) The supply is an intra-State supply – viz., ordinarily, the location of the supplier and the place of supply is in same Union Territory. (Refer Section 8 of the IGST Act to understand the meaning of intra-State supply);
- (c) The tax shall be payable by a 'taxable person' as explained in definition Sec. 2(107) and explained in Section 22 & 24 of CGST Act.

Tax shall be payable by a 'taxable person': The tax shall be payable by a 'taxable person' i.e. person/ separate establishments of persons registered or liable to be registered under section 22 and 24 of the CGST Act...

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

Supply:

Refer discussion under Chapter III of the CGST Act for a detailed understanding of the expression 'supply'. Additionally, the comments relating to 'composite supply' and 'mixed supply' and 'reverse charge' will equally apply for supplies taxable under UTGST Act.

7.3 Comparative review

Under the erstwhile tax laws, Central Excise is on 'manufacture of goods', VAT/CST is on 'sale of goods' and Service tax is on 'provision of service'. Unlike different incidences, under the GST law, it is 'supply' which would be the taxable event. Under the current law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT / CST. However, under the GST law, it would be taxable as a 'supply'. Further, free supplies would be liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit;

Under the erstwhile law, there are multiple transactions which apparently qualify as both 'sale of goods' as well as 'provision of services'. e.g. license of software, providing a right to use a brand name, etc. Unlike this situation, GST clarifies as to whether a transaction would qualify as a 'supply of goods' or as 'supply of services'. A transaction would either qualify as goods or as services, under the GST law. Even in respect of composite contracts, it has been clarified under Schedule II, Definition of composite supply and mixed supply in the CGST law.

The payment of VAT in the hands of the purchaser (registered dealer) on purchase of goods from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism in respect of say, import of services, sponsorship services etc. are comparable to the 'reverse charge mechanism' prescribed herein. Further, the concept of reverse charge only exists in relation to services. The GST law, however, permits the supply of goods also to be subjected to reverse charge.

7.4 Related provisions

Statute	Section	Description
CGST	Section 7 read with Schedule I, II and III	Definition of 'supply'
CGST	Section 2(17)	Definition of 'business'
CGST	Section 2(107) read with 22 and 24	Meaning of 'taxable person' and distinct persons
CGST	Section 2(31)	Meaning of consideration
IGST	Section 8	Meaning of intra-State supplies
UTGST	Section 7	Levy and collection of UTGST

7.5 FAQ

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

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

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

Ans. The receiver of goods would be liable to pay tax under reverse charge.

7.6 MCQ

Q1. As per Section 7, which of the following would attract levy of UTGST?

- (a) Inter-state supplies
- (b) Intra-state supplies
- (c) Any of the above
- (d) None of the above

Ans. (b) Intra-state supplies

Q2. Who can notify a supply to be taxed under reverse charge basis?

- (a) Board
- (b) Central Government
- (c) GST Council
- (d) None of the above

Ans. (b) Central Government.

Statutory provision**8. Power to grant exemption from tax**

- (1) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.
- (2) Where the Central Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
- (3) The Central Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.
- (4) Any notification issued by the Central Government under sub-section (1) of section 11 or order issued under sub-section (2) of the said section of the Central Goods and Services Tax Act shall be deemed to be a notification or an order issued under this Act.
- Explanation.* —For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, more than the effective rate, on such supply of goods or services or both

8.1 Introduction

This provision states that the Central Government may grant exemptions for intra-State supply of goods and / or services within a Union Territory. Reference may also be made to Section 11 of the CGST Act and Section 6 of the IGST Act for a detailed analysis.

8.2 Analysis

The Central Government will be empowered to grant exemptions from payment of UTGST on intra-State supplies within Union Territory, subject to the following conditions:

- (i) Exemption should be in public interest
- (ii) By way of issue of notification
- (iii) On recommendation from the Council
- (iv) Absolute / conditional exemption may be for any goods and / or services

- (v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature.
- With specific reference to the fourth condition indicated above, it is important to note that the exemption would only be in respect of goods and / or services, and not specifically for classes of persons.
 - It is to be noted that in cases where goods and/or services are exempt absolutely, no input tax credit can be claimed.
 - Mandatory nature of absolute exemptions has been litigated in the past and where tax is paid even though exemption is available, credit becomes admissible. For this reason, even inadvertence in not availing such absolute exemptions are made inexcusable. As such, credit denial also becomes absolute. No plea of equity or revenue neutrality becomes admissible.
 - There is generally not much doubt about exemptions – whether absolute or conditional – because the condition associated may be examined at one-time or continuously to be satisfied. Conditional exemptions abate if the associated condition is not complied. Care should be taken not to mistake conditional exemption with absolute exemption having specific applicability.
 - There is one school of thought wherein it is opined / understood that in case of conditional exemptions, there is an option available to the taxable person to pay the tax (by which way, there would be no requirement for input tax credit reversals). However, an absolute exemption is required to be followed mandatorily. The other view is that exemptions would never be optional, and would be mandatory automatically when the conditions relating to the exemption are satisfied. This provision does not bring in any clarity on this issue.
 - In terms of sub-Section (2), the Government may issue a special order on a case-to-case basis. The circumstances of exceptional nature would also have to be specified in the special order. While this provision is welcome, trade and industry is apprehensive that this could be used without necessary superintendence.
 - To provide more clarity to the exemption notification or the special order, it is provided that the Government may issue an “Explanation” at any time within a period of 1 year from the date of notification or special order. The effect of this “Explanation” would be retrospective, viz., from the effective date of the relevant notification or special order.
 - The law makes it clear that when the exemption is absolute (i.e., if whole or part of tax leviable is exempt) the registered person cannot collect taxes more than the effective rate.

Exemption under section 11 of the CGST/SGST Act equally applicable

Any exemption notification or special order issued under Section 11 of the CGST Law will apply equally for intra-State supplies, viz., any supply of goods or services or both which are exempt under CGST Law will be exempt even under the UTGST Law.

Effective date of the notification or special order:

The effective date of the notification or the special order would be date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would come into force on the date of its issue by the Central Government for publication in the Official Gazette. It follows that such notification/ order shall be made available on the official website of the department of the Central Government.

8.3 Comparative review

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

8.4 Related provisions

Statute	Section	Description
CGST	Section 11	Exemption from payment of CGST / SGST
IGST	Section 6	Exemption from payment of IGST
UTGST	Section 8	Power to grant exemption from tax

Chapters of UTGST Act covered under CGST / IGST

Sl. No.	Chapter No. / Heading – UTGST	Sections No. - UTGST	Description
1	IV – Payment of tax	9	Payment of tax
		10	Transfer of input tax credit
2	V – Inspection, Search, Seizure and Arrest	11	Officers required to assist proper officers
3	VI – Demands and Recovery	12	Tax wrongfully collected and paid to the Central Government or UT Government
		13	Recovery of tax
4	VII – Advance Ruling	14	Definitions
		15	Constitution of Authority for Advance Ruling
		16	Constitution of Appellate Authority for Advance Ruling
5	VIII – Transitional Provisions	17	Migration of existing tax payers
		18	Transitional arrangements for input tax credit
		19	Transitional provisions relating to job work
		20	Miscellaneous transition provisions

6	IX- Miscellaneous	21	Application of provisions of CGST Act
		22	Power to make Rules
		23	General power to make regulations
		24	Laying of rules, regulations and notifications
		25	Power to issue instructions or directions
		26	Removal of difficulties

- The sections cited supra other than the provisions relating to Chapter IX - Miscellaneous are discussed in the relevant sections of CGST / IGST laws wherever deemed fit.
- The Chapter IX - Miscellaneous other than Section 21 of the UTGST Act are similar to the provisions as discussed in the context of IGST Act. There is an additional provision (section 25 under the UTGST Act), which deals with Commissioner's power to issue instructions or directions, which is similar to section 168 of the CGST Act. Readers are requested to refer to the said provisions in this context.

The discussion on the following provisions have been provided in the CGST Act in the relevant chapters/sections.

(i)	scope of supply;
(ii)	composition levy;
(iii)	composite supply and mixed supply;
(iv)	time and value of supply;
(v)	input tax credit;
(vi)	registration;
(vii)	tax invoice, credit and debit notes;
(viii)	accounts and records;
(ix)	returns;
(x)	payment of tax;
(xi)	tax deduction at source;
(xii)	collection of tax at source;
(xiii)	assessment;
(xiv)	refunds;

(xv)	audit;
(xvi)	inspection, search, seizure and arrest;
(xvii)	demands and recovery;
(xviii)	liability to pay in certain cases;
(xix)	advance ruling;
(xx)	appeals and revision;
(xxi)	presumption as to documents;
(xxii)	offences and penalties;
(xxiii)	job work;
(xxiv)	electronic commerce;
(xxv)	settlement of funds;
(xxvi)	transitional provisions; and
(xxvii)	miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

It is important to note that the UTGST Act is legislated by the Central Government and the corresponding rules would also be legislated under its authority.

Note: All Relevant UTGST notifications are provided in forthcoming pages of this publication.

GOODS AND SERVICE TAX (COMPENSATION TO STATES) ACT, 2017

1. Short title, extent and commencement

The Goods and Service Tax (Compensation to States) Act, 2017 provides for a mechanism to compensate the States on account of loss of revenue which may arise due to implementation of the Goods and Services Tax read together with the Constitutional (one Hundred and First Amendment) Act, 2016, for a period of 5 years.

This Act, inter-alia provides:

- (a) That the base year during the transition period shall be reckoned as the financial year 2015-16 for the purpose of calculating compensation amount payable to the States;
- (b) That the revenue proposed to be compensated would consist of revenues from all taxes that stands subsumed into the GST law, as audited by the CAG;
- (c) For reckoning the growth rate of revenue subsumed for a State at 14% per annum;
- (d) That the compensation will be released bi-monthly based on the provisional numbers furnished by the Central Accounting Authorities and the final adjustment to be done after the accounts are subjected to audit by CAG;
- (e) That the revenue foregone on account of grant of exemption in the 11 special categories State (Article 279A), be counted for the purpose of determining revenue for the base year 2015-16;
- (f) That the revenue of States directly devolved to Mandi / Municipalities would be considered as revenue subsumed;
- (g) Levy of a cess over and above the GST on certain notified goods to compensate States for 5 years on account of revenue loss suffered by them;
- (h) That the proceeds of the cess will be utilised to compensate States that warrant payment of compensation;
- (i) That 50% of the amount remaining unutilised in the fund at the end of the fifth year will be transferred to the Centre and the balance 50% would be distributed amongst the State and Union Territories in the ratio of total revenues from SGST / UTGST of the fifth year;

Relevant Sections of the GST Compensation Act warranting attention are reproduced below:

2. Definitions:

- (c) *“cess” means the goods and service tax compensation cess levied under section 8;*
- (g) *“input tax” in relation to a taxable person, means:*
- (i) *the cess charged on any supply of goods or services or both to him;*

(ii) the cess charged on import of goods, and includes the cess payable on reverse charge basis;

(p) “taxable supply” means a supply of goods or services or both which is chargeable to the cess under this Act;

8. Levy and Collection of Cess

(1). There shall be levied a cess on such intra-State supplies of goods or services or both as provided for in Section 9 of CGST Act and such inter-State supplies of goods or services or both as provided for in Section 5 of IGST Act, 2017 and collected in such manner as may be prescribed on the recommendations of the Council, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of the goods and services tax with effect from the date from which the Central Goods and Service Tax Act is brought into force for a period of five years or for such period as may be prescribed on the recommendations of the council.

Provided that no such cess shall be leviable on supplies made by a taxable person who has decided to opt for composition levy under section 10 of the Central Goods and Service Tax Act.

(2). The cess shall be levied on such supplies of goods and services as are specified in column 2 of the Schedule, on the basis of value, quantity or on such basis at such rate not exceeding the rate set-forth in the corresponding entry in column 4 of the Schedule, as the Central Government may, on the recommendations of the Council, by notification in the Official Gazetted, specify.

Provided that where the cess is chargeable on any supply of goods or services or both with reference to their value, for each such supply the value shall be determined under Section 15 of the Central Goods and Service Tax Act for intra-State and inter-State supplies of goods or services or both.

Provided further that the cess on goods imported into India shall be levied and collected in accordance with the provisions of Section 3 of the Customs Tariff Act, 1975(51 of 1975), at the point when duties of customs are levied on the said goods under Section 12 of the Customs Act, 1962 (52 of 1962), on a value determined under the Customs Tariff Act, 1975.

9. Returns, Payments and Refunds

(1) Every taxable person registered making a taxable supply of goods or services or both, shall –

(a) Pay the amount of cess as payable under this Act in such manner;

(b) Furnish such returns in such forms, along with the returns to be filed under the Central Goods and Services Tax Act; and

(c) Apply for refunds of such cess paid in such form, as may be prescribed.

(2) For all purposes of furnishing of returns and claiming refunds, except for the form to be filed, the provisions of the Central Goods and Service Tax Act and the rules made thereafter, shall, as far as may be, apply in relation to the levy and collection of the cess leviable under section 8 on all taxable supplies of goods or services or both, as they apply in relation to the levy and collection of Central Tax on such supplies under the said Act or the rules made thereunder.

11. Other Provisions Relating to Cess

(1) The provisions of the Central Goods and Services Tax Act and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall, as far as may be, mutatis mutandis apply in relation to the levy and collection of the cess leviable under Section 8 on the intrastate supply of goods and services, as they apply in relation to the levy and collection of Central Tax on such intra-state supplies under the said Act or the rules made thereunder.

(2) The provisions of the Integrated Goods and Services Tax Act, and the rules made thereunder, including those relating to assessment, input tax credit, non-levy, short-levy, interest, appeals, offences and penalties, shall mutatis mutandis apply in relation to the levy and collection of the cess leviable under Section 8 on the inter-state supply of goods and services, as they apply in relation to the levy and collection of Integrated Goods Tax on such inter-state supplies under the said Act or the rules made thereunder.

Provided that the input tax credit in respect of Cess on supply of goods and services leviable under Section 8, shall be utilised only towards payment of said Cess on supply of goods and services leviable under the said Section.

Salient features of the GST Compensation Act:

I. Levy of cess:

- GST Compensation Cess (under Section 8 of the Act) will be levied on all intra-State and inter-State supplies of goods or services or both, including import of goods.
- The following supplies will be liable at the rate specified below:
 - Pan Masala (not exceeding 135% *ad valorem*)
 - Tobacco and Tobacco products (Rs. 4,170 per 1,000 sticks or 290% *ad valorem* or a combination thereof, but not exceeding Rs. 4,170 per 1,000 sticks plus 290% *ad valorem*)
 - Coal, briquettes and similar solid fuels (Rs. 400 per tonne)
 - Aerated Water (15% *ad valorem*)
 - Motor cars and passenger motor vehicles (25% *ad valorem*)
 - Any other supplies (15% *ad valorem*)
- The Cess would not be leviable on supplies made by a person who has opted for composition levy.

Goods and Services Tax (Compensation to States) Act, 2017

- Those supplies that are liable to tax with reference to their value (i.e. all supplies except coal, briquettes and similar solid fuels), are to be determined based on the Valuation provisions under Section 15 of the CGST Act.
- The cess levied under this Act would be payable over and above the CGST, SGST/UTGST and IGST tax leviable on. Cess would be levied on whole value exclusive of GST i.e. for Transaction value as per Section 15 is Rs. 100 and GST Rate is 18% then Cess would be levied on Rs. 100 Calculation would be Rs. 100+18% GST+ % Compensation Cess (as specified).

Central Government vide *Notification No. 04/2017- Compensation Cess (Rate) dt. 20th July 2017* has exempted intra-State supplies of second hand goods received by a registered person, dealing in buying and selling of second hand goods and who pays the goods and services tax compensation cess on the value of outward supply of such second hand goods as determined under rule 32(5) of the Central Goods and Services Tax Rules, 2017, from any supplier, who is not registered, from the whole of the goods and services tax compensation cess leviable thereon under section 8 of the Goods and Services Tax (Compensation to States) Act, read with Section 9(4) of the Central Goods and Services Tax Act.

Further, Central Government vide *Notification No. 05/2017- Compensation Cess (Rate) dt. 11th September 2017* made amendment in the rates of Compensation Cess for Motor vehicles as given in the following entries: -

S. No.	Chapter / Heading / Sub-heading / Tariff item	Description of Goods	Rate of goods and services tax compensation Cess
52	8703	Motor vehicles of engine capacity not exceeding 1500 cc	17%
52A	8703	Motor vehicles of engine capacity exceeding 1500 cc other than motor vehicles specified against entry at S. No 52B	20%
52B	8703	Motor vehicles of engine capacity exceeding 1500 cc, popularly known as Sports Utility Vehicles (SUVs) including utility vehicles. Explanation. - For the purposes of this entry, SUV includes a motor vehicle of length exceeding 4000 mm and having ground clearance of 170 mm. and above.	22%

II. Determination of Base Year Revenue:

- The Compensation amount to be paid in any year during the transition period is to be computed taking the base year as 2015-16 only.

- The provisions of Section 5(1) of the said Act lists the taxes imposed by State / Union that stand subsumed into the GST while the proviso to Section 5(1) lists out the taxes that shall not be included for calculation of base year revenue. The revenue collected by the States on account of the said taxes detailed in Section 5(1) of the Act alone would be considered for the determination of Base Year Revenue;
- The revenue collected would always be reckoned as 'net of refunds';
- The transition period will be the period of 5 years from the date when the respective SGST Acts commence.

III. Input Tax Credit and returns:

- Input Tax Credit on inward supplies liable to cess can be utilized only for payment of cess on outward supplies liable to cess under the Act.
- A taxable person effecting supplies chargeable to cess is required to file returns along with the returns prescribed under the CGST Act.

IV. General

- All provisions of CGST Act and IGST Act including input tax credit, assessment, offences, penalties, interest, non-levy and short-levy will apply in relation to the levy and collection of cess on intra-State and inter-State supply, respectively.

Note: The relevant notifications on Compensation Cess have been provided in forthcoming pages of this publications.

NOTE ON STATE GST LAWS & RULES

In the scheme of overall implementation of GST, the Parliament enacts Central GST Act, Integrated GST Act, Union Territory GST Act and when it comes to State GST Acts, each of the State legislature are to enact their respective State GST enactments.

As discussed in this background material in detail, on intra-state supply of goods or services, two levies would be attracted, i.e. Central GST and State GST in case of states; Central GST and Union Territory GST in case of Union Territory. When the same transaction attracts two taxes, obviously, both the enactments should operate simultaneously in the absence of which compliance with law arises. In that direction, the GST Council has provided all the States, a model version of State GST law for enactment in the respective states.

All the States have already passed State GST Acts including J&K whether through ordinance or by legislative assembly. On a perusal of the same it can be seen that almost all the provisions are in parallel with the provisions of Central GST Act, 2017 with suitable modifications as to State GST tax.

In this background material:

The Rules, which are available in public domain are considered and discussed at appropriate places. The Rules are issued under delegated legislation by the Central Government in so far as the CGST, IGST and UTGST laws are concerned whereas it will be issued by the respective State Government when it comes to SGST is concerned.

Special Category States under GST include:

1. Arunachal Pradesh
2. Assam
3. Himachal Pradesh
4. Jammu and Kashmir
5. Manipur
6. Meghalaya
7. Mizoram
8. Nagaland
9. Sikkim
10. Tripura
11. Uttarakhand

Composition Limits under various States

Notification No.46/2017- Central Tax dated 13.10.2017 has been issued so as to increase the threshold limit for opting composition scheme from ₹ 50 lacs to ₹ 75 lacs for Special Category States and ₹ 75 lacs to ₹ 1 crore for other States.

Note on State GST Laws & Rules

Earlier, Notification No. 08/2017 - Central Tax dated 27.06.2017 issued so as to increase the threshold limit for opting composition scheme from ₹ 50 lacs to ₹ 75 lacs except when the eligible registered person is in the following States: -

- | | | |
|---|---|---|
| a) Arunachal Pradesh,
b) Assam,
c) Manipur,
d) Meghalaya,
e) Mizoram,
f) Nagaland,
g) Sikkim,
h) Tripura,
i) Himachal Pradesh | } | Threshold limit of ₹ 75 lakhs
would be applicable for these
states under Composition |
|---|---|---|

For all the remaining states as well as Union Territories the threshold limit would be ₹ 1 crore under Composition. It is important to note that even though Uttarakhand and J&K are Special Category States the threshold limit under Compositions for said states is ₹ 1 crore only.

Aggregate Turnover Limit for Registration

Section 22 of the CGST Act, 2017 provides that every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.

Every supplier making a taxable supply of goods or services or both in the State, shall be liable to be registered under this Act if his aggregate turnover in a financial year exceeds ten lakh rupees.

(Only in SGST Law for special category States without the proviso)

How the Aggregate Turnover is Calculated?

XYZ Pvt. Ltd. is a manufacturing unit in Mumbai, Maharashtra along with unit at Assam. Turnover details of all the units are as follows:

Mumbai Unit: ₹ 8 Lakhs

Assam Unit: ₹ 11 Lakhs

Assam Unit is a special category state wherein the registration limit is ₹ 10 lakhs. Hence, in the given case XYZ Pvt. Ltd would be required to take registration in Assam due to aggregate

turnover being ₹ 11 Lakhs. Now it needs to be analyzed whether Mumbai unit also requires to get registered even though the aggregate turnover of all the units is less than ₹ 20 lakhs.

So even through aggregate turnover is less than 20 Lakhs, registration would be mandatory in the Mumbai also by virtue of mandatory registration in Assam.

Cabinet approves Scheme of Budgetary Support under GST Regime to the eligible units located in States of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim

The Cabinet Committee on Economic Affairs chaired by the Prime Minister Shri Narendra Modi has given its approval to the Scheme of providing Budgetary Support under Goods and Service Tax Regime for the eligible industrial units located in State of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim. Budgetary support of ₹ 27,413 crore for the said Scheme has been approved for the period from 1.7.2017 till 31.03.2027 for such industrial units located in aforesaid States which availed the benefit of Central Excise exemption prior to coming into force of GST regime.

The Government of India was implementing North East Industrial and Investment Promotion Policy (NEIIPP), 2007 for North Eastern States including Sikkim and Package for Special Category States for Jammu & Kashmir, Uttarakhand and Himachal Pradesh to promote industrialization. One of the benefits of the NEIIPP, 2007 and Package for Special Category States was excise duty exemption for first 10 years after commencement of commercial production.

Upon repeal of the Central Excise duty laws, the Government has decided to pay a budgetary support equal to the central share of the cash component of CGST and IGST paid by the affected eligible industrial units. The support shall be available for the residual period (ten years from the date of the commercial production) in the States of North Eastern region and Himalayan States. DIPP will notify the Scheme, including detailed operational guidelines for implementation of the scheme within 6 weeks.

It is estimated that total number of 4284 eligible units located in the State(s) of Jammu & Kashmir, Uttarakhand, Himachal Pradesh and North Eastern States including Sikkim will benefit from the above scheme.

[PIB Notification Release ID 170016 dt 07-08-2017]

