

GST on Traders

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This article has been written with a view to educate traders of the key highlights from the GST Laws that would have a bearing on the business carried on by them and to elicit comments, initiate debates and provide a basic understanding to the reader. It is fondly hoped that this article would provide to the reader some insight into the legal requirements that a trader must meet in order to strike a balance between trade and compliance.

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Contents

1.	Introduction	1
2.	Levy	2
3.	Time of Supply of Goods	18
4.	Place of Supply of Goods	21
5.	Value of Supply	23
6.	Input Tax Credits	28
7.	Payment	36
8.	Accounts and Records	39
9.	Documentation	40
10.	Compliance Requirements	43
11.	Assessment and Audit	49
12.	Offences & Penalties	51

Chapter 1

Introduction

Goods and Services Tax (GST), the biggest reform in the history of indirect tax in India, which is at present cross one year, is still in its very nascent stages of development. The Government, trade, industry and professionals and practitioners are grappling with various legal and procedural issues. The GSTN too, is in the process of settling down.

In this backdrop, it is necessary that small traders across the country need a working knowledge of the Law and other procedural aspects. This article is an attempt towards that end. We believe that this article will provide an insight into the various theoretical and practical aspects of the GST laws.

This article provides an analysis as well as an understanding of such issues to the reader.

Chapter 2

Levy

1. GST is a tax leviable on the “supply” of goods and/ or services. Therefore, for levy of GST, there must be a supply of one or more goods, a supply of one or more services, or a supply of a combination of goods and services. In other words, the term “supply” would replace the significance attached to the term “sale” particularly, in the case of traders. The provisions of the VAT laws were attracted when a dealer effected a “sale”. Therefore, traders would have to re-apply their minds to understand the taxation implications on every supply effected by them, irrespective of the fact that such a supply may not qualify as “sale”. The concept of ‘supply’ is elaborated in the ensuing paragraphs.
2. Levy of GST may be as follows:
 - (a) Central tax – CGST – levied under Section 9 of the Central Goods and Services Tax Act, 2017;
 - (b) State tax – SGST – levied under Section 9 of the relevant State’s Goods and Services Tax Act, 2017;
 - (c) Union Territory tax – UTGST – levied under Section 7 of the Union Territory Goods and Services Tax Act, 2017;
 - (d) Integrated tax – IGST – levied under Section 5 of the Integrated Goods and Services Tax Act, 2017; and
 - (e) Compensation cess – levied under Section 8 of the Goods and Services Tax (Compensation to States) Act, 2017.
3. GST shall be leviable on a taxable supply effected in India. The nature of GST to be levied would depend on various factors, including the location of the supplier / place of supply / location of the recipient. The GST law also prescribes that IGST will be levied on goods imported into India, while the levy and collection would be under the provisions of the Customs Act, 1961, on the value determined under that law. As regards exports and supplies to SEZ units / developers, the GST law treats the supplies as taxable supplies, while giving them a special status – zero-rated supplies.
4. Every person effecting a supply will be liable to pay GST (CGST+SGST or IGST, as the case may be) on every taxable supply, if such person is a taxable person at the time of supply. The time of supply would be determined based on several factors. The three determinants of supply – time of supply, place of supply and value of supply, have been discussed in detail in Chapters–3, 4 and 5 of this article.
5. Certain categories of supplies have been specified by the Government as supplies on which GST is payable on reverse charge basis – *Notification No. 4/2017 and 13/2017-Central Tax (Rate), dated 28-Jun-2017* as amended from time to time, for goods and services,

respectively. In other words, in case of notified goods and services, the recipient of the supply will be the person liable to pay tax. In this regard the law imposes mandatory registration on a trader who is otherwise not liable for registration (say, the turnover in the year is expected to be below the threshold limit of Rs.20 Lakhs), even if a single inward supply liable to reverse charge is effected during the year, thereby obligating him to pay taxes on all his taxable supplies effected by him thenceforth. The GST law also provides for levy of tax on reverse charge basis in case of all inward supplies (goods as well as services) from unregistered persons, much like the URD purchase tax that was prevalent under the hitherto State VAT laws in case of purchase of goods from unregistered dealers. With the levy follows other compliance requirements such as issue of invoice, payment voucher, etc. This levy has been relaxed by way of an exemption upto September 30, 2019 (vide Notification No. 22/2018-Central Tax (Rate) dt.6-Aug-2018), for the reason that this levy has caused undue hardship to trade and industry in complying with the requirements arising from this charge. Given the above, an amendment has been made (Notification giving effect to the amendment is awaited) in this regard wherein this levy shall be made applicable only to certain classes of registered persons, and shall be limited to the inward supply of specified goods and / or services.

6. The GST Council recommends the rates of tax / exemption from payment of tax on the supply of goods and/or services. Based on such recommendation, the rates of tax / exemptions therefrom would be notified by the Central Government in case of CGST, IGST, UTGST and Compensation Cess, and the respective State Governments in case of SGST. The amount of tax payable would be calculated at the rate of tax as notified, on the value of the supply as determined under the GST law.
7. While all supplies that enjoy an exemption under the CGST law would also enjoy the benefit of the exemption under the SGST laws. It may be possible that certain goods are exempt from SGST in a particular State, while they are taxable under the CGST law. However, no such divided exemptions have been notified as of date.
8. It would be important to note that the rates are specific to the HSN (Harmonised System of Nomenclature) as specified in the Customs Tariff Act, 1975, in case of goods, and a classification of services as specified by Notification in case of services. These codes are mandatorily required to be made available on the tax invoices issued by the trader. The number of digits of the HSN required to be quoted by a supplier has been prescribed by way of Notification No. 12/2017 – Central Tax dated 28-Jun-2017, as follows:

Annual Turnover in the preceding Financial Year	Number of Digits of HSN Code
Upto Rs.150 lakhs	Nil
More than Rs. 150 lakhs and upto Rs. 500 lakhs	2
More than Rs. 500 lakhs	4

Supply – Goods or goods & services

9. 'Supply', being the taxable event in the GST regime will be the event that triggers a GST implication. The GST law constructs an inclusive definition of the term 'supply', so as to provide scope for inclusion into GST as and when a new mechanism of supply is devised / discovered.
10. For the purpose of GST, all forms of supply of goods, or services, or a combination of both, when made or agreed to be made for a **consideration** by a person in the **course or furtherance of business**, will attract GST. The provision describes 8 illustrative activities in this regard – **sale, transfer, barter, exchange, license, rental, lease or disposal** of goods and/or services. Thus, it is clear that the term used would be supply, whether it is a sale of goods, scrapping of waste material, disposal of capital equipment, sale of goods by manufacturer from his factory, or hiring of equipment, etc. However, every supply will not attract GST. Ordinarily, only those supplies that are effected for a consideration, and made in the course or furtherance of business would be liable to GST. However, the GST law imposes a deeming fiction within the definition, to include the following within the ambit of 'supply':
- (a) **Importation of service** for a consideration, even if such importation is not in the course or furtherance of business. This means that importation of services will be liable to GST even if the service is intended for personal use, if there is a consideration to the supply.

This fiction is imposed to bring services on par with goods, given that import of goods would be subjected to GST en-route the Customs law, even when such goods are for personal use.

- (b) **The activities specified in Schedule I**, made or agreed to be made without a consideration:
- Permanent transfer/disposal of business assets where input tax credit has been availed on such assets;
 - Supplies between **related persons**, or between **distinct persons** (i.e., business establishments belonging to a single PAN), when made in the course or furtherance of business;
 - Supply of goods by a principal to his agent, and *vice-versa*, where the agent undertakes to supply, or receive goods (as the case may be) on behalf of the principal;

- Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.
11. Certain supplies have been prescribed in Schedule III of the CGST Act, which have been declared as supplies that are out of scope of taxation. Incidentally, almost all entries presently contained in Schedule III refer to services except actionable claims. For instance, the Schedule provides that services by an employee to the employer in the course of or in relation to his employment are not treated as 'supply' for the purposes of the Act. Although, the question as to whether supplies by employer to employee (e.g.: car, house, food facility given by employer to employee) would be taxed as supplies in the hands of the employer, is unanswered. But, to the extent such supplies are within the terms of employment, such supplies may be precluded from taxation under the GST laws. In this regard, it is important to note that the Parliament has made certain amendments (Notification giving effect to the same is awaited) in the legislation – and such amendment pertains to the inclusion of three activities in Schedule III which are relevant to traders – merchant trading from a place in a non-taxable territory to another such place, high sea sales wherein the supply takes place when the goods are in high seas, and in-bond sale of imported goods from customs bonded warehouses wherein the place of supply is in a non-taxable territory.
12. Additionally, the Government is empowered to notify activities or transactions undertaken by them (i.e., Central Government, State Government or any local authority) in which they are engaged as public authorities, as neither as a supply of goods nor a supply of services. Having regard to the above, it can be inferred that supply of all goods would attract GST unless such goods are exempted from tax. The meaning of the terms 'goods' and 'services' in terms of the GST laws is as follows:
- (a) **Section 2(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;
 - (b) **Section 2(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.
- Explanation.—For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;*
13. Section 7 of the GST Law also confers powers on the legislature, to determine what is, and what is to be treated as a supply of goods or a supply of services, by virtue of Schedule II. In short, the Schedule provides the below, amongst others:

(a) Supply of goods:

- Any transfer of title in goods;
- 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;
- Disposal of goods being business assets, transferred by or under the directions of the person carrying on the business, whether or not for a consideration.

(b) Supply of services:

- Any transfer of right in goods or of undivided share in goods without the transfer of title thereof;
- Works contract (for immovable property) including transfer of property in goods;
- Temporary transfer or permitting the use or enjoyment of any IPR;
- Transfer of the right to use any goods for any purpose;
- Any treatment or process which is being applied to another person's goods;
- Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software;
- 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 non-alcoholic drink;
- Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.

14. The Government is also authorised to specify other transactions that are to be treated as a supply of goods and not as a supply of services, and *vice versa*. However, traders are rest assured that no supply of goods (and goods alone) would be deemed by the statute to be a supply of services.

15. **Composite supply & mixed supply:** The GST law has introduced two concepts – composite supply and mixed supply. Specifically, for traders, supply of goods in combination with one another would also be treated either as composite supply or mixed supply. It is essential to differentiate a composite supply from a mixed supply as the treatments for the two from a taxation standpoint are poles apart.

- (a) Composite supplies: In terms of **Section 2(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.

- The rate of tax applicable to the principal supply would determine the rate of tax applicable to the entire composite supply, i.e., the rate applicable to the value of the bundled supply. Therefore, it becomes critical to evaluate as to which element of the bundled supply is the principal supply.
 - In terms of **Section 2(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;
 - From the above, it can be concluded that while a composite supply necessarily requires a principal supply, a supply cannot be regarded as a composite supply if there is more than one principal supply.
 - The term “principal supply” can be said to be the main supply that the recipient intends to acquire, and the remaining supplies would be ancillary/ complementary, or are supplied as a result of the said main supply.
- (b) Mixed supplies: In terms of **Section 2(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.

- Every component of a mixed supply, howsoever insignificant, would have to be identified, so as to determine that component of the supply which attracts the highest rate of tax. The tax treatment applicable to the mixed supply as a whole, would be that which is applicable to the goods / services attracting the highest rate of tax.
- Only a supply involving a combination of goods (or goods and services) that cannot be treated as a composite supply can be treated as a mixed supply.

- (c) For instance, consider a case where a trader supplies beds and mattresses. Undoubtedly, the bed and mattress are naturally bundled and supplied together in the ordinary course of business. However, the trader may not be able to establish which of the two goods constitute the principal supply, since *both are complementary, and neither are ancillary*, to one another. Therefore, it would be treated as a mixed supply, and not a composite supply. Consequently, higher of the rates of tax applicable to the said goods (i.e., bed and mattress) would be the applicable rate for the combined supply.
- (d) Each case of a combined supply would have to be evaluated based on the facts and circumstances relevant to the case to determine whether the supply is a composite supply / mixed supply / plain supply. While it is made clear that there is no straight-jacket formula to determine what constitutes a composite supply, the following illustrative questions could help a trader in determining whether a supply is a composite supply or a mixed supply:

Situation	It can be treated as:
Constitutes more than one main / predominant / principal supply	Mixed supply
Consideration for the two / more supplies is separately identifiable with each of the goods / services contained in the bundle?	Mixed supply
The two / more supplies are naturally bundled in the ordinary course of business	Composite supply

16. **Persons & taxable persons:** The term 'person' is different from the term 'taxable person'. Every taxable person must first be a person as defined under the GST law. An all-encompassing and yet inclusive definition is attributed to the term 'Person', as defined under Section 2(84) of the CGST Act. On the other hand, a taxable person is a distinctly recognised business establishment for the purposes of GST as opposed to the legal/ natural meaning of the term 'person'. The GST law defines the term 'taxable person' under Section 2(107) as:
- (a) **A person who is registered** under the GST laws (including a person who has voluntarily obtained registration although not liable to do so);
- (b) **A person who is liable to be registered in terms of Section 22 of the CGST Act** (aggregate turnover exceeding the prescribed threshold limit of Rs.20 lakhs / 10 lakhs in case of Special Category States); Section 23, however, specifies that there would be no requirement to obtain registration where the person:

- Is engaged exclusively in the business of supplying goods / services that are wholly exempt from payment of GST; and
- Is an agriculturalist (to the extent of supply of produce out of cultivation of land).

The term “**Aggregate turnover**” has been defined in the GST law to mean the aggregate value of all taxable supplies, exempt supplies, exports of goods and/or services and inter-State supplies of a person, to be computed on all India basis (i.e., from locations across India operating under the same PAN). However, the taxes charged under the GST laws and the value of inward supplies received on which tax is payable on reverse charge basis, would not form part of the aggregate turnover.

- (c) **A person who is liable to be registered in terms of Section 24 of the CGST Act:** Clauses that are relevant to a trader are provided as follows:

Persons making any inter-State taxable supply	<i>Any person making inter-State taxable supplies of handicraft goods, having aggregate turnover upto Rs. 20 lakh, is exempted from obtaining registration [Notification No. 8/2017-Integrated Tax, dated 14-Sep-2017]</i>
Casual taxable persons making taxable supply; In terms of Section 2(20) of the CGST Act, a “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.	<i>Casual taxable persons making taxable supplies of handicraft goods, having aggregate turnover upto Rs. 20 lakh, is exempted from obtaining registration [Notification No. 32/2017-Central Tax, dated 15-Sep-2017]. This exemption is available to persons making inter-State taxable supplies of handicraft goods and availing benefit of Notification No. 8/2017-Integrated Tax, dated 14-Sep-2017</i>
Persons who are required to pay tax under reverse charge on notified goods / services;	<i>Category of goods and services that attracts reverse charge liability notified vide Notification No. 4/ 2017-Central Tax (Rate), dated 28-jun-2017 and Notification No. 13/ 2017-Central Tax (Rate), dated 28-Jun-</i>

	<i>2017, respectively, as amended from time to time</i>
Persons who make taxable supply of goods and/or services on behalf of other taxable persons whether as an agent or otherwise;	
Persons who supply goods or services or both, through an e-commerce operator ("ECO") who is responsible for TCS under Section 52 of the CGST Act, 2017; <i>Exception: Where the ECO is the person liable to pay tax in terms of Section 9(5) of the CGST Act, 2017.</i>	<i>Persons making supply of services, having aggregate turnover upto Rs. 20 Lakh, through e-commerce operator (who is required to collect TCS) are exempted from obtaining registration vide Notification No. 65/2017-Central Tax, dated 15-Nov-2017. Category of services, the tax on which shall be paid by ECO has been notified vide Notification No. 17/2017-Central Tax (Rate), dated 28-Jun-2017 as amended from time to time</i>

17. **Distinct persons:** The GST law deems a single natural / legal 'person' to be two or more distinct persons in the following cases:

- (a) 'Taxable persons' as discussed above, having the same PAN (Permanent Account Number as issued under the Income Tax law);
- (b) An establishment in one State / Union Territory that is registered / is liable to be registered, and another establishment in another State / Union Territory (whether or not registered / liable to be registered).

For instance, a sole proprietor having 2 branches in two States from which he makes taxable supplies, will be liable for registration in 2 States, even if his turnover from the second State is of meagre value. Therefore, his registrations in each of the States will be considered as distinct from the other, and the two will be 2 distinct persons although the business as a whole is owned by the very same individual, as against the erstwhile provisions, whereby the transaction demanded reversal of input tax credit since the outward supply would be exempted from CST upon furnishing of Form F to the department.

18. **Related persons:** The term 'related persons' as defined under the GST laws is similar to, but not the same as the meaning provided to the term "related parties". Two persons

(whether natural/legal) will be treated as 'related persons' only if any of the below conditions are met:

- (i) They are officers or directors of one another's businesses;
- (ii) They are legally recognized partners in business;
- (iii) They are employer and employee;

However, services by an employee to an employer in the course of employment will not be treated as a supply for the purpose of GST [Paragraph 1 of *Schedule III to CGST Act, 2017*].

- (iv) Any person (i.e., a third person) directly or indirectly owns, controls or holds 25% 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) The two together directly or indirectly control a third person;
- (viii) They are members of the same family; or
- (ix) Persons who are associated in the business of one another – One is the sole agent/distributor/ concessionaire, howsoever described, of the other.

[Explanation to Section 15 of the CGST Act, 2017]

- ✓ Say, for instance, Srinivas Enterprises is a stationery shop owned by Mr. Srinivas, and Mohan & Srinivas Associates is a grocery store owned by a partnership between Mohan and Srinivas. In such a case, paper supplied by Srinivas Enterprises would be liable to GST, on a value determined under the Valuation Rules, although no consideration is charged by Srinivas Enterprises for the supply, as the two persons are related persons for the purpose of GST.

- 19. The concept of distinct persons and related persons becomes crucial for the purpose of supply, as all supplies between distinct persons and related persons would be taxable under GST, even if made without consideration [*Paragraph 2 of Schedule I to the CGST Act, 2017*].
- 20. It is relevant to note that the GST registration is attributed to the Legal Name of the registered person, and not the trade name. For instance, say a proprietor Mr. Venkatesh is a dealer in textiles and effects sale of cotton material from "Vinayaka Enterprises", and sale of Linen material from "Vinayaka Linen Stores". Therefore, it would be important for the Legal name

of the proprietor to appear on all the documentation, while the trade name may be additionally specified in such documents.

21. **Factors influencing taxation:**

- (a) The transaction must result in a **supply**, which may comprise a supply of
- ✓ Goods;
 - ✓ Services;
 - ✓ A combination of 2/more goods;
 - ✓ A combination of 2/more services; or
 - ✓ A combination of 1/ more goods and 1/more services.
- (b) The supply must be made by a **taxable person** to:
- ✓ A registered person;
 - ✓ An unregistered taxable person;
 - ✓ A taxable person having the same PAN as the supplier (i.e., distinct persons);
 - ✓ A person who is related to the supplier;
 - ✓ An unregistered person – not being a person who is required to obtain registration.
- (c) The supply must be **taxable** under GST; the below would not be taxable:
- ✓ A supply which is fully exempt by way of notification;
 - ✓ Goods/services being supplied are non-taxable supplies – i.e., supplies on which tax is payable under other laws, say VAT, etc. [i.e., alcoholic liquor for human consumption, petroleum crude, high speed diesel, petrol, natural gas, and aviation turbine fuel.];
 - ✓ Activities declared as neither a supply of goods nor a supply of services [Schedule III to the CGST Act, 2017].

Composition levy

22. All registered persons will be entitled to apply to the proper officer for permission to pay an amount in lieu of tax, under the composition scheme, subject to certain conditions and

restrictions. The law prescribes the following fixed rates of tax as the tax payable in the State in which the supplier is registered/ liable to be registered-

- (i) Manufacturer: 1% (CGST+SGST) of turnover in State
- (ii) Restaurant Service: 5% (CGST+SGST) of turnover in State
- (iii) Traders: 1% (CGST+SGST) of turnover of taxable supplies of goods in State

23. The below-mentioned **persons will NOT be permitted to opt to pay tax under the composition scheme:**

- (a) Persons whose **aggregate turnover** (all-India turnover for the particular PAN, including both taxable and exempt supplies) for a financial year exceeds Rs. 1 Crore (Refer Notification 46/2017-Central Tax dated 13-Oct-2017) – this threshold limit is increased to Rs.1.5 Crore (Notification giving effect to the same is awaited);

Central Government vide Order No. 01/2017-Central Tax dated 13-Oct-2017, namely, The Central Goods & Services Tax (Removal of Difficulties) Order, 2017 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. Also, the supplier is eligible for composition scheme even if he supplies any exempt service.

- (b) Persons engaged in the **supply of taxable services**, howsoever small (including after-sale support services) – a relaxation has been made on this front to permit suppliers of goods to effect supply of services of value capped at higher of Rs.5 Lakhs, or upto 10% of the turnover (Notification is awaited);
- (c) Persons effecting **inter-State outward supplies**– including stock transfers (even where the goods are exempt);
- (d) Persons supplying goods that are **not chargeable to tax under the GST law** (say petroleum, etc.)
- (e) Persons making **supplies through an e-commerce operator** who would be liable to collect tax at source;
- (f) Manufacturers of certain notified goods (Refer Notification No. 8/2017-Central Tax dated 27-Jun-2017).

24. While opting for payment under the composition scheme, the trader has to keep in mind, the following:

- ✓ The trader is neither allowed to collect any GST nor to claim the credit of GST paid on inward supplies;
- ✓ All the registrations obtained by him under the same PAN would also be mandated to operate under the composition scheme (all other conditions would accordingly apply);
- ✓ The trader would still be liable to pay tax at the applicable rates, in case of inward supplies of goods/services on which tax is liable to be paid on reverse charge basis;
- ✓ The person will have to pay tax under the normal provisions from the day the person, i.e., any of the registration obtained under the PAN, becomes ineligible for operating under the scheme (e.g., turnover exceeds the threshold limit, or the person makes an inter-State supply, or effects a supply of service, etc.); however, he will be entitled to claim credit on the stock (as inputs or contained in semi-finished/ finished goods, provided tax invoices are maintained against such stock and the invoice is not more than a year old) and on capital goods.
- ✓ Once the person becomes ineligible for the scheme, he will not be entitled to opt for the scheme another time during the same year. However, he may apply afresh in the subsequent year, if his aggregate turnover during the preceding year did not exceed the threshold limit.
- ✓ This would mean that persons who are traders providing related-services such as after-sale warranty services, etc. will also not be permitted to pay composition tax, where such service is a “supply of service”. In other words, only those services which are comprised in a “composite supply of goods” would be permitted to be supplied by a trader opting to pay tax under the scheme. [Except as amended by the legislatures to the extent of 10% of the turnover or Rs. 5 Lakh whichever is higher (Notification is awaited)]

25. Composition Scheme was prevalent under the erstwhile laws as well. Below are some of the important points of differences in the Scheme from the erstwhile regime:

Sl. No.	Composition Scheme pre-GST	Composition Scheme in the GST Regime
1.	Dealers whose aggregate turnover does not exceed an amount as prescribed under the VAT law specific to each State	Registered taxable persons whose aggregate turnover in a financial year does not exceed the threshold limit of Rs. 1 Crore [being increased to Rs. 1.5 Crore (Notification awaited)]—single limit for all-India turnover

2.	No limit of annual turnover for the dealers of eligible lines – e.g. works contractors, caterers, etc.	Threshold limit applicable to every taxable person, irrespective of the sector in which he operates
3.	Scheme not available to manufacturers	Scheme not available only to manufacturers of notified goods (<i>such as ice-cream, pan masala, tobacco</i>)
4.	Scheme not available to importers/ purchasers of goods on high-sea basis	No such restriction
5.	No restriction to traders in terms of: <ol style="list-style-type: none"> 1. Providing after-sale support services, or ancillary services 2. Selling goods through an e-commerce platform 	Scheme not available in case of: <ol style="list-style-type: none"> 1. Supply of Services – including composite supplies which are treated as a supply of services [permitted to a limit extent of higher of Rs.5 Lakhs / 10% of the turnover (Notification awaited)]; 2. Supply of goods through an e-commerce platform

Also, Rule 5 of CGST Rules, 2017 provides that 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 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, where the option is exercised under 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

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- (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.

Time of Supply of Goods

1. Under the erstwhile laws, the point of taxation, i.e., the point in time when the tax becomes payable, was determined based on the removal of goods in case of Central Excise, issue of invoice or receipt of payment or completion of provision of service in case of Service Tax and sale of goods or transfer of property, under the VAT/ CST laws. The taxable event under GST would be 'supply'. Consequently, it becomes necessary to determine at what point of time such supply has taken place in order to determine when the liability to pay GST will arise.

2. **Timelines for issuance of invoice:** Under the GST regime, a registered person will be required to issue an invoice 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 the goods available** to the recipient, in all other cases.
 - (c) In special cases:
 - ✓ Continuous supply of goods involving successive statements of accounts – before or at the time of issuing the statements;
 - ✓ Continuous supply of goods involving successive payments – before or at the time of receiving each payment;
 - ✓ Sale on approval basis – before or at the time of supply, or on completion of six months from the date of removal, where the supply has not been accepted / rejected.

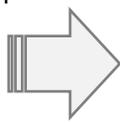
3. Provisions of time of supply under Section 12 of the CGST Act, 2017:

Situation	Time of Supply
General Rule	Date of issue of invoice or the last date on which the trader is required to issue the invoice <i>(Note: Although the statute provides for taxation on receipt of advances, this requirement has been relaxed in all cases of supply of goods by any person except composition taxpayer, by way of Notification No. 66/2017 dated 15-Nov-2017)</i>
Inward supplies liable to tax on reverse charge basis	a) Date of receipt of goods; b) Date of making payment (earlier of payment entry in books/ debit in bank);

Situation	Time of Supply
	c) Date immediately following 30 days from the date of supplier's invoice. (Whichever is earlier) <i>Note: Where time of supply cannot be determined under a), b) or c), it shall be the date of entry in the books of account of the recipient.</i>
Supply of vouchers	a) Date of issue of voucher, if supply is identifiable at that point; b) Date of redemption of voucher, in all other cases.
Interest, etc. for delayed payment of consideration	Date on which the supplier receives such interest / late fee / penalty for delayed payment of consideration
Residual clause – undetermined from above	a) Date of filing of periodical return, if such return has been filed; b) Date on which tax is paid, in all other cases

4. **Change in rate of tax:** Where there is a change in the rate of tax while the key events – removal of goods, issuance of invoice and receipt of payment – are taking place at different points in time, Section 14 of the CGST Act 2017 will operate to determine the rate applicable, and has an overriding effect on the provisions of Section 12.
5. From a reading of Section 14, the following tabulation emerges and considering the base fact of – time of supply – and the secondary facts of – issuance of invoice and receipt of payment:

Base fact (A)	Case	Goods supplied BEFORE change	CHANGE IN TAX RATE	
Additional facts	1			Earlier of:
	2	✓ Date of invoice (Before)		× Date of payment (After)
	3	✓ Date of payment (Before)		× Date of invoice (After)

Base fact (B)	Case		CHANGE IN TAX RATE	Goods supplied AFTER change
Additional facts	4	Earlier of: <ul style="list-style-type: none"> • Date of invoice or • Date of receipt of payment 	4 	Earlier of: <ul style="list-style-type: none"> • Date of invoice or • Date of receipt of payment
	5	× Date of invoice (Before)		✓ Date of payment (After)
	6	× Date of payment (Before)		✓ Date of invoice (After)

6. Given the above, the time of supply would occur for every supply transaction. However, the liability to pay GST arises only at the time of filing of returns, i.e., on the due date of furnishing the applicable returns, i.e., monthly return in FORM GSTR-3B, or quarterly return in FORM GSTR-4 in case of composition suppliers. Therefore, any delay in remittance of tax must be computed from the date on which the return was liable to be furnished.

Place of Supply of Goods

1. The 'place of supply' is not a phrase of common understanding and derives meaning from that which the law appoints to each of the specified supply transactions.
2. Given that GST is a destination-based consumption tax, it is pertinent to determine the place of supply so as to ascertain the nature of tax applicable on the supply transaction, i.e., intra-State or inter-State and consequently, the nature of GST payable, i.e., CGST and SGST or IGST.
 - (a) CGST and SGST will be levied on all intra-State supplies of goods where the location of supplier and 'place of supply' are in the same State.
 - (b) IGST will be levied on all inter-State supplies of goods where the location of supplier and 'place of supply' are in different States / Union Territory (e.g. Supplier located in Punjab and 'place of supply' is in Chandigarh). Additionally, the following will be deemed to be supplies in the course of inter-State trade or commerce:
 - (i) Supply of goods in the course of import till they cross the customs frontiers of India;
 - (ii) Situations where location of the supplier is in India and 'place of supply' is outside India (example: exports);
 - (iii) Supply of goods to, or by a SEZ developer or SEZ unit.
3. From the above, it can be inferred that every zero-rated supply (as provided for under Section 16 of the IGST Act, 2017) would be an inter-State supply.
4. It should be noted here that imports would continue to be governed under the provisions of the Customs law and will be subjected to Basic Customs Duty (BCD). However, in place of Counter-Vailing Duty (CVD) and Special Additional Duty (SAD), IGST regime would be leviable on import of goods, whereas the charge of such IGST would be enforced through the Customs law (and not through the GST laws).
5. The GST laws provide the meaning to the term 'location of supplier' in the context of services alone, and not in the case of goods. Therefore, it may be safely inferred that the location of the supplier of goods would be the location of the goods.
6. Under the GST regime, 'place of supply' in respect of goods will be determined in the following manner:

Situation	Place of Supply
Supply involves movement of goods by <ul style="list-style-type: none"> ▪ Supplier ▪ Recipient ▪ Any other person 	Location of goods when movement terminates for delivery to the recipient <i>[Section 10(1)(a) of the IGST Act, 2017]</i>
Goods delivered by the supplier to the recipient / any other person on the direction of a third party (agent or otherwise)	Principal place of business of the third person <i>[Section 10(1)(b) of the IGST Act, 2017]</i>
Supply does not involve movement of goods	Location of goods at the time of delivery to the recipient <i>[Section 10(1)(c) of the IGST Act, 2017]</i>
Goods are assembled or installed at site	Place of installation or assembly <i>[Section 10(1)(d) of the IGST Act, 2017]</i>
Goods supplied on board a conveyance like vessel, aircraft, train, motor vehicle	Location where such goods are taken on board <i>[Section 10(1)(e) of the IGST Act, 2017]</i>
Goods imported into India	Location of importer <i>[Section 11(a) of the IGST Act, 2017]</i>
Goods exported from India	The location outside India <i>[Section 11(b) of the IGST Act, 2017]</i>

Chapter 5

Value of Supply

1. The 'value of supply' was relevant to traders under the erstwhile VAT laws only to the extent of money-consideration received on account of sale, or sales made for a consideration that is lower than the cost of purchase of the goods being sold. However, in the GST regime, the 'value of supply' would have to be determined for every transaction, regardless of consideration, and whether or not such consideration is monetary. This is for two primary reasons:

(i) The term 'Consideration' as defined under Section 2(31) of the CGST Act, 2017 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;”

(ii) A supply made without consideration may also qualify as a taxable supply by virtue of a deeming fiction imposed under Section 7 read with Schedule I of the CGST Act, 2017.

2. Under the GST regime, the value of supply of goods and services on which tax is to be levied will be the 'transaction value' where the supplier and recipient are not related persons, and the price is the sole consideration to supply [Refer Section 15(1) of the CGST Act, 2017]. The law specifies certain inclusions / exclusions to the value, as follows:

Inclusions to transaction value	Exclusions from transaction value
<ul style="list-style-type: none"> ▪ Taxes, duties, cesses levied under any statute (<i>other than those levied under the GST laws</i>), if charged separately by the supplier; ▪ Amounts incurred by the recipient which the supplier is liable to pay, and 	<ul style="list-style-type: none"> ▪ Taxes, duties, cesses levied under GST laws including the Compensation Cess; ▪ Subsidies provided by Central and State Governments; ▪ Discounts provided before / at the time of supply, and reflected on the face of invoice;

<p>is not included in the price paid/ payable;</p> <ul style="list-style-type: none"> ▪ Incidental expenses (commission, packing, etc.) charged by supplier; ▪ Interest/ late fee/ penalty collected for delayed payment of consideration; ▪ Subsidies directly linked to price (<i>except those provided by Central or State Governments</i>). 	<ul style="list-style-type: none"> ▪ Discounts provided after supply has been effected on the conditions that: <ul style="list-style-type: none"> ○ Such discount is in terms of an agreement which had been entered into before or at the time of supply; ○ The credit note bearing the discount can be linked to specific invoices; ○ Input tax credit attributable to the discount has been reversed by the recipient.
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3. Recourse to rules is a must in situations where **value cannot be determined u/s 15(1)**, i.e., when:

- (i) Price is not the sole consideration; OR
- (ii) Supplier-recipient are related persons (*i.e., whether supplier is related to the recipient, or vice versa*).

The following table broadly summarises the valuation rules to the extent applicable to traders:

Rule	Description of nature of goods / situation	Priority	Determination of value
Rule 27	Value of goods where the consideration is not wholly in money (<i>i.e., consideration is partly in money, or wholly in non-monetary terms</i>)	1	Open Market Value of such supply
		2	Consideration in money + Any further money equivalent of the non-monetary consideration (if such amount is known at the time of supply)
		3	Value of supply of goods of like kind and quality;
		4	Consideration in money + Any further money equivalent of the non-monetary consideration determined as:
		(i)	Cost + 10%; OR

Rule	Description of nature of goods / situation	Priority	Determination of value
		(ii)	In a reasonable manner consistent with the principles of the Law
Rule 28	Value of supply of goods between distinct persons (same PAN) or related persons: <i>Recourse to Rules even if the Supplier-Recipient relationship:</i> <ul style="list-style-type: none"> • <i>Did not influence the price;</i> • <i>Precedes agreement to supply;</i> • <i>Has no bearing on pricing;</i> • <i>Has no bearing on agreement to the supply;</i> • <i>Has no relevance to supply;</i> • <i>Was to meet with different criteria or purpose.</i> 	1	Open Market Value of such supply Note: Invoice value deemed to be Open Market Value where the recipient is entitled to full credit
		2	Value of supply of services of like kind and quality;
		3	Value to be determined as:
		(i)	Cost + 10%; OR
		(ii)	In a reasonable manner consistent with the principles of the law
		Option to supplier: 90% 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 as such by the recipient.	
Rule 29	Value of supply of goods made or received through an agent	1	Open Market Value of such supply Option to supplier: 90% 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 as such by the recipient.
		2	Value to be determined as:
		(i)	Cost + 10%; OR
		(ii)	In a reasonable manner consistent with the principles of the law

Rule	Description of nature of goods / situation	Priority	Determination of value
Rule 32 (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	–	Difference between the selling price and the purchase price (Note: This value shall be ignored where the difference is negative)
Rule 32 (6)	Value of a token / voucher / coupon / stamp, redeemable against a supply	–	Money value of the goods and/or services redeemable against such token / voucher / coupon / stamp

4. In terms of the Explanation to 'Chapter IV – Valuation' of the CGST Rules, 2017:
- (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.*
5. The GST law also provides for a mechanism for computation of the tax element in a transaction where the consideration is inclusive of GST – this shall be carried out using the typical grossing-up basis, wherein the total consideration amount is appropriated between the value of supply and the tax thereon based on the rate of tax applicable to the supply.
6. **Inferences:**
- (a) Post-sale discounts would not have any tax implication where the credit note is issued after September of the succeeding financial year would have, since such credit note would be time-barred and cannot be reflected in the returns. Accordingly, even if the recipient were to reverse the credit attributable to the credit note issued by the supplier,

the supplier would not be entitled to claim a reduction in liability on account of such credit note.

- (b) Volume discounts would not entitle a supplier to claim a reduction in liability, given that the discount cannot be linked to any specific invoice, but relates to the turnover as a whole, despite the fact that the discount is in terms of an agreement entered into before the time of supply. The amendment which is made (notification is awaited for effective date) to the provisions of CGST relating to Credit notes delinking the invoice would help to overcome such difficulty.
- (c) The inclusions and exclusions to the value as specified in Section 15(2) and 15(3) of the CGST Act would equally apply to the value of supply determined under 'Chapter IV – Valuation' of the CGST Rules, 2017.

Chapter 6

Input Tax Credits

1. One of the key changes that GST brought with is the generosity of a seamless-credit mechanism for availment and utilisation of input tax credits. The GST law has created sufficient reasons to provide for availment of credit attributable to all inputs, input services and capital goods, that are used in the course or furtherance of business, barring a limited few exceptions. No cross credits are available across the States, and between various indirect taxes – however, there would be no cascading effect resulting from such restriction given that tax moves to the consumption State.
2. Under the erstwhile indirect tax regime, traders were unable to offset the credit of the taxes paid on receipt of goods and services, that is the excise duty on procurement of goods and service tax on receipt of services like rentals, freight, and advertisement etc., against the output VAT liability. Therefore, the taxes which were paid by traders could not be passed on to the recipients / customers as taxes, and therefore had to be included within the cost of the goods being traded. This resulted in cascading effect of taxes, since the end-customers were liable to pay VAT on the taxes paid by the trader and included in the price of the goods sold.
3. Under the GST regime, since the taxable event is supply, and goods and services are both governed under a single taxing statute, the credits can be cross-utilised between goods and services. Accordingly, a trader can utilise input tax credit on services received by him.
4. **Relevant definitions:**

Section 2(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;

Section 2(60): “**Input service**” means any service used or intended to be used by a supplier in the course or furtherance of business;

Section 2(19): “**Capital goods**” means goods, the value of which is capitalized in the books of account of the person claiming the credit and which are used or intended to be used in the course or furtherance of business.
5. The expression “in the course or furtherance of business” has not been defined in the law. However, it can be understood to cover all activities related to the functioning of a business as such activity/ inward supply has taken place in the course of business. The activities or goods inwarded need not be directly related to the trade undertaken by the supplier. Say, for instance, purchase of computers used for designing the packing of goods traded would be considered as an inward supply of capital goods effected in the course of business.
6. It may be noted that the differential treatment of capital goods as against inputs would be minimal. Credit on capital goods (ordinarily) can be availed in one-go, just as it is available

in case of inputs. The two points of differences between treatment of inputs and capital goods are:

- (a) Where the goods are used in effecting both taxable and exempt outward supplies – the difference arises by treating the capital goods as depreciable assets with an average value derived by treating the same as depreciable of over 5 years;
- (b) At the time of disposal / resale of the goods – the difference arises since the law reviews the value of supply of capital goods, i.e., the tax to be paid on supply of capital goods shall be higher of the tax on value of supply determined under Section 15 read with the Valuation Rules, or the amount equal to the input tax credit taken on said capital goods or plant and machinery reduced by such percentage points as may be prescribed.

7. **Conditions for claiming input tax credit**

- (a) Credit will be available only to registered persons, except in case of suppliers opting to pay tax under the composition scheme:
- (b) Tax invoice or debit note issued by the supplier is in the format prescribed under rules, containing all the particulars;
- (c) Tax invoice or debit note is available with the registered person claiming credit;
- (d) The person claiming credit has received the corresponding goods or services:
 - ✓ It is not sufficient if the invoice is addressed to the registered person, whereas the registered person ought to have physically received the goods / services on which credit is being claimed;
 - ✓ In case of goods dispatched in lots/ instalments, credit will be available only after receiving the last lot/ instalment;
 - ✓ Where goods are delivered to a person on the direction of the person claiming credit, the person claiming the credit will be deemed to have received the goods.
- (e) The tax has been discharged by the supplier (except in case of reverse charge mechanism)
 - ✓ Note: The mechanism for matching of details claimed as credit on the basis of the details furnished by suppliers has not been put in place as of date.
- (f) Some experts believe that credit cannot be availed unless the Place of Supply happens to be the same State in which the registered person intending to claim the credit is located;

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- (g) If depreciation is being claimed under the Income Tax law on the GST component in case of capital goods, credit will not be available.
- ✓ Note: It goes without saying that the GST component in case of inputs and input services shall not be included in their costs, so as to be claimed as an expense in the Statement of Profit and Loss;
- (h) The goods or services are used/ intended for use in the course or furtherance of business of the registered person;
- ✓ Note: Credit in respect of asset / goods purchased by one branch used for the business of another branch (located in a different State) shall not be available if the asset is not used in the course or furtherance of business of the branch (taxable person) making the purchase.
- (i) The supplier of the goods or services is also a registered person who has not opted to pay tax under the composition scheme (except in case of transactions liable to tax under reverse charge mechanism);
- (j) The supply is not classified as a supply ineligible for credits (as explained in Paragraph 8 of the Chapter);
- (k) The supplier has furnished the details of the invoice in the monthly return in FORM GSTR-3B/ FORM GSTR-1 and the recipient has furnished the details in the monthly return in FORM GSTR-3B:
- ✓ If the recipient has not declared the details in the Form GSTR-3B of the relevant month, he may declare it in a subsequent return, latest by September – i.e., Form GSTR-3B pertaining to September of the following year (or if the annual return is filed earlier, in a return prior to such annual return).
 - ✓ Credit cannot be claimed if the tax is as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities.
8. **The following inward supplies will not be eligible for input tax credit**, regardless of how directly they may be linked to the outward supplies, unless an exception has been specifically carved out:
- (a) motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), except when they are used for making the following taxable supplies, namely:—
- (A) further supply of such motor vehicles; or

- (B) transportation of passengers; or
- (C) imparting training on driving such motor vehicles;
- (aa) vessels and aircraft except when they are used—
 - (i) for making the following taxable supplies, namely:—
 - (A) further supply of such vessels or aircraft; or
 - (B) transportation of passengers; or
 - (C) imparting training on navigating such vessels; or
 - (D) imparting training on flying such aircraft;
 - (ii) for transportation of goods;
- (ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa):

Provided that the input tax credit in respect of such services shall be available—

- (i) where the motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) are used for the purposes specified therein;
- (ii) where received by a taxable person engaged—
 - (I) in the manufacture of such motor vehicles, vessels or aircraft; or
 - (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;

[Substituted vide amendment in legislation (Notification giving effective dated is awaited)]

- (b) the following supply of goods or services or both—
 - (i) food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicles, vessels or aircraft referred to in clause (a) or clause (aa) except when used for the purposes specified therein, life insurance and health insurance:

Provided that the input tax credit in respect of such goods or services or both shall be available where an inward supply of such goods or services or both 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; and
- (iii) travel benefits extended to employees on vacation such as leave or home travel concession:

Provided that the input tax credit in respect of such goods or services or both shall be available, where it is obligatory for an employer to provide to its employees under any law for the time being in force. *[Substituted vide amendment in legislation (Notification giving effective dated is awaited)]*

- (c) **Works contract service** provided for construction of immovable property;

Exception: Credit allowed if the immovable property is a plant or machinery; also allowed where the service is an input service for further supply of works contract service;

- (d) Supplies received for **construction of an immovable property** on own account, even if the property is used in the course or furtherance of business;

Exception: Credit allowed if the immovable property is a plant or machinery other than those specified under the Explanation to Section 17 of the CGST Act, 2017.

- (e) Supplies intended to be used and used for **personal consumption /for disposal as gifts or free samples.**

9. **Post-facto credit disallowance/ reversal of credit, or increase in output tax liability:**

- (a) **If the recipient does not pay the supplier** the consideration for the supply (including tax) within 180 days from the invoice date, the credit availed earlier will be treated as output tax liability and shall be paid immediately. Such credit can be reclaimed at a later date upon payment of consideration;
- (b) Goods / services used **partly for business, partly for other** purposes, and those used **partly for making taxable supplies** (including zero-rated supplies), **partly for making exempt supplies** (including supplies on which tax is payable by recipient)– reversal of credit attributable to other purposes in terms of Rule 42 / 43 of the CGST Rules, 2017;

Note: Exempted goods cannot be equated to zero-rated goods. While the former should be understood as 'no tax applicable', the latter should be understood as a tax at the effective rate of 0%.

10. The CST law provided an exemption or the benefit of concessional rate to certain specified inter-State transactions, subject to conditions including the submission of prescribed Statutory Forms. However, the need for such exemptions or concessions would not be necessary in the GST regime, given that the GST law allows credit of taxes paid in respect of inter-State inward supplies, unlike the provisions under the erstwhile CST law. Therefore, all such supplies would be wholly taxable, and accordingly, the recipient would be eligible for availment of full credit.
11. **Special circumstances where credit availed should be reversed:** In the below cases, the credit that has been availed should be reversed, and any balance of credit lying in electronic credit ledger shall lapse:

<p>A taxable person shall be liable to debit the electronic credit ledger in respect of:</p> <ul style="list-style-type: none"> • inputs held in stock • inputs contained in semi-finished/ finished goods held in stock • capital goods (reduced by % points) 	
<p>A. He switches over to composition scheme; B. He begins to make outward supplies that are wholly exempted from payment of tax</p>	<p>On the day immediately preceding:</p> <p>A. The date of switchover B. The date on which goods become absolutely exempt</p>

12. **Special circumstances where credit not available earlier becomes available –**
Condition: Invoice in relation to which credit is being claimed is not older than 1 year:

<p>A taxable person shall be entitled to credit in respect of:</p> <ul style="list-style-type: none"> • inputs held in stock • inputs contained in semi-finished/ finished goods held in stock • capital goods (reduced by %points) (Only in Case C & D below) 	
<p>A. A person who has applied for registration ➤ Within 30 days of becoming liable; and ➤ Registration has been granted. B. A person taking voluntary registration C. A composition supplier switches over to normal scheme D. A person who only supplied exempt goods which become taxable</p>	<p>On the day immediately preceding the date:</p> <p>A. From which he becomes liable to tax B. Of registration C. He becomes liable to pay tax under the normal scheme D. From which such supply becomes taxable – only on inputs relating to exempt supply, as not claimed earlier</p>

13. **Special circumstances where credit can be transferred from one registered person to another:** Where there is a change in the constitution of a registered person, the registered person can transfer the credits remaining unutilized in its books (with the specific provision

for transfer of liabilities) where the said change is on account of any Sale / Merger / Demerger / Amalgamation / Lease / Transfer of business.

14. **Distribution of credit by an Input Service Distributor:** The concept of distribution of credit has been explored and experienced by service providers in the past, while it is entirely new to traders. Traders, having dealt with goods, have never found the tracing of recipient as challenging as it is in case of services, given that services are intangible in nature. Many a time, the costs of several services are borne by the corporate office although the service is actually consumed by one or more sales offices. The Input Service Distributor (ISD) concept has been introduced now, to traders alike, since traders would now, in the GST regime, be entitled to avail credits arising from services received by them.

(a) An ISD is an office of the supplier of goods and/ or services that receives tax invoices towards receipt of input services and in turn issues prescribed document for distributing the credit of CGST, SGST, IGST paid on such services to taxable persons having the same PAN as that of the ISD.

(b) An ISD is not authorised to distribute credit in respect of goods, even if such goods are consumed by one registration for and on behalf of other registrations under the same PAN. An ISD is only authorised to distribute credit in respect of services which are invoiced to the ISD. In order to be recognised as an ISD, a separate registration as an ISD should be obtained. Such ISD would be granted a separate GSTIN, even if the person has already obtained a registration in the same State in which the ISD is located.

Input Tax credit	Distributed to	Distributed as	Conditions
CGST / SGST	Different State	IGST	<ul style="list-style-type: none"> • By issue of an ISD invoice • If attributable to 1 taxable person <ul style="list-style-type: none"> ➤ Only to that taxable person • If attributable to 2/more taxable persons <ul style="list-style-type: none"> ➤ To such persons in the ratio of their respective turnover
CGST	Same State	CGST	
SGST	Same State	SGST	
IGST	Always	IGST	

Chapter 7

Payment

1. All registered persons will have the 3 ledgers maintained on their behalf on the GST Common Portal. These ledgers are unique to each registered person and cannot be merged together merely because the registrations are obtained under the same PAN. The following are the 3 ledgers, which shall be separate for each type of account (say CGST – tax, SGST late fee, IGST interest, etc.):

(1) **Electronic cash ledger:** Every deposit made towards tax, interest, penalty, fee or any other amount by internet banking or by using credit/ debit cards or National Electronic Fund Transfer (NEFT) or Real Time Gross Settlement (RTGS) or by any other mode, would be credited to this ledger.

(2) **Electronic credit ledger:** The input tax credit as self-assessed in the return of a registered person would be credited to this ledger once it is provisionally accepted. Any credits appearing in the electronic credit ledger would, with immediate effect, be available for utilisation. There can be a credit ledger only in respect of taxes and cess (i.e., CGST, State specific SGST, IGST and Compensation Cess) and not for any other liabilities. The utilisation of the credits available in the electronic credit ledger would be as follows:

- (a) The credit of IGST shall first be used towards any IGST liability; thereafter, any excess thereof shall be used towards CGST liability; any excess thereafter can be used towards SGST/UTGST liability;
- (b) The credit of CGST shall first be used towards any CGST liability; thereafter, any excess thereof shall be used towards IGST liability; CGST credit cannot be used towards SGST/UTGST liability even if there is any excess balance lying in the CGST credit ledger thereafter;
- (c) The credit of SGST/UTGST shall first be used towards any SGST liability; thereafter, any excess thereof shall be used towards IGST liability; SGST/UTGST credit cannot be used towards CGST liability even if there is any excess balance lying in the SGST credit ledger thereafter;
- (d) The credit of compensation cess shall be used only towards any liability of compensation cess.

Following amendments are made (notification giving effective date is awaited)

- (a) It is provided that SGST/UTGST shall be used for payment of IGST only when there is no balance left in CGST account.

- (b) Further it is also provided that IGST has to be first exhausted and later on CGST/SGST/UTGST can be used towards the respective payments as explained in (a) to (c) above.
- (3) **Electronic liability ledger:** All liabilities of the taxable person would be recorded and maintained in this ledger, whether it pertains to tax or interest or penalty or any other amount payable under the GST law. The nature of demand raised by the department can be any of the following:
- ✓ **Tax:** Tax is the amount payable as a result of the charging provision. It is a compulsory exaction of money by a public authority for public purposes, the payment of which is enforced by law. Any amount in lieu of tax (say amount paid by persons opting for composition scheme) cannot be regarded as tax.
 - ✓ **Interest:** Interest is compensatory in character and is imposed on a taxpayer who has withheld payment of any tax as and when it is due and payable. The levy of interest is geared to actual amount of tax withheld and the extent of the delay in paying the tax on the due date. Essentially, it is compensatory and different from penalty which is penal in character.
 - ✓ **Penalty:** Penalty is ordinarily levied on a taxpayer for some contumacious conduct or for a deliberate violation of the provisions of the particular statute.
 - ✓ **Fees:** Amount paid for the processing/ regulatory acts performed by the department to facilitate the activities of the taxpayers.
2. Input tax credit can only be utilised for payment of tax and no other amount due under the Act. However, the amount available in the electronic cash ledger may be used for making payment towards tax, interest, penalty, fees or any other amount payable under the law. E.g. Any interest liability shall be discharged from the electronic cash ledger, although the registered person has credit balance of IGST lying in his electronic credit ledger.
3. Once a taxpayer is registered on the GST Common Portal, the electronic ledgers will automatically be displayed on his dashboard at all times to facilitate tracking of his credits and liabilities, as also the excess cash available in the electronic cash ledger. While the taxable event would be the 'time of supply' as explained in Chapter 3, the trader would be liable to make payment only at the time of furnishing his monthly returns in FORM GSTR-3B.
4. It is important to note that a mere deposit into the electronic cash ledger would not render the same a 'payment'. The amount in the electronic cash / credit ledgers must be off-set with the self-assessed liability in order to consider the liability discharged.

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5. Say, for instance, a supplier has reflected an outward supply as an intra-State supply and has wrongly deposited the amount in the cash ledger of CGST & SGST. In that case, he would be required to infuse additional cash into the correct liability account, being the IGST account in order to offset the liability. The excess cash appearing in the electronic cash ledger may be claimed as a refund by way of an online application which can be made on the GST Common Portal. Unlike the electronic credit ledger, the electronic cash ledger does not permit cross utilisation.
 6. When payments are due from a taxable person, he must keep in mind the following order in which his liability would be discharged:
 - (i) Taxes and other dues pertaining to any returns of preceding tax periods (months, or quarter in case of composition suppliers) furnished by the trader;
 - (ii) Taxes and other dues pertaining to the return of the current tax period furnished by the trader;
 - (iii) Any amount other than taxes payable, including the demand determined by the tax authorities.
 7. In this regard, it is relevant to understand the functioning of the GST Common Portal:
 - (a) The Portal is designed in such a way so as to impose the registered person to furnish all the returns pertaining to preceding tax periods before furnishing the return for the current tax period. Further, returns can only be furnished.
 - (b) The design does not permit a taxpayer to furnish a return without offsetting the self-assessed liabilities.
 8. **Payment of interest:** Every person who was liable to pay tax but failed to pay the whole/part of the tax to the account of the appropriate Government within the period prescribed, will be required to self-assess the interest payable on such delay in remittance (and off-set) for the period for which the tax remains unpaid, and key in the details of such interest liability in the returns. The law does not require a notice to be served on a registered person in order to demand the same. For instance, if an intra-State outward supply was to be reflected in the monthly return of October, but was reflected only in the month of November, the interest payable on the supply would be computed separately for CGST and SGST, at the notified rate (18% or 24%, as the case may be), and shall be reflected in the monthly return for November, by the registered person, i.e., there would be no indication on the Portal to alert him that interest is due.

Accounts and Records

1. Every registered trader shall be required to maintain, amongst others, the details of input tax credit availed, stock of goods, inward and outward supplies of goods and/or services including imports and exports, supplies attracting tax on reverse charge basis, details of advances paid / received, output tax payable and paid, etc. He shall also be liable to maintain the documents evidencing the above such as invoices / bills of supply / delivery challans / debit notes / credit notes / receipt vouchers / refund vouchers / self-invoices / payment vouchers, and other such documents. The accounts, records and other documents shall be required to be maintained for a period of 72 months from the date on which the Annual Return for the financial year is furnished.
2. The stock records shall include the details of opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock, scrap and wastage. However, a composition taxpayer is not required to maintain stock details. Specifically, in respect of taxable goods and services, the registered person shall also maintain the names and complete addresses of suppliers from whom he has received, and the persons to whom he has supplied the goods / services.
3. The registered person shall also maintain the complete address of the premises where goods are stored by him along with the particulars of the stock stored therein. Where any such address has not been declared by the person, and goods are found in such location without the cover of any valid documents, it shall be deemed that the goods have been supplied, and the proper officer is empowered to demand taxes due thereon.
4. Where any of the records required to be maintained under Section 35 of the CGST Act, 2017 read with 'Chapter VII – Accounts and Records', of the CGST Rules, 2017 are maintained electronically, the record so maintained are statutorily required to be authenticated by means of a digital signature.

Chapter 9

Documentation

1. The following documents would be relevant in case of any outward supplies effected by a registered person being a trader in terms of Section 31 – 34 read with 'Chapter VI – Tax invoice, Credit and Debit Notes' of the CGST Rules, 2017:

Particulars	To be issued by the trader in the following cases of outward supplies	Timeline for issuing the Document
Tax Invoice	For effecting any taxable outward supplies, e.g.: <ul style="list-style-type: none"> - Issue of goods for rental purpose - Scrapping & disposal of goods - Service charges - Inter-State stock transfer 	In case of supply of goods : Before/ at the time of removal of goods for supply / making goods available to the recipient;
Bill of supply	For supplying any exempted goods or services or paying tax under composition scheme	<i>Similar to tax invoice provisions</i>
Receipt voucher	Where advance amount is received <i>Note: A deposit received in respect of a supply of goods or services would not be considered as an advance (i.e., payment made for the supply) until such time the amount is applied as consideration for the supply.</i>	At the time of receipt of advance.
Refund voucher	Where advance amount is received and subsequently, no supply is made (in part / whole) and consequently, tax invoice has not been issued for the amount being refunded to the recipient	At the time of refunding the advance amount to recipient
Credit Note	Credit note can be issued only in the following 4 cases: <ul style="list-style-type: none"> - Taxable value specified in the invoice is in excess of the taxable value applicable; - Tax charged in the invoice is in excess of tax chargeable; - Goods supplied are returned; - Supply made is found to be deficient. 	At the time the reason for issuance of credit note is identified but within latest by September of the succeeding financial year (or filing of the annual return, if filed earlier)

Particulars	To be issued by the trader in the following cases of outward supplies	Timeline for issuing the Document
Debit Note	Debit note shall be issued by the trader in the following 2 cases: - Taxable value in the invoice is less than the taxable value applicable; - Tax charged in the invoice is less than the tax chargeable.	At the time the change is noted. Note: A “debit note” includes a supplementary invoice.
Delivery Challan	Delivery Challan shall be issued in the following cases - Transportation of goods for Job work; - Transportation of goods for reasons other than by way of supply (<i>such as transportation of goods between warehouses within the same State</i>); - Transportation of goods for the purpose of supply where invoice could not be issued at the time of removal of goods (<i>Note: Tax invoice to be issued additionally at the time of delivery in such cases</i>).	At the time of removal of goods for transportation.
E-way bill	For causing movement of taxable goods and also in case of receipt of goods from unregistered suppliers, if consignment value >Rs.50,000 <i>(This document shall be generated on the Portal)</i>	Document to be generated before commencement of movement of goods

2. The following documents would be relevant in case of any inward supplies effected by a registered person being a trader in terms of Section 31 – 34 read with Chapter VI – Tax invoice, Credit and Debit Notes’ of the CGST Rules, 2017:

Particulars	To be issued by the trader in the following cases of inward supplies	Timeline for issuing the Document
RCM Tax invoice (<i>also commonly referred to as self-invoice</i>)	For all supplies liable to tax under reverse charge mechanism, where the supplier is not registered person.	On the date of receipt of goods or services
Payment Voucher	For all supplies liable to tax under reverse charge mechanism, whether or not the supplier is a registered person	At the time of making payment to the supplier
ISD invoice	To be issued by the ISD registrants on a monthly basis to every recipient of credit, for distribution of credit, arising on account of invoices and debit notes issued by various suppliers of services to the ISD, for the month	For the month in which tax invoice/ debit note is issued to the ISD.
ISD Credit note	To be issued by the ISD unit in case of reduction of credit distributed earlier, for any reason.	For the month in which credit is reduced for any reason.

Compliance Requirements

1. Under the GST laws, every registered trader is required to file returns for all tax periods. Such returns are required to be filed whether or not any supplies have been effected during the tax period – in other words, NIL Returns are required to be filed for tax periods in which there were no supplies of goods or services. In addition to this, a trader is required to file details of inward and outward supplies. A delay in filing of the returns would attract a late fee as prescribed. Presently, the late fee is payable under the CGST and SGST Laws for delayed filing of returns @ Rs.25 per day under each law (i.e., a total of Rs.50 per day), for the period during which the default continues. However, the late fee shall be a reduced fee of Rs.10 per day (i.e., a total of Rs.20 per day), for tax periods where there is no tax liability under each of the laws. Also, late fee for delayed filing of FORM GSTR-6 (ISD return) @ Rs. 100 per day under each law (i.e. a total of Rs. 200 per day).

2. The periodicity for filing such details of inward and outward supplies and returns has been briefly summarised in the following table, in terms of the provisions of Sections 37 to 44 of the CGST Act, 2017 read with 'Chapter VIII – Returns', of the CGST Rules, 2017:

Return/ Statement	Particulars	Applicability	Due date
FORM GSTR-1	Details of outward supplies	All registrants (including Casual Taxable Person) other than those obtained in the capacity as: × ISD × Composition supplier × TDS registration × TCS registration	<ul style="list-style-type: none"> • April 2018: 31-May-2018 • May 2018 to June 2018: 10th of the succeeding month • July 2018 to March 2019: 11th of the succeeding month
FORM GSTR-2 (Deferred)	Details of inward supplies		15 th of the succeeding month
FORM GSTR-3 (Deferred)	Monthly Return		20 th of the succeeding month

Return/ Statement	Particulars	Applicability	Due date
FORM GSTR-3B	Monthly Return		
FORM GSTR-4	Quarterly Return	Traders who have opted for composition scheme	18 th of the month succeeding the quarter
FORM GSTR-6	Monthly Return	Traders registered as ISD	All tax periods upto August 2018: 30-Sep- 2018
FORM GSTR-7 (Deferred)	Monthly Return	Traders required to deduct tax at source	10 th of the succeeding month
FORM GSTR-8 (Deferred)	Monthly Return	E-commerce operators required to collect tax at source	10 th of the succeeding month
FORM GSTR-9	Annual Return	All traders other than those being ISD, TDS, TCS and Casual taxable person registrants	31 st December succeeding the end of the financial year
FORM GSTR-10	Final Return	Every trader who applies for cancellation	Expiry of 3 months from the date of cancellation, or the date of cancellation order, whichever is later

3. **First Return:** On registration into the GST regime, a trader would be required to file the relevant details and returns as mentioned above. In cases where a trader has effected outward supplies in the period between the date on which he became liable to be registered and the date on which registration was granted to him, he shall be required to declare the

details of all such supplies in the first return filed by him after grant of registration. In effect, such first return may contain details of transactions occurring in a period longer than one tax period, covering the entire taxable period.

4. **GST Audit:** Every registered trader whose aggregate turnover in a financial year exceeds Rs. 2 Crore shall be required to get his accounts audited by a Chartered Accountant or a Cost Accountant, for all the GST registrations obtained under the PAN, and shall be required to submit the audited annual accounts and a certified reconciliation statement, along with the Annual Return, on the GST Common Portal.

5. **Brief note on the simplified user-friendly scheme of returns:**

Return format	✓ Two main tables – One for liability and one for credits. The details would be auto-populated in the Liability table based on Annexure of invoices.
Monthly returns	✓ Single return, to be filed on a monthly basis, to be filed within due dates staggered for various classes of registered persons (based on estimated annual turnover)
Quarterly returns	<ul style="list-style-type: none"> ✓ Option available to registered persons having estimated annual turnover upto Rs.500 Lakhs in the preceding FY – whereas tax payable on monthly basis; ✓ Option to switchover from quarterly scheme shall be given only once during the FY, and shall be exercised at the beginning of a quarter; ✓ Benefit of treating invoices as pending / declaring missing invoices not available.
Nil returns	✓ Simplified by way of SMS facility – nil purchases / output tax / input tax
Viewing facility	✓ Anytime uploading of invoices by supplier which would be continuously visible to the recipient of supply, with the cut-off date as 10 th of the succeeding month. Where invoices are uploaded but return is not filed, the same shall be treated as self-admitted liability and thus, the supplier shall be liable for recovery proceedings. There would be no automatic reversal of credit where the supplier has failed to remit taxes, other than in exceptional cases such as missing supplier, etc.

	<ul style="list-style-type: none"> ✓ To safeguard / warn recipients, no invoices would be permitted to be uploaded by a supplier until payment of tax: <ul style="list-style-type: none"> ○ In case of a newly registered supplier – However, initial invoices upto a certain threshold can be uploaded until such time; ○ In case of a supplier who has defaulted in payment of tax beyond a time period and/or above a threshold.
Credit availment	<ul style="list-style-type: none"> ✓ All invoices shall be accepted / rejected / kept pending – between 11th of the succeeding month and the due date for filing of return. Only uploaded invoice would be a valid document for availing input tax credit, and credit can be availed only against accepted invoices. Once accepted, the invoice would be locked and cannot be amended, unless the input tax credit thereon is fully reversed. ✓ Credit on imports and supplies from SEZ shall be availed on self-declaration basis until such time the data is transmitted online from ICEGATE & SEZ portals. ✓ Where supplier has failed to upload any invoices, the recipient may avail credit on declaring such missing invoices. However, if such missing invoices are not uploaded by the supplier within a prescribed period, the credit availed thereon shall be recovered from the recipient. ✓ The input tax credits based on invoices uploaded after 10th of the succeeding month would be available only in the succeeding month (whereas the tax liability of the supplier would be attributable to the month to which the invoice pertains).
Missing invoices	<ul style="list-style-type: none"> ✓ Missing invoices shall be reported by the supplier in the main return for any tax period with interest or penalty as applicable. Reporting of missing invoices by recipient can be delayed up to two tax periods to allow recipient to follow up and get the missing invoice uploaded from the supplier. Taxpayers filing quarterly returns shall report missing invoices in the next quarter.
Delayed reporting (invoice of one month reported in	<ul style="list-style-type: none"> ✓ The liability acknowledged in a particular month, attributable to such month as well as preceding months, would be reflected separately for each of the months, whereas the payment would be a consolidated sum. The return can be filed only after the total

the subsequent month)	<p>liability acknowledged in such return is fully remitted. The interest thereon would be auto-computed.</p> <ul style="list-style-type: none"> ✓ After filing of the return, information relating to each tax period would appear with the information relating to the applicable tax period, irrespective of the tax period in which the liability is declared. Say a missing invoice is reported in a subsequent tax period, the details of such invoice would still appear along with the other invoices uploaded for the relevant month.
Amendment return	<ul style="list-style-type: none"> ✓ Every return can be amended by amending the details of liability in the Annexure, by way of an amendment return – to be filed within the due date specified in Section 39(9) (September of the succeeding FY or date of Annual Return, whichever is earlier). All the details attributable to a specific month (including missing invoices reported at a later date) can be amended only through the amendment return for such month, even if any details are reported in the return filed for a subsequent month. ✓ Each return can be amended only twice. Therefore, one must act diligently in choosing the time to furnish an amendment return. ✓ Amendment of the Credit Table would also be permitted. However, the change in closing balance of credits due to such amendment would not require an amendment in opening balance and closing balance in the subsequent returns.
Pending invoices	<ul style="list-style-type: none"> ✓ Where the recipient believes that the invoice requires amendment, or is yet to receive the supply / invoice, or is unable to decide on the availability of credit thereon for any other reasons, the invoice uploaded by the supplier may be kept pending – this may be accepted / rejected at a later date. ✓ Such invoices will have to be reported separately in the annual return.
Miscellaneous	<ul style="list-style-type: none"> ✓ Payment on account of amendment return can be made using input tax credits available in the credit ledger. However, an amendment return may attract a higher late fee for an increase in liability by more than 10%; ✓ Negative liabilities can be carried forward into the subsequent tax period (say, reduction of tax liability on account of issue of credit

	<p>notes reported in a month being higher than the tax liability on account of issue of tax invoices reported in the month);</p> <p>✓ An option for uploading details of the shipping bill separately at a later date shall be provided to exporters, and this shall not be regarded as an amendment return. All details of exports shall be transmitted to ICEGATE</p>
Transition phase	<p>✓ For 6 months after the aforesaid system of returns is implemented, the recipient would be able to avail input tax credit on self-declaration basis, even on the invoices not uploaded by the supplier using the facility of indicating missing invoices.</p>

Note: In this article, the issues relating to returns and due dates announced by the Government for the Financial Year 2017-18, have not been discussed.

Chapter 11

Assessment and Audit

1. The procedure for assessments and audits would continue to be in the same manner as is in existence under the erstwhile laws, although the GST regime would facilitate transparency in the communications with the tax authorities.
2. Assessment would be on a monthly basis (or quarterly basis in case of composition suppliers), on furnishing of periodical returns. The system provides for self-assessment of the turnover of outward and inward supplies. The returns furnished could be picked up for scrutiny to verify the correctness of the return, and explanations may be demanded where any discrepancies are noticed. In case no satisfactory explanation is furnished within 30 days, or where the trader accepts the discrepancies but 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 initiation of recovery proceedings.
3. **Provisional assessment:** Where a trader is unable to determine the value of supply or the rate of tax applicable, he may request the proper officer for permission to pay tax on a provisional basis. The permission can only be granted if the proper officer is satisfied with the reasons furnished by the trader. It may be noted that the registered person is not mandated to effect supplies at the provisionally assessed value or rate, and these are for the purpose of computing the tax leviable on the supply. Every supply made where the tax is determined on a provisional basis shall be required to be reported in the statement of outward supplies in Form GSTR-1 as a transaction on which tax is provisionally assessed. The proper officer shall pass the final assessment order within 6 months from the date of the communication of the order for provisional assessment. For this purpose, he may require the trader to provide further information as may be necessary for finalizing the assessment.
4. **Assessment without returns:**
 - (a) **Non-filers of returns:** Where a registered trader fails to furnish a periodical return, or the annual return, or final return (where he has applied for cancellation of registration), a notice shall be served upon him requiring him to furnish the relevant return. Where the default continues even after service of such notice, the proper officer may proceed to perform a best-judgement assessment of the tax liability and issue an assessment order. However, this order shall be deemed to be withdrawn if the trader furnishes the returns within 30 days of the said order (nevertheless, applicable interest and late fees would be payable).
 - (b) **Unregistered persons:** Where a trader becomes liable for registration and fails to obtain registration in the State, he would be treated as an “unregistered taxable person” in respect of the State in which he has failed to obtain registration. Thereafter, he would be treated on par with a ‘non-filer of returns’, as above.
 - (c) **Special cases:** A proper officer may proceed to assess the liability and pass an assessment order where he obtains any evidence showing a tax liability of a taxable person, even if such

person is not ascertainable – the person in charge of the goods supplied would be deemed to be the taxable person liable to pay the tax. However, if the trader applies to the officer that the order is erroneous, along with the necessary evidences, within 30 days of its service, the said order may be withdrawn.

5. **Departmental audit:** The Commissioner or any officer authorised by him may undertake audit of any taxable person, and this shall be distinct from the GST audit that is carried out annually by the Chartered Accountant or Cost Accountant appointed by the registered person. This audit is statutorily required to be completed within 3 months from the date on which the details called for by the tax authorities are made available by the taxable person, or the actual institution of audit at the place of business, whichever is later. Therefore, traders should provide the relevant details at the earliest to ensure speedy completion of the audit.
6. **Special audit:** A special audit may be demanded at any stage of scrutiny, enquiry, investigation or any other proceedings before the proper officer, based on the nature and complexity of the case, and the interest of revenue. The registered person would be directed to get his records and books examined and audited by a Chartered Accountant (or a Cost Accountant) as may be nominated by the Commissioner in this behalf, where the officer is of the opinion that value has not been correctly declared, or that credit has not been availed within the normal limits.

Chapter 12

Offences & Penalties

1. **Offences and penalties** go hand-in hand in any taxation statute. The GST law attempts to standardise the categories of offences in order to bring clarity in the quantum of penalty to a fixed amount, so that the discretion exercisable by the officer imposing the penalty is minimal. Despite this, the question of whether or not there was *malafide* intent in the non-compliance would continue to be relevant in determining the quantum of penalty.
2. The following table summarises the offences and the corresponding penalty:

Sl.	Nature of Offence – When the trader:	Prescribed Penalty
(i)	<ul style="list-style-type: none"> • Supplies any goods without invoice; • Issues invoice without supply of goods; • Transports taxable goods without documents; • Disposes or tampers goods detained or seized etc.; • Collects tax amount but does not remit the same; • Collects tax in contravention of the Act; • Fails to deduct/ collect tax at source; • Takes input tax credit (ITC) without receipt of supply; • Takes or distributes credit in violation; • Obtains refund by fraudulent means; • Fails to get registered; • Suppresses turnover; • Gives false information; • Manipulates financial records; • Fails to maintain books of account; • Fails to provide information, required documents; • Obstructs/ prevents an officer in discharge of duty; • Tampers or destroys evidence. 	<p>Higher of the following:</p> <ol style="list-style-type: none"> 1. Rs. 10,000/-; or 2. An amount equivalent to: <ul style="list-style-type: none"> • tax evaded; • tax not deducted; • tax not collected; • excess ITC availed; • excess ITC distributed; • excess refund claimed.
(ii)	(a) Tax not paid/ short-paid/ erroneously refunded, or input tax credit wrongly	(a) Higher of the following:

Sl.	Nature of Offence – When the trader:	Prescribed Penalty
	<p>availed/ utilized is for any reason, other than by fraud or any wilful misstatement or suppression of facts to evade tax</p> <p>(b) Tax not paid/ short-paid/ erroneously refunded, or input tax credit wrongly availed/ utilized is for any reason of fraud or any wilful misstatement or suppression of facts to evade tax</p>	<p>1. Rs. 10,000/-; or</p> <p>2. 10% of tax due</p> <p>(b) Higher of the following:</p> <p>1. Rs. 10,000/-; or</p> <p>2. Tax due</p>
(iii)	<ul style="list-style-type: none"> • Aids or abets any of the offences specified in Sl.No.1 above; • Acquires possession of, or deals with any goods which he knows/ has reason to believe are liable to confiscation; • Receives any supply of services in contravention; • Fails to appear before an officer when summoned; • Fails to issue invoice or record it; • Residuary penalty. 	<p>Up to Rs. 25,000/-, subject to:</p> <ul style="list-style-type: none"> • Issuance of show cause notice; • Opportunity of being heard; • Explanation specifying the nature of breach, applicable provisions prescribing the penalty; • Facts and circumstances of the case.

3. **Detention, seizure & release of goods and conveyances in transit:** Where any person transports/ stores goods while they are in transit in contravention of the provisions, such goods, along with the conveyance carrying such goods, and the related documents would be liable to detention / seizure. The payment towards the tax and penalty shall be made upon receipt of notice, for the release of goods / conveyance. After detention / seizure, the goods or conveyance shall be released,-

- (a) on payment of the applicable tax and penalty equal to 100% of the tax payable on such goods and, in case of exempted goods, on payment of an amount equal to 2% of the value of goods or Rs. 25,000/-, 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 50% 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 5% of the value of goods or Rs. 25,000/-, 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

In this regard, the law has carved out a provision for the transporter to upload the details of interception on the GST Common Portal where a vehicle has been intercepted and detained for a period exceeding 30 minutes vide Rule 138D of the CGST Rules, 2017.

4. **The GST law provides for confiscation of goods and/ or conveyances and levy of penalty where any person:**

- ✓ Uses any conveyance for carriage of taxable goods in contravention of the provisions (unless the owner proves that it was without his knowledge/ connivance);
- ✓ Does not account for goods liable to tax;
- ✓ Makes taxable supplies without applying for registration;
- ✓ Supplies/ receives goods in contravention of provisions, with an intent to evade tax;
- ✓ Contravenes any of the provisions of the law with intent to evade tax.

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- Indirect Taxes Committee